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REPORT TO THE HONORABLE MAYOR AND CITY COUNCIL

CLARIFICATIONS REGARDING APPOINTMENTS TO THE SAN DIEGO REGIONAL
TRANSPORTATION AGENCY, LOCALLY REFERRED TO AS SANDAG

INTRODUCTION

This Report supplements the Report to the Honorable Mayor and City Council dated December 21, 2009, entitled "Authority to Make Appointments to Outside Organizations Under the Mayor-Council Form of Governance." City Att'y Report 2009-33 (Dec. 21, 2009) (2009 Report). A copy is attached for your reference. Additionally, it memorializes verbal advice given and responds to questions raised during the January 8, 2013, City Council (Council) meeting concerning appointments to the San Diego Regional Transportation Agency, locally referred to as SANDAG.

DISCUSSION

Various Council members questioned whether council members who are not members of the Board of Directors could sit on the policy advisory committees (PACs). With the exception of the Executive Committee, California Public Utilities Code section 132351.4¹ does not require that only representatives or alternates of the Board of Directors may serve on the PACs. Contrary to SANDAG's interpretation from 2009, which is represented in our 2009 Report, the current General Counsel to SANDAG concurs that membership on PACs, other than the Executive Committee, is *not* limited to those who are members or alternates of the Board of Directors.²

Since the meeting of January 8, 2013, we have also received questions regarding the number of alternates that may serve on one of the PACs, the Transportation Committee. Section 132351.4(a)(2)(A) and Board Policy No. 002 address this issue. Section 132351.4(a)(2)(A) states that:

[T]he transportation committee shall consist of nine voting members with board members or alternates representing east county, north county coastal, north county inland, south county and the mayor or a council member from the City of San Diego, a supervisor from the County of San Diego, a member of the board of the MTDB appointed by the board of the MTDB, a member of

¹ All references are to the California Public Utilities Code unless otherwise specified.

² Confirmation received by electronic correspondence on January 8, 2013.

the board of the NCTD appointed by the board of the NCTD, and a member of the San Diego County Regional Airport Authority appointed by the airport authority.

Board Policy No. 002, section 1.2 states in relevant part that “[t]here may be nine alternates chosen in the same manner [as the members].” Given the plain language of both section 132351.4(a)(2)(A) and Board Policy No. 002, San Diego may appoint one member and *one* alternate to the Transportation Committee.

Finally, we clarify section 132351.4(c) regarding the limitation on the number of board members who may serve on PACs. SANDAG Board Policy No. 002, section 2, Limitation on Committee Membership,³ states in relevant part that “[n]o Board member or alternate may serve as the *primary* member of more than two [PACs] at any one time.” (Emphasis added.)

CONCLUSION

Membership on PACs, other than the Executive Committee, is *not* limited to those who are members or alternates of the Board of Directors. San Diego may appoint one member and one alternate to the Transportation Committee. Under SANDAG Board Policy No. 002, no Board member or alternate may serve as the *primary* member of more than two PACs at any one time.

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By /s/ Mary Jo Lanzafame
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Attachment
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³ Board Policies are established pursuant to section 132351.4(a).

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December 21, 2009

**REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL**

**AUTHORITY TO MAKE APPOINTMENTS TO OUTSIDE ORGANIZATIONS UNDER THE
MAYOR-COUNCIL FORM OF GOVERNANCE**

INTRODUCTION

In February 2006, the City Attorney advised the City Council's Committee on Rules, Open Government and Intergovernmental Relations about changes to the procedures for appointing City representatives and public members to various City corporations, boards and committees, and regional agencies required under the Mayor-Council form of governance. City Att'y Report No. 2006-9 (Feb. 28, 2006). Each year since then, by informal agreement, the Mayor and Council President have jointly suggested to the Council which elected officials should be appointed to represent the City as members of certain outside entities. The Council then votes on the resolutions appointing the various Councilmember representatives, which the Mayor must approve or veto.

The voters will determine whether the Mayor-Council form of governance will become permanent in June, 2010. The Mayor and Council President have requested advice on the authority to appoint Councilmembers as representatives to organizations and entities outside the City, such as, the San Diego Regional Transportation Agency [SANDAG] and other organizations. This Report describes in more detail the current laws and other authorities specifically governing the appointment process for various organizations.¹ Each particular appointment process may involve the Mayor or the City Council, alone or in combination. These processes do not preclude the Mayor and City Council from reaching a voluntary agreement to share their respective authority with each other, so long as their process is consistent with the controlling authority and agreeable to the outside entity. We have attached a chart summarizing the conclusions of the report for the parties' convenience.

¹ This Report is based solely on existing statutes, bylaws, agreements or contracts, which are subject to change.

DISCUSSION

I. OVERVIEW OF APPLICABLE LAW.

San Diego is a charter city, permitting it to “make and enforce all ordinances and regulations in respect to municipal affairs” subject only to its charter’s restrictions and limitations. Cal. Const. art. XI, § 5. Courts have established general rules governing which laws apply in the interplay between charter cities and state laws, and between City charter provisions and other acts of the City. For example, charter cities may not take actions, by resolution, ordinance, or otherwise, which conflict with their charters. “Any act that is violative of or not in compliance with the charter is void.” *Domar Electric, Inc. v. City of Los Angeles*, 9 Cal. 4th 161, 171 (1994). Local laws “enacted in a charter city relating to matters which are purely municipal affairs prevail over state laws covering the same subject.” *Committee of Seven Thousand v. Superior Court*, 45 Cal. 3d 491, 505 (1988). On the other hand, as to matters of statewide concern, “home rule charter cities remain subject to and controlled by applicable general state laws regardless of the provisions of their charters” *Id.* (quoting *Bishop v. City of San Jose*, 1 Cal. 3d 56, 61 (1969)). The California Supreme Court has defined “matters of statewide concern” to include “all matters of more than local concern [including] matters the impact of which is primarily regional rather than truly statewide.” *Committee of Seven Thousand*, 45 Cal. 3d at 505.

This simply means that state laws creating regional agencies and *requiring* a certain appointment process for their elected representative members will control over any conflicting City Charter provision providing for the appointment of City representatives. Where the state laws are silent on the appointing authority, there is no conflict. In that event, local laws addressing the appointing authority will control the appointment process. Our local law, reflected in the City Charter, is consistent with these established legal principles. It provides the City’s Mayor with “[s]ole authority to appoint City representatives to boards, commissions, committees and governmental agencies, unless controlling law vests the power of appointment with the City Council or a City Official other than the Mayor.” San Diego Charter § 265(b)(12). These Mayoral appointments are not subject to Council confirmation.

We apply the Charter and these legal principles to determine who appoints the elected officials to the entities in this report, which are grouped under three headings for convenience: (1) agencies created by state law or pursuant to agreements under state law; (2) multi-jurisdictional task forces created by joint local resolutions; and (3) private organizations and liaisons.

II. AGENCIES CREATED BY STATE LAW OR PURSUANT TO AGREEMENTS UNDER STATE LAW.

As explained above, if the state laws creating regional agencies require a certain appointment process for their elected representative members, that process will control. Where

the state laws are silent, the City Charter will control the appointment process. Similarly, required appointment processes found in legal agreements governing multi-jurisdictional groups authorized pursuant to state law, such as the Joint Exercise of Powers Act [Cal. Gov't Code §§ 6500-6536], control over conflicting local charter provisions. If the legal agreement is silent on the appointment authority, the City Charter controls the appointment process.

A. SANDAG: Its Boards, Policy Advisory Committees and Working Groups.

The San Diego Regional Transportation Agency, a consolidated regional transportation agency, was created by state law in 2002 as a successor agency to local agencies including the San Diego Association of Governments [SANDAG]. It assumed certain functions of the Metropolitan Transit Development Board and the North County Transit Development Board. The regional agency is locally referred to as SANDAG. The selection process for members of SANDAG is fully described within the controlling statutory scheme creating the agency. *See* Cal. Pub. Util. Code §§ 132350 et seq.² Accordingly, when the statutory scheme provides how elected City representatives are to be chosen, those rules will govern. When it does not, San Diego Charter section 265(b)(12) provides the appointing authority solely to the Mayor. The City provides elected and non-elected representatives to the 21-member Agency Board; its five Policy Advisory Committees [PACs]; and various working groups and committees, described in greater detail below.

1. The Mayor and Council Jointly Appoint Representatives to the SANDAG Board of Directors and its PACs.

a. The SANDAG Board of Directors.

The City of San Diego provides a total of six elected representatives to the SANDAG Board of Directors: a primary and secondary representative, and two alternates for each position. Each representative must be the Mayor or a City Councilmember. The statute requires the "governing body" of the City to select these representatives. § 132351.1(d). "Governing body" is defined as the "council and mayor where the mayor is not a member of the council." § 132351.1(b).

b. The SANDAG PACs.

There are five SANDAG PACs. Four were created expressly by statute: the executive, transportation, regional planning, and borders committees. § 132351.4(a). The fifth, the public safety committee, was created by SANDAG in 2004 to assume the administrative and financial functions of the ARJIS Joint Powers Agency (JPA). Committee members are selected according to processes established by SANDAG. § 132351.4(a); SANDAG Board policy 002. Board Policy 002, section 4.1.1 (July 2007 Rev.) requires "[t]he mayor and council of the City of San

² Section references in this part are to the California Public Utilities Code unless otherwise indicated.

Diego . . . [to] make their appointments . . . ,” mirroring section 132351.1. The state law does not permit board members to sit on more than two PACs at any one time. § 132351.4(c).

- **The Executive Committee** consists of six voting members including one from the City of San Diego and the representative’s alternate. Both representatives must be selected from the six Agency Board representatives or alternates. § 132351.4(a)(1), Board Policy 002 §§ 1.1 and 1.1.1.
- **The Transportation Committee** consists of nine voting members, including one from the City of San Diego and the representative’s alternate who must be either “the mayor or a council member.” § 132351.4(a)(2)(A); *see also* Board Policy 002, § 1.2. SANDAG interprets these requirements to limit the City’s choice of its appointees to only the City’s Agency Board representatives or alternates.³
- **The Regional Planning Committee** consists of six voting members including one from the City of San Diego and the representative’s alternate, who must be either “the mayor or a council member.” § 132351.4(a)(3); *see also* Board Policy 002 § 1.3. SANDAG interprets these requirements to limit the City’s choice of its appointees to only the City’s Agency Board representatives or alternates.
- **The Borders Committee** consists of seven voting members including one from the City of San Diego and the representative’s alternate, who must be either “the mayor or a council member.” § 132351.4(a)(4); *see also* Board Policy 002 § 1.4. SANDAG interprets these requirements to limit the City’s choice of its appointees to only the City’s Agency Board representatives or alternates.
- **The Public Safety Committee** consists of six voting members including one from the City of San Diego and the representative’s alternate, who must be either “the mayor or a council person.” Board Policy 002 § 1.5; *also see* Board Policy 026 § 2.2. SANDAG interprets these requirements to limit the City’s choice of its appointees to the City’s Agency Board representatives or alternates.

2. Sharing the Appointment Authority.

The controlling statutes and SANDAG Board policies vest the authority to appoint the City’s six representatives (including first and second alternates) to the SANDAG Board, and the selection of PAC representatives from the six Board representatives, *jointly* in the Mayor and the City Council. Accordingly, the Mayor does not have sole authority to make these appointments.

³ January 16, 2009 letter from SANDAG General Counsel to the City Clerk of the City of San Diego.

San Diego does not have a procedure that specifically contemplates a shared appointment process between the Mayor and City Council.⁴ However, the informal procedure developed by the Mayor and Council President over the past few years appears to meet the statutory requirements and has not prompted concerns from SANDAG. It contemplates the Mayor and Council President to jointly nominate to the City Council elected officials to serve as SANDAG's City representatives, and the full Council to approve those nominees by resolution. If voters approve this form of government in June, 2010, Council Policy 000-13 could be amended to incorporate the procedure in a more permanent format.

3. The Appointing Authority to SANDAG Working Groups Varies.

SANDAG has established working groups to advise the Board or PACs pursuant to section 132351.4(b). Each working group is governed by a charter, which must be approved in accordance with Board Policy 004, section 6.6 (Sept. 2008 Rev.). The City sends elected officials as representatives to some of these working groups. To the extent the groups' charters determine how their members are appointed, they will govern. When they are silent, San Diego Charter section 265(b)(12) gives the Mayor sole authority to appoint these City representatives.

a. The City Council Appoints to the SANDAG Bayshore Bikeway Working Group.

This working group reports to the Transportation Committee and meets as needed. It consists of six elected officials representing the jurisdictions surrounding San Diego Bay; a representative from the San Diego Unified Port District; and the Metropolitan Transit System. The group's charter (June, 2005) provides that "members are appointed by their respective boards or city councils." It does not require the elected official to be a Councilmember.

Accordingly, we conclude that the City Council has the authority to appoint the City's representative to this working group. When the law requires the City Council to make the appointment, it is the City Council as a body which holds the appointing authority. The authority should be exercised as provided in Council Policy 000-13. The appointment should occur in open session by a resolution, which is subject to Mayoral approval or veto. San Diego Charter §§ 265(b)(5), 280(a).

b. The Mayor Appoints to the SANDAG Regional Energy Working Group [EWG].

This twenty-member group, consisting of elected officials and members of the public, was established by SANDAG to advise the Regional Planning Committee and the Board on energy issues. Its charter (Aug. 2008 Rev.) provides that elected officials and their alternates "are

⁴ Appointment authority is different than confirmation authority. *See discussion* City Att'y MOL No. 2006-12 (July 14, 2006). The City often follows a process of Mayoral appointment with Council confirmation. *See e.g.* San Diego Charter §§ 41, 43(a), 57, 58.

appointed by the six subregions they represent (North County Coastal, North County Inland, East County, South Bay, the City of San Diego, and the County of San Diego).” It does not require the elected official be a city councilmember.

If an elected official “cannot serve,” the charter indicates the subregion may appoint “a non-elected government employee to serve in place of an elected in the primary or alternate member position.” Accordingly, we conclude that San Diego Charter section 265(b)(12) applies and the Mayor has the authority to appoint the City’s elected representative to the EWG. If no elected officials are able to serve, the Mayor may appoint a non-elected City official as representative.

c. The Mayor Appoints City Staff to the SANDAG Regional Housing Working Group [RHWG].

This large working group is co-chaired by one elected official and consists of representatives from the region’s housing agencies and community organizations. It advises the Regional Planning Committee on regional housing issues. The City appoints no elected officials to this working group. The elected official serving as co-chair is selected by the Regional Planning Committee.

The group’s charter ⁵ requires the City to appoint a “housing staff” member as its representative to the RHWG. It is silent on how that staff representative should be selected. Accordingly, we conclude that San Diego Charter section 265(b)(12) provides the Mayor with the authority to appoint the City’s housing staff representative to the RHWG.

d. The Mayor Appoints to the SANDAG Shoreline Preservation Working Group

This eleven voting-member working group advises the Regional Planning Committee on issues related to SANDAG’s Shoreline Preservation Strategy and the Regional Comprehensive Plan. It consists of one “elected official” and alternate from the coastal cities and one representative each from the U. S. Navy and the San Diego Unified Port District. It does not require the elected official be a city councilmember.

The group’s charter (Sept. 2005) indicates that “members . . . are selected by the bodies they represent.” The City of San Diego is the “body” represented in our situation. It is silent on what City official holds the appointment power. Accordingly, we conclude that San Diego Charter section 265(b)(12) applies and the Mayor has the authority to appoint the City’s elected representative to the Shoreline Preservation Working Group.

⁵ This charter is undated, and was accessed November 19, 2009, through SANDAG’s website , http://www.sandag.org/uploads/committeeid/committeeid_23_8365.pdf

B. The City Council Appoints to the Service Authority for Freeway Emergencies [SAFE] and Abandoned Vehicle Abatement Service Authority [AVA].

The boards of these two statutorily-enabled County agencies are linked and are discussed together in this section.

1. Service Authority for Freeway Emergencies [SAFE].

California Streets and Highways Code section 2551(a) permits any county in the state to establish a service authority for freeway emergencies [SAFE] if the county's board of supervisors and the city councils of a majority of the cities within the county having a majority of the population of cities in the county adopt resolutions providing for establishment of the authority. The statutory scheme requires the boards of such authorities to "have seven members, with two members selected by the board of supervisors and five members selected jointly by the *city councils* of cities within the county." Cal. Sts. & High. Code § 2553 (emphasis added). Following a County of San Diego request in November 1985, the City Council of San Diego enacted appropriate resolutions providing for the establishment of the authority and the appointment of its two Councilmember representatives in 1985 and 1986. San Diego Resolutions R-264731 (Dec. 16, 1985) and R-264828 (Jan. 6, 1986).

2. Abandoned Vehicle Abatement Service Authority [AVA].

Similar to the statutes authorizing SAFE, California Vehicle Code section 22710(a) permits counties to establish a service authority for the abatement of abandoned vehicles (AVA) and to impose a one dollar vehicle registration fee if the board of supervisors of the county, by a two-thirds vote, and a majority of the cities having a majority of the incorporated population within the county have adopted resolutions providing for the establishment of the authority and imposition of the fee. The statute permits "the board of supervisors and a majority vote of the majority of the cities within the county having a majority of the incorporated population" to determine membership of the authority. Cal. Veh. Code § 22710(a).

Following County of San Diego action and request in 1991, the City Council of San Diego enacted a resolution providing for the establishment of the authority; imposing the fee; and directing that the Board of Directors of SAFE constitute the Board of Directors of AVA. San Diego Resolution 278829 (Oct. 8, 1991). Accordingly, the appointed Board of SAFE automatically constitutes the Board of AVA.

3. The City Council Appoints the Board Members of SAFE (and AVA).

The statute authorizing the creation of SAFE requires "city councils" to select their representatives to that board. Similarly, the requirement of a City's "majority vote" to determine membership on AVA refers to the actions of a legislative body, not an individual. Complying

with the statutes, the City Council has historically appointed two of its members as the City's representatives to the SAFE Board, who then automatically serve as the City's representatives on the Board of AVA.

The statutes vest the appointing authority for the City's representatives to the Board of SAFE (and AVA) in the City Council. Accordingly, we conclude that the City Council has the authority to appoint the City's elected representatives to SAFE, in accordance with Council Policy 000-13. The SAFE appointees automatically serve as the City's representatives to AVA.

C. The San Diego Consortium Policy Board, San Diego Workforce Partnership, Inc., and Workforce Investment Board.

Since 1974, San Diego City and County have established and maintained the San Diego Consortium pursuant to a joint exercise of powers agreement [JEPA] enacted under California law. Cal. Gov't Code §§ 6500-6536. The Consortium shares responsibility with the Workforce Investment Board in overseeing funding and policy development under the federal Workforce Investment Act of 1998. It is governed pursuant to the JEPA, which was most recently revised in 2000. San Diego Resolution R-294028 (Oct. 23, 2000) and RR-294028-1 (Nov. 9, 2000). The Consortium Policy Board appoints citizen members of the Workforce Investment Board. A member of that Board is the Mayor of the City of San Diego or his/her designee. By agreement, the San Diego Workforce Partnership, Inc. administers the grants and programs of the Consortium and the Workforce Investment Board.

1. The City Council Appoints Councilmembers to the San Diego Consortium Policy Board.

The Consortium is governed by its five-member Policy Board, each member serving for one calendar year. The members include two members of the San Diego City Council (and alternates), two members of the San Diego County Board of Supervisors (and alternates), and one member (and alternate) of the Board of Directors of the United Way of San Diego County. JEPA Agreement

§ 4 (Nov. 9, 2000). A designated City Councilmember and member of the Board of Supervisors alternate annually as Chair and Vice Chair of the Policy Board. *Id.* § 4(a). The Chair and the Vice Chair of the Policy Board automatically become non-voting members of the San Diego Workforce Partnership, Inc. Board.

The JEPA requires that a City Councilmember be designated to serve as the Chair or Vice Chair. It also requires that the "City Council . . . shall appoint . . . one other member of their Council" to serve as the alternate designated Councilmember. *Id.* § 4(a). The second member of the City Council and alternate for this position "shall be appointed from . . . the City Council" *Id.* § 4(b). The controlling JEPA language appears sufficiently clear in context for us to conclude that it vests the appointing authority for the Councilmembers selected for the Consortium Policy Board in the City Council and that San Diego Charter section 265(b)(12) is

inapplicable. Accordingly, the City Council has the authority to appoint four City Councilmembers to the Consortium Policy Board in accordance with Council Policy 000-13, electing two of them, respectively, as the "designated" member and "designated" alternate to the Board, in accordance with procedures established in Council Policy 000-13.⁶

2. The City Does Not Directly Appoint Representatives to the San Diego Workforce Partnership, Inc. Board.

San Diego Workforce Partnership, Inc. is a private, non-profit California corporation. By agreement, it administers grants and workforce programs of the Consortium and the Workforce Investment Board. It is governed by a corporate Board of Directors. The City does not appoint representatives to this corporate Board. However, the corporate bylaws require the corporate Board's two non-voting members to be the Chair and Vice Chair of the Consortium Policy Board. Partnership Bylaws Art. IV § 4.2.2 (Nov. 3, 2004). Accordingly, the Councilmember appointed by the City Council as the Chair/Vice Chair of the Policy Board, automatically assumes this non-voting seat on the Workforce Partnership, Inc. Board.

3. The Mayor, or Designee, is a Member of the Workforce Investment Board.

State and Federal rules and regulations require the Policy Board of the Consortium to establish a Workforce Investment Board (WIB), which is governed by its own Bylaws. It is composed of 49 members, who serve two year terms and are specifically described in the Bylaws. One of those board members represents the City of San Diego and must be the Mayor or his/her designee. WIB Bylaws § 3.2.2 (B) (Sept. 26, 2008). Accordingly, by operation of the WIB Bylaws, the Mayor sits on the Board, or selects a designee of his/her choice for that purpose.

III. MULTI-JURISDICTIONAL TASK FORCES CREATED BY JOINT LOCAL RESOLUTIONS.

There are several task forces to which the City sends elected representatives. These were created decades ago by joint resolutions of the City and the County of San Diego to address specific mutual concerns. They vary in the degree of their formality, and some have changed membership and structure over the years. All are currently meeting. These groups consider multi-jurisdictional matters and are not purely City entities.

None were established pursuant to state law authority and only one provides a membership selection process affected by contractual agreement. Where there is no legally controlling document affecting the appointment process, the Mayor holds the sole appointing authority pursuant to San Diego Charter section 265(b)(12).

⁶Under the JEPA, the Mayor is not eligible to serve as a Policy Board member or alternate because he is no longer a member of the City Council.

A. The Mayor Appoints and Council Confirms the Councilmember Co-Chair of the San Diego City-County Reinvestment Task Force [RTF].

The San Diego City-County Reinvestment Task Force [RTF] was created in 1977 by separate and joint resolutions of the San Diego County Board of Supervisors and the San Diego City Council. *See* San Diego Resolution R-219283 (Sept. 7, 1977). In 1993, the RTF was substantively restructured after approval by the three agencies that play roles in it, namely, the San Diego City Housing Commission, the County Board of Supervisors, and the San Diego City Council. San Diego Resolution R-282628, RR-282628 (Sept. 13, 1993).

The RTF is composed of up to 15 voting members, including representatives from North, East, and South County cities; lending representatives; and representatives of community housing, economic development and small business organizations. It is co-chaired by a member of the San Diego City Council and a member of the San Diego County Board of Supervisors. The 1993 restructuring plan requires the Mayor of San Diego to appoint and the City Council to confirm the City Councilmember acting as RTF.

In the past, the City of San Diego and the County provided funding for the RTF. Currently, the County of San Diego provides partial funding for the RTF by contract with the San Diego City Housing Commission, with the Housing Commission providing the remainder of support. The Housing Commission provides staff for the RTF and monitors compliance with the County contract.

The RTF was originally created solely by joint local resolutions, not pursuant to controlling state law. However, the County contract with the City's Housing Commission legally requires the Commission to administer the RTF as the contract describes. That description incorporates the same appointment process for the RTF's City Councilmember co-chair the City Council approved in its 1993 resolution. We conclude the City should comply with the process required in the contract for the appointment of the City Councilmember co-chair. Accordingly, the Mayor appoints the City Councilmember who serves as co-chair of the RTF, subject to City Council confirmation.

B. The Mayor Appoints the Two Councilmember Representatives to the Mission Trails Regional Park Task Force.

The Mission Trails Regional Park Task Force was created in 1977 by separate and joint resolutions of the San Diego County Board of Supervisors and the San Diego City Council.⁷ *See* San Diego Resolution R-218325 (May 5, 1977). With the concurrence of the County Board, Task Force membership was reconstituted in 1991 to include "[t]wo members from the San

⁷ The group's original title was the Lake Murray, Cowles Mountain, Fortuna Mountain Regional Park Task Force, mirroring the Park's original name. The Park received its current name by county resolution, November 6, 1979.

Diego City Council, one of whom shall be from the council district in which the regional park is located." San Diego Resolution R-277269 (Jan. 28, 1991).⁸

The general purpose of the Task Force is to advise the various public bodies on matters relating to the development of the regional park. *Id.* at 2. In 1991, the City and County was to explore a replacement for the task force structure. *Id.* at 1. However, the Task Force continues to meet on a regular basis. In 1996, the City and County of San Diego entered into a 25-year joint exercise of powers agreement (JEPA) relating to the operation and maintenance of the Park. San Diego Ordinance O-18268 (March 4, 1996), OO-18268-2. It contemplates management of a communications facility on Cowles Mountain by a joint City-County operations group, consisting of specific City and County employees. OO-18268-2 § 14. The group must follow guidelines adopted by the Task Force for maintaining and improving the communications complex and access road. The JEPA does not address the appointment of Task Force members.

The Task Force was not established pursuant to controlling state law authority, but by local resolutions. Although the Task force has a role under the JEPA, that agreement makes no mention of and, accordingly, does not control Task Force membership.

It is also true that a city may not enact a resolution that would conflict with its charter authority. The question is whether the City's 1991 resolution conflicts with San Diego City Charter section 265(b)(12) by requiring one seat on the joint Task Force be filled by the Councilmember from District Seven, *ex officio*. We think not. No controlling law vests the power to appoint elsewhere. Therefore, the Mayor has the sole appointing authority of Councilmembers to this Task Force under San Diego Charter section 265(b)(12). However, one of the two Councilmembers appointed should be the Councilmember elected to represent District Seven.

C. The Mayor Appoints Councilmembers to the Los Peñasquitos Canyon Preserve Task Force.

The Los Peñasquitos Canyon Preserve Task Force⁹ was created in 1978 by separate and joint resolutions of the San Diego County Board of Supervisors and the San Diego City Council. *See* San Diego Resolution R-221307 (June 28, 1978). Its purpose is similar to that of the Mission Trails Task Force, namely, to facilitate City/County coordination in the implementation of Los Peñasquitos Regional Park.

In 1978, the County and the City Council each appointed two supervisors and two Councilmembers, respectively, to serve on the Task Force. For a substantial period of time, the Councilmembers from Districts One and Five (the two Districts within the Park boundary) have

⁸ The other members include two County supervisors (one of whom must be from the district in which the park is located), one Councilmember each from the cities of Santee and La Mesa, and the Chairperson of the Mission Trails Regional Park Citizen's Advisory Committee. *Id.* at 1.

⁹ The original name of the group was the Los Peñasquitos Regional Park Task Force.

been the City's representatives on the Task Force. More recently, the Task Force has not met. It began meeting again during the summer of 2009, with a different membership.¹⁰ Currently, the City Councilmembers from Districts One and Five meet with one member of the Board of Supervisors as the Task Force.

Like the Mission Trails Task Force, this Task Force was not established pursuant to controlling state law authority, and its membership selection process is not described in any legally controlling agreement. Accordingly, we conclude that San Diego Charter section 265(b)(12) provides the Mayor with the authority to appoint the City's Councilmember representatives to this Task Force. We recommend the Mayor consider the historical role played by the Councilmembers representing Council Districts One and Five serving on this Task Force in making his selection.

D. The Joint City-County Homeless Task Force No Longer Exists.

We have also been asked about a joint City-County Task Force on the Homeless. Such a task force was established in the wake of an April 25, 2000 joint meeting of the San Diego City Council and the San Diego County Board of Supervisors to collaborate on certain homeless matters. It consisted of two San Diego City Councilmembers and two members of the San Diego County Board of Supervisors, and resulted in a City resolution to continue a number of City actions addressing homelessness in San Diego. *See* San Diego Resolution No. 294623 (March 5, 2001). This Task Force has not convened in a number of years.¹¹ Accordingly, we recommend no appointments be made to it.

V. PRIVATE ORGANIZATIONS, LIAISON TO THE PORT DISTRICT.

Some organizations in which the City chooses membership are private in nature, such as the League of California Cities. To the extent such organizations contemplate elected officials as City representatives *and* the organization details a selection process, that process would usually govern in order to maintain the City's membership status. To the extent the organization's selection process for City representatives is silent, San Diego Charter section 265(b)(12) would give the Mayor the authority to appoint to those organizations.

A. The League of California Cities.

The League of California Cities is a California nonprofit corporation, composed of regional divisions, and governed by its Bylaws and the California Nonprofit Corporation Code. It is a private state-wide association supported by member dues, which the City may or may not choose to join. It permits member cities to exchange information, enhance skills and combine

¹⁰ We were unable to locate any resolution changing the constitution of the Los Peñasquitos Regional Park Task Force, or any other City documents detailing a more recent or more specific goal for this Task Force.

¹¹ Information provided in part by Pamela Ison, Council Representative and Policy Advisor, Office of Councilmember Todd Gloria.

resources to influence policy decisions that affect cities. Any city in the state may become a member city if they pay the League's annual dues. All elected and appointed City officials then become members of the League. League or Division Bylaws do expressly indicate how certain representatives are to be appointed, and will control the selection process. We review the requirements under the current Bylaws.

1. The Mayor Appoints the City's Representative to the League's Board of Directors.

The League is governed by a Board of Directors, composed of one Director elected from each of the League's regional divisions, and one Director appointed by the Mayor of each of the eight largest cities in the state. Each Director serves a two-year term. League Bylaws Art. VII § 2(d) and (f). (Nov. 26, 2008). As one of the eight largest cities, the Mayor of San Diego appoints the City's Representative Director to the League's Board.

2. The Mayor Appoints the City's Voting Delegates to the League, with City Council Approval .

Each League member city, with city council approval, may also designate a city official, as a voting delegate and up to two alternate voting delegates to the League's annual meeting. League Bylaws Art. V § 3(a) (Nov. 26, 2008). Accordingly, we conclude the Mayor may appoint the City's voting and alternate delegates to the League, so long as those selections are approved by the City Council.

3. The Mayor is, or Appoints, the City's Representative to the Executive Committee of the San Diego County Division of the League.

San Diego County Division of the League is a regional subdivision of the League. Like the League, membership in the Division is voluntary. Any incorporated city in the County of San Diego is eligible to pay dues and become a member of the Division. Only elected City officials of member cities are members of the Division. The members of the division are governed by Division Bylaws.

Member cities may each have one representative (the Mayor) on the Executive Committee. Alternatively, the Mayor may appoint another elected representative as the City's representative. San Diego County Div. League of Cal. Cities Bylaws Art IV § 1 (August 11, 2008). Consistent with our previous analysis and the rules for membership in this private organization, we conclude the Mayor is, or may appoint another elected official as, the City's representative to the Executive Committee of the San Diego County Division of the League.

B. Liaison to the Port Commission.

There is a question about appointing a Councilmember to act as liaison with the San Diego Unified Port District. The state law creating and governing the Port Commission, the San Diego Unified Port District Act, does not require the City to establish such a position. Cal. Harb. & Nav. Code, app. 1. We are informed that Port Commissioners usually seek out the Councilmember of the District they believe to have the information they require.

CONCLUSION

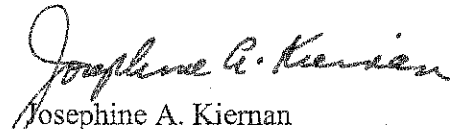
Each year the Mayor and City Council select elected representatives to serve on boards and commission outside the City. This Report describes which City officials currently hold the technical authority to appoint elected officials as the City's representatives to certain of these entities. The answer turns on the nature of the outside entity and whether controlling law or legal documents require a particular appointment process.

When an outside entity is created and governed under state law, or in accord with legal agreements, and those laws or documents provide direction for the appointment of the City's representatives, those directions would control who appoints the City's representatives to the regional entities. When the controlling law or legal documents are silent, San Diego Charter section 265(b)(12) provides the Mayor with sole authority to appoint elected officials as the City's representatives to these entities. When a regional task force is formed solely by local resolutions, San Diego Charter section 265(b)(12) would provide the Mayor with the authority to appoint the City's elected representatives. When the City chooses membership in a private state-wide or regional organization, the City submits itself to the organization's specific membership requirements. When there are none, the Mayor would appoint the City's elected representatives pursuant to San Diego Charter section 265(b)(12).

However, we see nothing in these situations to preclude the Mayor and City Council from voluntarily sharing the appointment authority given them with other officials, at least so long as the sharing is consistent with the outside entities governing laws or legal agreements.

Respectfully submitted,

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