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REPORT TO THE HONORABLE MAYOR AND CITY COUNCIL

DIRECTING THE USE OF GENERAL FUND LEASE REVENUES

**INTRODUCTION**

In a Memorandum dated February 28, 2013 (Memo), Council President Todd Gloria and Councilmember Lorie Zapf, Chair of the Land Use and Housing Committee, requested advice on directing the use of lease revenues from City-owned property for affordable housing programs or similar projects. In particular, the Memo focuses on a ground lease for a senior affordable housing project being considered for approval by the City Council. At issue is the ability to direct the \$4 million lease payment (Lease Payment) by Housing Development Partners to the City in the first year of that lease.

**QUESTIONS PRESENTED**

1. May General Fund revenues from leases of certain City-owned properties be used to fund affordable housing programs?
2. Are there any restrictions on directing that revenues from a lease of certain City-owned property be used to fund specific programs and projects as part of City Council's approval of that lease?

**SHORT ANSWERS**

1. Yes. Lease revenue from most City leases, including the proposed ground lease with Housing Development Partners, is unrestricted General Fund revenue. Pursuant to San Diego Municipal Code section 98.0502(a), General Fund monies may be appropriated in the Affordable Housing Fund.
2. Yes. However, consistent with prior City Attorney reports, under the San Diego Charter, the direction that revenues from a certain lease be used for specific programs or projects would require an amendment to the City's budget, which amendment must be initiated by the Mayor and approved by the City Council.

## **DISCUSSION**

### **I. GENERAL FUND MONIES MAY BE APPROPRIATED FOR THE AFFORDABLE HOUSING FUND**

The Lease Payment constitutes revenue to the City's General Fund. As such, the Lease Payment is unrestricted in nature and "shall be applicable to any purpose to which the Council may appropriate [it]." San Diego Charter § 86.

San Diego Municipal Code section 98.0502(a) establishes the San Diego Affordable Housing Fund (Housing Fund) and delineates the various funding sources for that fund. Among the funding sources listed is "any other appropriations as determined from time to time by legislative action of the City Council." SDMC § 98.0502(a). The inclusion of this catch-all phrase in section 98.0502(a) indicates that funding sources to the Housing Fund were not intended to be limited only to certain fees, in lieu fees and revenues from shared-equity programs referenced in that section. Thus, General Fund revenue may be appropriated in the Housing Fund and used for affordable housing programs and projects.

### **II. THE APPROPRIATION OF LEASE REVENUES REQUIRES A BUDGET AMENDMENT INITIATED BY THE MAYOR**

In recent years, the City Attorney's Office has provided several reports to the Budget and Finance Committee addressing the Charter-mandated roles of the City Council and the Mayor in the City's budget process.<sup>1</sup> What follows is a brief synopsis of those reports as pertains to the City's budget process pursuant to the Charter.

The Mayor is the Chief Budget Officer of the City, "responsible for planning the activities of the City government and for adjusting such activities to the finances available." San Diego Charter § 28. Under the Charter, revisions to the budget and transfers of appropriations must be initiated by the Mayor. San Diego Charter §§ 290(b), 69, and 73.

The City Council has non-delegable legislative power and authority regarding the spending of public money. San Diego Charter § 11.1. The City budget is adopted by the City Council, either as proposed by the Mayor or modified by the City Council, and is subject to veto by the Mayor. San Diego Charter § 290(b). As we noted in the City Attorney's Reports to the Budget and Finance Committee dated January 7, 2011 and May 18, 2011, the budget revision process should follow the budget adoption process laid out in San Diego Charter section 290(b).

Turning to the question at hand, the Memo states that the Lease Payment should be directed for use to support other affordable housing programs (at least in part because the Lease Payment will be the product of an affordable senior housing lease). Directing this would have the practical effect of amending the budget which, as we have consistently advised, may only be

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<sup>1</sup> CityAtt'y Report 10-35 (Nov. 5, 2010), CityAtt'y Report 11-1 (Jan. 7, 2011), CityAtt'y Report 11-15 (Mar. 28, 2011), CityAtt'y Report 11-24 (May 18, 2011).

initiated by the Mayor. Thus, the Lease Payment must be deposited into the City's General Fund until such time as it is appropriated as proposed by the Mayor and approved by the City Council. In order for the Lease Payment to be appropriated to the Housing Fund at the time of City Council's approval of the lease, the Mayor must also propose a budget amendment to this effect.

The Memo also states that "there is precedent to applying lease revenue to benefit the source where generated," giving the example of Mission Bay Park. While this is true, it is important to note that the reason lease revenues collected by the City from commercial and non-profit sources within Mission Bay Park above a certain threshold amount are automatically allocated to funds other than the City's General Fund is because the Charter specifically directs that such be done. San Diego Charter § 55.2(b). No such Charter section pertaining to affordable housing exists.

### CONCLUSION

The Lease Payment may be appropriated for affordable housing programs and projects via the Affordable Housing Fund if done in accordance with the budget amendment process delineated in the Charter. Such action may be taken at the time that the City Council considers the lease if the Mayor also proposes a budget amendment.

Respectfully submitted,

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