

November 18, 1994

REPORT TO THE COMMITTEE ON RULES, LEGISLATION,
AND INTERGOVERNMENTAL RELATIONS

REMOVAL OF ADVISORY BOARD AND COMMISSION MEMBERS
FOR FAILURE TO FILE ECONOMIC DISCLOSURE FORMS

At its meeting on October 3, 1994, the Rules Committee ("Committee") directed the City Attorney to make a minor change in a draft ordinance that was submitted with the City Clerk's Report of September 7, 1994 (Report No. 94-05) pertaining to Conflict of Interest Codes for City Advisory Boards. The City Attorney has made that minor change and has attached a copy of the amended draft ordinance to this report for the Committee's consideration at an upcoming meeting.^F Specifically, the words "policies and" were deleted from the proposed San Diego Municipal Code section 26.0107 on page five (5) of the draft ordinance.

Also at its meeting on October 3, 1994, the Committee asked the City Attorney to research whether the Council may adopt an ordinance requiring "automatic" removal of advisory board and commission members when they fail to file required economic disclosure forms. The issue arose during the Committee's discussion of the City Clerk's Report No. 94-05, cited above. The results of that research follow:

There are two major legal issues raised by the proposed "automatic" removal of advisory board members for failure to file economic disclosure forms: 1) Whether removal of advisory board members may be "automatic," that is, may it be accomplished by administrative action of the Clerk rather than by vote of the Council; and, 2) Whether failure to file economic disclosure forms may be considered cause for removal of advisory board members.

Procedures for Removal of Advisory Board Members

Most, but not all^F

For example, the Housing Commission is created pursuant to state law. Cal. Health and Safety Code " 34270 - 34286. The advisory boards and commissions at issue in this report are those listed in Category B in City Clerk's Report No. 94-02, and Category C(1) in City Clerk's Report No. 94-05 (both Clerk Reports are in

Attachment B to this report).
of the City's boards and commissions
are either created by the San Diego City Charter or are appointed pursuant to its provisions. For example, the Civil Service Commission, Funds Commission and Planning Commission are all created by Charter section 41, whereas the Salary Setting Commission is created by Charter section 41.1. Several advisory boards are created by ordinance pursuant to authority established in Charter section 43(a). See, for example, the Historical Site Board (San Diego Municipal Code ("SDMC") Sections 26.0201 - 26.0206) and the Commission for Arts and Culture (SDMC Sections 26.0701 - 26.0707). Temporary advisory committeesF Charter section 43(b) discusses creation of temporary advisory committees, not commissions. Over the years, these terms have come to be interchangeable.

may be
established pursuant to authority granted by Charter section 43(b).

The provisions for removal of board and commission members vary, depending on the specific charter section that created the board or commission or authorized its creation. For example, as expressly stated in Charter section 41, members of the Civil Service Commission may be removed only for cause by a two-thirds vote of the Council, and then only after written charges are made against the commission member and only after an opportunity for a public hearing on the charges before the Council has been provided. Charter section 41. In contrast, only a majority vote of the City Council is required to remove members of the other two commissions established by Charter section 41. Charter section 43(c) specifies that a majority vote of the City Council is required to remove members of advisory boards or committees created pursuant to Charter sections 43(a) and (b).

The City Attorney concludes that board or commission members appointed pursuant to the Charter may not be removed "automatically" by administrative action of the City Clerk. Rather, for the vast majority of boards, a vote of the Council is required to remove members who are appointed pursuant to the Charter.

Failure to File Economic Disclosure Forms as Cause:

As stated above, "cause" is required to remove Civil Service Commissioners, by the express terms of Charter section 41. Charter section 41 also expressly requires cause to remove Funds Commissioners and Planning Commissioners. The Charter is silent as to whether cause is required to remove Salary Setting Commissioners and members of boards and commissions created pursuant to Charter section 43. See Charter Sections 41.1 and

43(c).

Even though the organic law creating them is silent on whether removal for cause is required, if an advisory board's members sit for fixed terms, some cases suggest that they may be removed for cause only. See, for example, *Brown v. Superior Court*, 15 Cal. 3d 52 (1975), which held that a coastal commissioner whose term was fixed by law could not be dismissed at will but only for cause. See also San Diego City Attorney Opinion No. 90-1 pertaining to removal of San Diego Unified Port District Commissioners, which found that "good cause" was required for removal of Port Commissioners.F

This City Attorney opinion construed language in state law that created the Port District's Board of Commissioners as that law related to removal of the Commissioners. The state law was similar to the language in Charter section 43(c) and required a vote of the City Council to remove a Commissioner.

Salary Setting

Commissioners and members of Charter section 43 boards sit for fixed terms. Therefore, "cause" is required to remove them.

Where removal for cause is conferred but causes for removal are not defined, determining grounds for cause is usually left to the appointing agency, in this case the City Council. See, for example, *Sudduth v. Board of Fire and Police Commissioners*, 48 Ill. App. 2d 194, 198 N.E. 2d 705 (1964); 3 McQuillin, *Municipal Corporations*, Section 12.234 (3d ed. 1990).

Members of advisory boards and commissions that are listed in category B of City Clerk's Report No. 94-02 are required by state law to file economic disclosure forms under the applicable conflict of interest code.F

Members of boards in Category A are also required to file economic disclosure forms. Removal of these types of board members is not at issue here, because they are more than advisory board members; each of these boards and commissions have some form of final decisionmaking authority.

Failure of those persons to file a

required economic disclosure form is a violation of law and may subject a person to administrative, criminal and civil sanctions. Cal. Gov't Code Section 87300; 2 Cal. Code of Regs. Section 18730(12). In the City Attorney's opinion, a violation of state law would clearly constitute "cause" for purposes of removal of board members appointed pursuant to the Charter.

If the Council chooses to adopt the proposed ordinance attached to this report, the effect will be to require all land use advisory board members listed in Category C(1) of City Clerk's Report No. 94-05 to file economic disclosure forms. Failure to file will constitute a violation of the Municipal

Code. In the City Attorney's opinion, violation of the Municipal Code will also constitute "cause." The ordinance could be amended to more clearly require filing a disclosure form and to add removal as a penalty for failure to file.

In summary, the City Attorney concludes that failure to file an economic disclosure form required either by state or by local law constitutes cause for removal of an advisory board member. The proposed ordinance could be amended to clarify that violation of the ordinance constitutes cause for removal.

Respectfully submitted,
JOHN W. WITT
City Attorney

CCM:jrl:011(043.1)
Attachments
RC-94-48