

DATE: June 23, 1986

SUBJECT: Authority of City Council in
Administrative Matters

REQUESTED BY: Deputy Mayor and Council

PREPARED BY: C. M. Fitzpatrick, Assistant City
Attorney and Jack Katz, Chief Deputy

QUESTION PRESENTED

May the City Council adopt an annual appropriation ordinance which mandates a particular number of personnel to be utilized for any particular program under any and all circumstances and precludes the use of those personnel for any other purpose?

CONCLUSION

No. The City Council may not adopt an annual appropriation ordinance which mandates a particular number of personnel to be utilized for any particular program under any and all circumstances and precludes the use of those personnel for any other purpose because such mandate would violate the City Manager's administrative authority under the City Charter.

BACKGROUND

On June 2, 1986, the Council Committee of the Whole conducted a review of the Police Department's proposed budget for fiscal year 1987. During that hearing, an issue arose concerning the appropriate role and authority of the City Council as it may relate to the specific allocation and utilization of City personnel. Thus, we view the issue as whether the City Council may adopt an annual appropriation ordinance which specifically mandates the use of a particular number of people to a particular program. At the time we orally expressed our reservations about the legal propriety of such an action. You asked us to express our views in writing. Our reservations remain as indicated above. Our rationale follows.

City of San Diego - Authority for Legal Existence

The City of San Diego is a municipal corporation organized and established pursuant to the then-existing article XI, section 8 of the Constitution of the State of California. The organic statutory authority for the City is set forth in its Charter, approved by the voters on April 7, 1931, and thereafter approved by Senate Concurrent Resolution No. 34, dated April 15, 1931 and filed with the Secretary of State on April 24, 1931. The City is still governed by that 1931 Charter, albeit amended on many occasions.

Charter - Historical Perspective and Development

Source: Report of the Citizens Charter Review Committee, August

1962 (herein referred to as "Chernoff report"); City Manager Government in San Diego; Public Administration Service 1939

A close examination of the history of applicable sections of the City Charter is necessary in our analysis of the question presented.

San Diego was granted its first Charter by the California Legislature in 1850. It lasted only two years and was revoked by the Legislature. San Diego then reverted to a "town" form of government, with a three-member Board of Trustees in charge, that number increasing to five by 1872. In 1872, conditions once again appeared favorable for "cityhood" and a Charter was provided by special act of the Legislature to provide a basis for local government. This municipal authority existed for seventeen years.

In 1889, the City drafted and adopted a freeholders charter, pursuant to provisions of the California Constitution, which provided the framework for municipal government until adoption of the existing (1931) Charter. The 1889 enactment provided for a bicameral Council elected by wards. In 1905, the Charter was amended to provide for a unicameral Council, again elected by wards.

During this period of time, there grew in popularity across the nation the concept of a "commission" plan for local government. San Diego was so enthused with that concept that its 1889 Charter was amended in 1909 to accommodate the commission plan, with five commissioners elected at large. The operation of government under that scheme shortly fell from favor and, in 1915, the Charter was once again amended to provide for what was

loosely referred to as a "Mayor-Council" form of government. That form of government in San Diego existed from 1915 to 1931. Five Councilmen and a Mayor were elected at large and the Mayor was president of the Council but had no vote. The Mayor had veto power and was designated as the Chief Executive Officer.

Though the Mayor's office was designed to be a "strong Mayor" operation, his power over administration was extremely restricted. The Council, through its designated powers, was able to effectively take from the Mayor most of the administrative operations. The Charter called the Mayor the Chief Executive and gave him the responsibility of supervising the departments, yet it did not give him enough authority to do so effectively.

The operation of the City and frequent internal power struggles convinced the Mayor and Council that a new Charter was needed. More important, the community was very much in favor of immediate action. A complete narration of the troubles and

problems that beset City government and the City in general in those days may be found in the "City Manager Government in San Diego" written by Stone, Price and Stone and published by the Public Administration Service, 1939, cited above as source material.

A fifteen-member Board of Freeholders was elected in 1929 and it drafted a brand new Charter. This new Charter proposal encompassed the concept of a "City Manager" in a "Council-Manager" form of government. History tells us that various vested interest factions that produced most of the dissatisfaction with the status quo prior to 1929 banded together to defeat the 1929 Charter proposal because of its radical new concepts and dilution of their authority.

The dissatisfaction of and with San Diego government did not diminish. The internal power struggles and bickering continued. The groups that opposed the 1929 proposal came forward to offer support in drafting another new Charter. Thereafter, a new Board of Freeholders was elected and it drafted a Charter with significant changes as a compromise measure to the 1929 document. The Mayor was to be elected separately and be a member of the Council. The City Attorney was to be elected separately, as well. The "Council-Manager" form of government was retained and reinforced. With the various other modifications as proposed, the 1931 Charter was overwhelmingly approved by the voters.

Referred to as the City Manager Charter, it was the result of four years of effort. The following observations provided an

insight into the legislative history as contemporaneously perceived:

The City adopted the Charter of 1931 by a vote of more than four to one, with no groups or sections of importance holding out against it. ... The mistakes made in the former proposal have been corrected, said the San Diego Union, and the new Charter "offers the City a clear-cut manager form of government, a fair system of representation, and a unified scheme of things. Emphasis added.

City Manager Government in San Diego, supra at p. 26.

The City Manager was given full administrative authority to manage the departments, subject to the control of the Civil Service Commission over the appointment and removal of employees except the heads of departments. ... Emphasis added.

Id., at p. 26.

History tells us that the first few years of the City Manager form of government in San Diego were somewhat unsteady due to the residual influence of the preexisting vested interests and the general overall state of the nation's economy. Recognizing the need to get on with the business of effective government, a group of civic leaders organized the Civic Affairs Conference and, through community persuasion and political advocacy, breathed new life into the City Manager concept of operation. By 1935, the governmental climate in San Diego was such as to permit the City Manager to effectively perform as the Chief Executive and Administrative Officer, with the attendant powers and duties called forth in the 1931 Charter.

A 1953 revision to the Charter removed a number of Charter imposed administrative constraints upon the Manager with respect to certain operating divisions and in effect gave him plenary administrative authority over those divisions and their structure.

In 1961, the City Council caused the formation of a Citizens Charter Review Committee for purposes of studying the City Charter. This committee (commonly referred to as the "Chernoff

Committee" for its chairman, Howard Chernoff) spent approximately one year in hearings and review of our Charter. Its report in August 1962 commenced its recommendations with the following:

1. Retain the Council-Manager form of government.

Implementing that recommendation, the Charter Review Committee proposed among other things, several Charter changes which relate to the issue at hand. They proposed:

- (a) That the City Manager no longer be referred to as "Chief Executive and Administrative Officer" of the City, but as Chief Administrative Officer. (Voter approval in September 1963.)
- (b) That the City Manager no longer be directed in detail as to the form of his proposed budget, but simply be required to furnish necessary detailed information. (Voter approval in November 1962.)
- (c) That the City Council would no longer be restricted to a reduction or elimination of items in the City Manager's proposed budget, but could reduce, eliminate or increase any item in its adoption of the annual appropriation ordinance. (Voter approval in

November 1962.)

- (d) That the Chief of Police and Fire Chief, acting under the City Manager, would have all power and authority necessary for the operation and control of their respective departments, including the direct right and authority with respect to all personnel matters. (Voter approval in September 1963.)

In November 1973, another substantive Charter proposal was presented to the voters as a proposed amendment to the form of government in San Diego. That proposal was so drawn as to significantly strengthen the office of Mayor and effectively change the form of government to strong Mayor-Council. It would have authorized the Council to appoint a Legislative Analyst to independently scrutinize the Manager's budget proposals and, in effect, dilute most of the Manager's administrative powers. Proposition B was defeated by the voters by a 62% to 38% margin. One can only infer that the citizens of San Diego in 1973 were not ready to change their City Manager form of government.

ANALYSIS

With this historical background, we will now examine the applicable sections of the 1931 Charter, as amended, to analyze and address the issue presented.

City Council

The City Council:

- * Is the legislative body of the City, vested with all legislative powers subject to the terms of the Charter. Charter section 11. It is solely and exclusively empowered to enact all ordinances and resolutions Charter sections 15, 16 and 17 and shall determine its own rules and order of business Charter section 14.

- * Elects the City Manager and the City Manager serves at the pleasure of the Council. Charter section 27. No Councilmember may, however, interfere with the administrative service which is vested with the Manager. Charter section 22.

- * Is solely responsible for enacting an appropriation ordinance to provide the necessary funds for the operation of the City Charter section 71 and has the power to fix the salaries of those specified officers under its jurisdiction Charter section 70.

Numerous other powers of a legislative nature are vested by the Charter in the City Council, generally relating to funding and imposition of taxes; however, the recitation of those powers

are not germane to this analysis.

City Manager

The City Manager is the chief administrative officer of The City of San Diego Charter section 27 and shall be responsible to the Council for the proper administration of all affairs of the Council placed in his or her charge. Charter section 28. He or she is empowered to supervise the administration of the affairs of the City, keep the Council advised of the financial condition and future needs of the City, prepare and submit the annual budget estimate and, except as otherwise provided in the

Charter, exercise all other administrative powers conferred by the laws of the State upon any municipal official. The Manager is also designated as the Chief Budget Officer of the City and is responsible for planning activities of the City and adjusting such activities to the finances available. Charter section 28.

Addressing one specific Charter-granted power of the Manager which is part of the underlying question at issue, i.e., the authority of the Manager or Department head to transfer individuals, section 28 of the Charter provides:

In order to expedite the work of any department or to adequately administer an increase in the duties which may devolve on any Department or to cope with periodic or seasonal changes, the Manager, subject to Civil Service regulations is empowered to transfer employees temporarily from one Department to perform similar duties in another Department. Likewise each Department head shall have power to transfer employees from one Division to another within his Department. Emphasis added.

Charter section 28.

Annual Appropriation Ordinance

In addition to its other legislative responsibilities in a home rule city, the process associated with and the enactment of an annual appropriation ordinance to finance the operation of the City is probably the most important duty of the City Council. Granted, the Charter provides for an automatic reappropriation for the new fiscal year, at the same level as the prior year, if the Council fails to act see Charter section 71a. Despite that "plugging the gap" proviso, the approval of the annual budget by enacting annual appropriations ordinance is one of the primary actions vested with Council.

The Manager is directed to prepare and submit to Council a proposed budget for the ensuing year Charter section 69 and

upon receipt of the Manager's estimate, the Council is required to prepare an appropriation ordinance using such estimate as a basis. The form, arrangement and itemization of the appropriation ordinance shall be determined and prescribed by the Auditor and Comptroller and City Attorney. See Charter section

71. The Council may reduce or eliminate any item, increase any amount or add any new item for personal services, contractual services, materials, supplies and equipment for any Department. Id.

The annual budget documents as opposed to the annual appropriation ordinance have been so arranged as to show the detail of activities which are authorized as a sum total in the appropriation ordinance. This methodology of display is commonly called a program budget. The programs as approved by Council represent the purpose and intent of the allocation of dollars and people. It is a projected blueprint of operation of the City for the forthcoming year. It is the financial and logistical vehicle which the City Manager uses to administer the affairs of the City.

Reconciliation of Charter Provisions and Summary

The preceding discussion was provided to identify seemingly competing Charter provisions and responsibilities. The historical perspective is intended to reveal what the legal structure of government in San Diego really is (as opposed to the informal process which has gradually evolved) and to illuminate the respective powers of the City Council (as a policymaking body) and the City Manager (as the Chief Administrator).

We confine our analysis and any conclusion drawn therefrom narrowly to the issue of the Council's authority to direct the City Manager in respect to allocation and placement of personnel and the specificity of any adopted appropriation ordinance.

To begin with, we observe that several important sections of the Charter would seem to be at odds with each other. Those sections have been referred to in the above discussion. The resolution, therefore, draws heavily upon historical perspectives which reveal the intent of the framers of the existing Charter and the voters thereon, and the changes (and attempted changes) since 1931.

The City Council is the legislative body of The City of San Diego, endowed with all powers necessary, subject to the terms of the Charter, to perform as such. California case law is clear that a City Charter is construed as an instrument of limitation on the exercise of powers by the municipality and its officers. *City of Grass Valley v. Walkinshaw*, 34 Cal.2d 595, 212 P.2d 849 (1949). The City of San Diego is a Council-Manager form of

government providing therein a separation of powers; that is, Council as the policymaking body and the Manager as the Chief Administrator. The City Manager is hired by the City Council and serves at its pleasure. In connection therewith, the Council also evaluates the performance of the City Manager.

The City Manager is required to prepare and submit to the Council, at a specified time in May, a budget proposal for the expenses of conducting the affairs of the City for the ensuing year. The City Council is empowered to enact an appropriation ordinance for such purposes and may reduce or eliminate any item, increase any amount or add any new item for personal services contractual services, materials, supplies and equipment for any department.

The format of the budget document reflects programs and projects which Council, in its legislative discretion, determines to be a checklist of projected governmental operation in San Diego for the ensuing year. It is designed with a lowest common denominator specificity. Those specific programs and projects identifying positions and dollars, are parts of the whole which is adopted in generalized sums total in the annual appropriation ordinance.

The question then arises -- Can the Council, in effect, direct that there be no reassignment of personnel for which an appropriation has been made during a fiscal year to accommodate a need as determined by the City Manager as Chief Administrative Officer without first coming before Council? We believe not. That would be in contravention of Charter section 28. We do not mean to imply that the Manager is prohibited from informing the Council of any movements of concern but rather we conclude he is not required by the Charter to obtain the City Council's specific consent or to inform them if he chooses not to inform them.

The City Manager is empowered as Chief Administrator, during any fiscal year, to transfer employees temporarily from one department to another to perform similar duties. Similarly, Department heads may transfer people between divisions within their department. The Charter is quite clear in this regard and it would be our opinion, based upon everything discussed hereinabove, that such provision exists to enable the Manager and Department heads to address situations that arise during the year which need administrative action and attention, and that the Manager is not required to advise Council prior to any such temporary personnel reassignment. Implicit in Council's discussion giving rise to this matter was the suggestion that the

Council wanted prior notification (of any personnel move) in order to spend time evaluating it -- which leads to the further

inference that the Council might abandon its policy role and inject itself into the administrative affairs of the City.

Council will also recall that during the discussion on the matter on June 2, 1986, the City Attorney stated that any "permanent" transfer between departments would amount to an appropriation ordinance change and would require Council action to do so. It follows, a fortiori, that Council would be informed prior to any such action and accorded the opportunity to evaluate and act upon it.

SUMMARY

The 1931 Charter establishes a Council-Manager form of municipal government. The City Manager, as Chief Administrative Officer of the City, is budget officer, as well. The budget is prepared by the Manager for approval by the Council. The Council may increase, reduce or eliminate any budget item amount. Once the budget and appropriation ordinance have been adopted, the Manager may transfer employees between departments temporarily, as may department heads between divisions within their respective departments. Notification of the Council of such temporary transfer is not required. Any permanent transfer, however, would amount to an appropriation ordinance change and would require Council action.

Respectfully submitted,
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