

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

Michael J. Aguirre
CITY ATTORNEY

1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

MEMORANDUM OF LAW

DATE: April 18, 2005
TO: The Honorable Mayor and City Council
FROM: City Attorney
SUBJECT: Selection of Presiding Officer for Transition Period

QUESTION PRESENTED

May the Council select a presiding officer for the transition period during the Council meeting scheduled for April 18, 2005?

SHORT ANSWER

No. This action would be premature. The position of "presiding officer" does not yet exist and will not exist until January 1, 2006. The Council may, however, establish a transition committee.

BACKGROUND

New Charter Section 270d, approved by the voters on November 2, 2004 as Proposition F, provides that "The Council shall have the right to determine its own rules and order of business as provided for in Charter section 14, including a process for the selection of a presiding officer who shall have responsibility for chairing meetings of the Council and managing the docket process." This Charter Amendment is to take effect on January 1, 2006.

ANALYSIS

Current Charter Section 12 (k) provides that Council members shall not be eligible, during the term for which they were appointed or elected, to hold any other office or employment with the City, except as Mayor or City Attorney and as a member of any Board, Commission or Committee thereof, of which they are constituted such a member by general law or by this Charter.

A Council presiding officer cannot be selected until January 1, 2006, when the Council is reconstituted and the position is created. In addition, under Charter Section 12(k), a presiding officer of a committee cannot be selected until an appropriate committee is established. However, pursuant to its authority to implement the intent of Proposition F, the City Council may, by resolution, establish an advisory "Transition Committee" and then this committee may select its "chair" or "presiding officer."

As one alternative to creating a Transition Committee by resolution, the Council may use the Committee of the Whole to discuss transition issues. This would be permissible under Rule 24 of the Permanent Rules of the City Council which provides: "This special committee shall have the responsibility to analyze, study and evaluate a proposed resolution or ordinance, or to hold fact finding hearings on any subject concerning City government that is beyond the scope of responsibility of any one standing committee or is adjudged by the Rules Committee to be more properly a concern of the entire Council."

It should be noted that, pursuant to the Permanent Rules, the Mayor is to serve as chairperson of the Committee of the Whole and the Deputy Mayor is to serve as vice-chairperson. However, since the Mayor indicated at the Council meeting of April 11, 2005, that he would be willing to remove himself from this committee when it discussed issues regarding transition, it would fall to the Deputy Mayor to chair this committee during such discussion. The committee could, however, waive the rules and designate a different chair.

As a second alternative, the Committee of the Whole could adopt a rule that permits it to establish a temporary sub-committee to deal with transition issues. This would be permissible under the Rule 11 of the Permanent Rules which provides: "Each committee may adopt, by a majority votes of its entire membership, such additional rules, not in conflict with the permanent Rules of the Council, as it may deem necessary for the conduct of committee business."

CONCLUSION

The Council does not yet have legal authority to select a presiding officer for the Council. However, the Council may 1) establish a Transition Committee by resolution or 2) use the Committee of the Whole as a forum for discussion of transition matters or 3) as the Committee of the Whole, adopt a rule establishing a temporary sub-committee to deal with transition issues. Such sub-committee would, under Robert's Rules of Order, require a procedure for selection of a chair.

Should the Council choose to establish a Transition Committee by resolution, it should, at the same time establish a procedure for selection of its chair and vice-chair, choose titles for these individuals and determine the duration of their terms.

MICHAEL J. AGUIRRE, City Attorney

By

Abbe Wolfsheimer
Deputy City Attorney

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