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**MEMORANDUM OF LAW**

**DATE:** January 26, 2007

**TO:** The Honorable Mayor and City Councilmembers

**FROM:** City Attorney

**SUBJECT:** The Appointment of a Commissioner to the San Diego Unified Port Commission for a Third Consecutive Term

**QUESTION PRESENTED**

May the City Council reappoint a commissioner to the San Diego Unified Port District for a third consecutive term?

**SHORT ANSWER**

Yes. State law and the City Charter do not preclude reappointment of a commissioner for a third consecutive term. However, to be consistent with past practices, the City Council must waive the two-consecutive term limit provisions of Council Policy 000-13.

**DISCUSSION**

The San Diego Unified Port District [Port District] is a regional agency created and governed by state law - the San Diego Unified Port District Act [Act]. Cal. Harb. & Nav. Code, app. 1, §§ 1-88. The Port District is governed by a seven-member board of commissioners representing the five incorporated cities that constitute the Port District. The controlling state law requires that “[e]ach city council . . . shall appoint the . . . commissioners to which it is entitled . . . to represent that particular city on the board.” *Id.* § 16. The state law clearly vests the appointment authority with the City Council and such authority remains unchanged by the Mayor-Council form of governance. San Diego Charter § 265(b)(13). State law entitles the City of San Diego to appoint three commissioners. Cal. Harb. & Nav. Code, app. 1, § 16.

Section 17 of the Act governs the terms of the board of commissioners, setting the term of each commissioner at “four years.” That section also permits city councils to fill vacancies and to remove commissioners by majority vote.<sup>1</sup> State law permits regional agencies like the Port District to set a limit on the number of terms a board member may serve if the limitation is approved by the voters. Cal. Gov’t Code § 53077(a). No such term limits have been set for the commissioners of the Port District. From this we conclude that state law does not limit the number of terms that a commissioner of the Port District may serve.

City Charter section 43(a) provides, in relevant part: “Members of [City Council-created] advisory boards shall be limited to a maximum of eight (8) consecutive years in office and an interval of four (4) years must pass before such persons can be reappointed.” By its own terms, section 43(a) only applies to those advisory boards which are created and established by the City Council by ordinance. It has no direct application to a state-law created regional agency.

However, the City Council has adopted Council Policy 000-13 “to establish a uniform procedure for the appointment and confirmation of members of commissions, boards, committees, Authorities, districts, and councils . . . .” This Policy incorporates the language of City Charter section 43(a) after acknowledging that “some, but not all, other laws creating commissions, boards, committees, authorities, districts and councils provide limitations on the number of terms or years a member can serve.” Council Policy 000-13 reflects “the intent of the Mayor and City Council that persons recommended as appointees to any City agency pursuant to this policy shall be governed by the maximum length of service provisions of the Charter so that appointees shall be limited to two (2) full consecutive terms or eight (8) consecutive years in office, whichever is longer; with one term or four (4) years, whichever is longer, intervening before they become eligible for reappointment.”

The Council Policy language, indicating that it applies only to appointments to “any City agency,” suggests it would not apply to appointments to regional agencies created by state law. However, the City Council historically has applied the term limitations of Council Policy 000-13 to all of its appointments, including those to state-law created regional agencies, unless the City Council waives the Policy. For example, the City Council previously has passed resolutions waiving the two consecutive term limitation in the Policy for appointments to the Port District (San Diego Resolution R-267001, adopted November 6, 1986, and San Diego Resolution R-272698, adopted January 17, 1989), and to other agencies such as the San Diego County Water Authority Board of Directors (San Diego Resolution R-260300, adopted March 19, 1984). Accordingly, we conclude that the City Council may appoint a Commissioner to the San Diego Unified Port Commission for a third consecutive four-year term and, if it does, it must waive Council Policy 000-13 as part of the resolution.

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<sup>1</sup> We have previously concluded that the City Council may only remove a commissioner for good cause. 1990 Op. City Att’y 1.

### **CONCLUSION**

State law does not place a limitation on the number of terms that by a commissioner may serve on the San Diego Unified Port Commission. The City Charter does not expressly limit the number of terms which may be served by City appointees to regional agencies. Nonetheless, the City Council has included the City Charter term limitations within Council Policy 000-13 and has applied that policy to limit its appointees to regional agencies to two consecutive terms. However, the City Council also has waived application of the term limitations in the Council Policy when it determined it was appropriate to do so.

Thus, the City Council may appoint a commissioner to the San Diego Unified Port Commission for a third consecutive four-year term. To be consistent with past practices, the City Council must waive the applicability of the two consecutive term limitation established by Council Policy 000-13.

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