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MEMORANDUM OF LAW

DATE: April 29, 2008

TO: Mayor and City Councilmembers

FROM: City Attorney

SUBJECT: City Attorney's Office Budget: Funding of Charter Mandated Duties

INTRODUCTION

Mayor Sanders' budget for fiscal year 2008 forced the layoffs or job eliminations of 14 deputy city attorneys, approximately 10 percent of the attorneys employed by the City Attorney's Office and the prior administration. The resulting layoffs and attrition created a situation in which areas of the City no longer receive basic public safety services from this Office, due to the elimination of certain neighborhood prosecutors.

In response, the City Attorney has proposed a reasonable budget for fiscal year 2009 that seeks to repair some of last year's damage. The proposed budget would restore Criminal Division staffing to meet the City's public safety needs, by reinstating neighborhood prosecutors and adding service for South Bay not previously provided. The budget also would fund three litigators added to the Civil Division, needed to ensure the Office can meet service mandates of City Charter section 40.

Despite deep cuts to the Office in the last fiscal year, Mayor Sanders now proposes an additional five percent reduction from the final FY2009 budget for the City Attorney's Office, adjusted for current salaries, by way of a vacancy factor.

The City Attorney thus is faced with a Mayoral proposal to cut the Office budget deeply enough to threaten its ability to carry out Charter-mandated duties. This memorandum explains that the Mayor has no authority to reduce or reallocate the City Attorney's budget and affirms the Council's duty to set a budget that allows the City Attorney to meet Charter mandates.

QUESTION PRESENTED

1. What is the obligation of the Council to fund mandated duties of the City Attorney's Office?

SHORT ANSWER

1. The City Attorney's Office is not a Mayoral department and not in the administrative service. The Mayor can make a recommendation, but has no authority to reduce or reallocate the City Attorney's Office budget. Rather, the Mayor is charged only with collecting the budget estimate from the Office and transmitting it in proper form for Council consideration. Additionally, the City Council, as the legislative body that sets the budget, must provide the Office sufficient funds to carry out Charter-mandated duties.

ANALYSIS

I. The Charter Imposes Mandates on the City Attorney's Office.

Charter section 40 provides in relevant part that the City Attorney is the "chief legal advisor of, and attorney for the City and all Departments and offices thereof. . ."

It further states, "It shall be the City Attorney's duty, either personally or by such assistants as he or she may designate, *to perform all services* incident to the legal department; to give advice in writing when so requested, to the Council, its Committees, the Manager [Mayor under the Strong Mayor form of government], the Commissions, or Directors of any department. . ." (Emphasis added.) Moreover, "the City Attorney shall appoint such deputies, assistants, and employees to serve him or her, as may be provided by ordinance of the Council."

Among the many duties of the Office mandated by Section 40, it "shall be the City Attorney's duty" to "prosecute or defend, as the case may be, all suits or cases to which the City may be a party; to prosecute for all offenses against the ordinances of the City and for such offenses against the laws of the State as may be required of the City Attorney by law." Further, the City Attorney is mandated "to prepare in writing all ordinances, resolutions, contract, bonds, or other instruments in which the City is concerned."

The Council votes on an annual appropriation ordinance and Salary Ordinance. The elected City Attorney then exercises control over how to spend its budgeted amounts and is empowered to set the number of persons employed in the Office to carry out Charter-required duties, which include public safety responsibilities to uphold our loss.

II. The City Council Must Provide a Budget Sufficient for the City Attorney's Office to Carry Out Charter-Mandated Duties.

San Diego City Charter section 69 provides that the Mayor shall collect budget estimates from non-Mayoral Departments for transmittal to the City Council. The Council then holds public hearings and has discretion to make certain revisions in compliance with Charter section 71. The Council – not the Mayor - ultimately decides budget issues for the City Attorney's

Office. However, in its consideration of the City Attorney's Office budget, the Council must take care to ensure the budget is adequate to allow the Office to carry out Charter-mandated duties.

This premise has been upheld by the courts. Courts will not uphold budget cuts in the office of an elected official that prevent that official from carrying out his or her mandated duties. *See, Scott v. Common Council of City of San Bernardino*, 44 Cal. App. 4th 684 (1996). Thus, local legislative bodies may not by indirection accomplish that which they are precluded from accomplishing directly. For example, the Council cannot impair the City Attorney in the performance of Charter-defined prosecutorial duties by instituting staff cuts touted as necessary budget measures.

In *Scott*, the City Attorney of San Bernardino also was charged by the Charter with mandated duties, including the duty to represent the city in actions brought against it, and the duty to prosecute certain violations of state law. *Id.* at 686. Yet the budget eliminated the only investigator positions in the office. The City Attorney argued investigators were indispensable to his ability to perform mandatory duties and the Council had a legal duty to fund the positions. The Court held that the Council "cannot relieve a charter officer of the city from the duties devolving upon him by the charter..." *Id.* at 695. Moreover, the Court noted the trial court's findings that the City Attorney's budget had been cut in retaliation for his investigation of the Council for Political Reform Act violations. Thus, the Council's budget decision prevented the performance of the city attorney's mandatory duties as enumerated in the city charter and materially impaired the performance of his prosecutorial duties. *Id.* at 694.

In the absence of Charter provisions specifying the manner in which the Council may reduce or eliminate "salaries and probable wants" of a City department, or the number and compensation of employees to take precedence over the provisions specifying the duties of the City Charter, the court held the Council could not use the budget process "to eliminate functions otherwise specified in the Charter." *Id.* at 697.

Similarly, in *Hicks v. Board of Supervisors*, 69 Cal. App. 3d 228, 241 (1977), an appellate court disallowed the Board of Supervisors' transfer of 22 investigators from the District Attorney's Office to another agency. The court found that the Board had "no power to control the district attorney in the performance of his investigative and prosecutorial functions, and may not do so indirectly by requiring that he perform his essential duties through investigators who are subject to the control of another county officer." This supports the principle that it is the elected officer running the prosecutorial office – here, the City Attorney – who must make decisions regarding how his Office budget will be used to meet Charter mandates.

As stated in an Attorney General opinion:

... just as a city council may not effectively destroy a municipal office by setting its compensation so low that no one would serve to discharge its duties, so too may it not emasculate the Legislature's design for municipal government by depriving an

officer adequate quarters and indispensable help and equipment with which his or her statutorily set duties might be carried out. (*Cf. Hicks v. Board of Supervisors* [citation omitted here]). Instead, a city council is required to provide for appropriate quarters and such help and equipment as is essential for the effective functioning of the office in question. . . ”

69 Ops.Cal.Atty.Gen. 25, 28 (1986) (considering whether council of a general law city may specify location of the office where an elected treasurer conducts business).

Additionally, it is important to note that Charter section 11.1 provides in relevant part that “The City Council shall give priority in the funding of municipal services to the need of the citizens for police protection in considering adoption of this salary ordinance and the annual budget ordinance.” This language should be kept in mind when setting the budget for the Criminal Division of the City Attorney’s Office, which must have the requisite public safety resources to employ sufficient prosecutors to keep pace with misdemeanor arrests.

CONCLUSION

The authorities cited above support the conclusion that the City Attorney must be provided sufficient resources to meet the mandates of Charter section 40 and that the City Attorney retains control over how his Office budget is to be allocated. The Mayor, who now seeks to propose a percentage of budget cuts based on a number of allotted employees, is operating outside of the authority vested in him by the Charter. The Mayor is charged only with gathering the Office’s budget estimate. The Council ultimately sets the budget for this non-Mayoral department and must do so with Charter mandates in mind.

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