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**MEMORANDUM OF LAW**

**DATE:** March 13, 2018  
**TO:** Audit Committee Members  
**FROM:** City Attorney  
**SUBJECT:** Audit Committee Oversight of City Auditor

**INTRODUCTION**

The Audit Committee has asked that this Office provide guidance on the scope of its authority under San Diego Charter (Charter) sections 39.1 and 39.2 to oversee the work of the City Auditor, as it relates to review and approval of the Annual Audit Plan.

**QUESTION PRESENTED**

Does Audit Committee review and approval of the City Auditor's proposed Annual Audit Plan, including approval of any amendments to the Plan, violate the Charter or Government Auditing Standards (GAS) on auditor independence?

**SHORT ANSWER**

No. Charter sections 39.1 and 39.2 establish an independent audit structure with the independent Audit Committee directing and reviewing the work of the City Auditor, who reports to the Audit Committee. The Audit Committee's review and approval of the Annual Audit Plan is consistent with both the Charter and with GAS requirements for auditor independence. The Audit Committee's oversight does not extend to directing or controlling the City Auditor's opinions or conclusions in performing audit work.

**BACKGROUND**

Charter sections 39.1 and 39.2, approved by the voters on June 3, 2008, function together to establish an independent audit structure in the form of the Audit Committee and the City Auditor. Charter section 39.1 establishes the Audit Committee as an independent body with oversight responsibility for the City's auditing and internal controls and responsibility for "directing and reviewing the work of the City Auditor." It provides that the City Auditor shall report directly to the Audit Committee.

Charter section 39.2 further describes the relationship between the Audit Committee and the City Auditor. It gives the Audit Committee a consulting role in the City Manager's appointment of the Auditor, which is then subject to confirmation by the San Diego City Council (Council). It reiterates that the Auditor shall "report to and be accountable to" the Audit Committee, and gives the Audit Committee authority to recommend the Auditor's compensation and removal for cause to the Council. The section then lists the various duties of the City Auditor, including the duty to follow GAS. The Audit Committee's duties are further detailed in the San Diego Municipal Code (SDMC or Municipal Code), Chapter 2, Article 6, Division 17 (Audit Committee Ordinance), as authorized in Charter section 39.1. Those duties include review and approval of the City Auditor's Annual Audit Plan. SDMC § 26.1710.

Thus, in adopting Charter sections 39.1 and 39.2, the voters adopted an independent audit structure, with the independent Audit Committee responsible for both directing and reviewing the work of the City Auditor.

### ANALYSIS

Prior to enactment of the Audit Committee Ordinance in 2010, this Office issued a Report to Council (2010 Report) addressing whether a provision in the ordinance giving the Audit Committee the duty to review and approve the Annual Audit Plan interfered with the City Auditor's independence under GAS. 2010 City Att'y Report 400 (2010-1; Jan. 8, 2010).<sup>1</sup> The 2010 Report stated: "Mandating Committee approval of the Audit Plan *could* impair the independence of the City Auditor or create the impression that his independence is impaired. This would be contrary to the requirement that the City Auditor conduct his work in accordance with GAS." Emphasis added. *Id.*

The 2010 Report based this statement upon an interpretation of 2007 GAS<sup>2</sup> rules on independence, referencing the following provision on "external" impairments to independence: "External impairments to independence include 'pressure, actual or perceived, from management and employees of the audited entity or oversight organizations' that restrict [sic] the auditor's work or interferes with the auditor's ability to form independent conclusions." *Id.* citing *Government Accountability Office, Comptroller General of the United States, Government Auditing Standards* (GAO-07-731 G) §§ 3.02 and 3.10 (2007).

The GAS rules were revised in 2011 and no longer include the above definition for "external impairments." However, GAS rules on auditor independence continue to provide that both individual auditors and audit organizations should be free from internal, external, and structural threats to independence in performing audit services. *Id.* Chapter 3. The purpose of auditor independence is to ensure that the auditor's "opinions, findings, conclusions, judgments and recommendations will be impartial and viewed as impartial by reasonable and informed third parties." *Id.* § 3.04.

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<sup>1</sup> The provision had been removed from the draft ordinance prior to Council approval. The ordinance was then returned to Committee and this Office issued the 2010 Report explaining the removal. Council ultimately adopted an ordinance which included among the Audit Committee's duties the review and approval of the Annual Audit Plan. SDMC § 26.1710.

<sup>2</sup> The Government Accountability Office updated GAS in 2011 and another update is due this year. The updates provide some clarifications, but the fundamental principles on auditor independence remain the same.



cc: Mayor Kevin L. Faulconer,  
Eduardo Luna, City Auditor  
Andrea Tevlin, Independent Budget Analyst