

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: October 2, 2002

TO: John Kern, Chief of Staff, Office of the Mayor

FROM: Kelly J. Salt, Deputy City Attorney

SUBJECT: Mandatory Percentage for Art in Annual Appropriations Ordinance

INTRODUCTION

This memorandum is in response to your inquiry about mandating funding for public art in the Annual Appropriations Ordinance.

QUESTION PRESENTED

May the City Council adopt an amendment to the Municipal Code requiring that a certain percentage of capital improvement moneys be set aside for public art in the Annual Appropriations Ordinance?

SHORT ANSWER

No. San Diego Charter section 11.1 prohibits the City Council from adopting an ordinance which delegates the City Council's legislative power by mandating specific, programmatic funding levels in the Annual Appropriations Ordinance.

BACKGROUND

The City Council is the legislative body of the City, vested with all legislative powers subject to the terms and limitations of the San Diego Charter and the Constitution of the State of California. San Diego Charter § 11. As the legislative body, the City Council is exclusively empowered to enact all ordinances and resolutions. *Id.* at §§ 15, 16, and 17. In this capacity, the City Council is responsible for enacting an annual budget and appropriations ordinance to provide the funds necessary for the operation of the City. *Id.* at § 71. The approval of the budget and appropriations ordinance on an annual basis is one of the primary functions of the City Council.

The City Manager is the chief administrative officer of the City. *Id.* at § 28. In this capacity, the City Manager has the duty to advise and make recommendations to the City Council concerning the affairs of the City, “to keep the Council advised of the financial condition and future needs of the City; [and] to prepare and submit to the Council the annual budget estimate. . . .” *Id.* at § 28. San Diego Charter section 69 requires the City Manager, on or before the first City Council meeting in May of each year, to “prepare and submit to the Council a budget of the expense of conducting the affairs of the City for the ensuing fiscal year.” The budget document reflects programs and projects which the City Council, in its legislative discretion, reviews as a checklist of projected governmental operation in San Diego for the ensuing year. Upon receipt of the City Manager's estimate, the City Council is required to prepare an Annual Appropriations Ordinance using such estimate as a basis.

San Diego Charter section 71 governs the preparation and passage of the City's Annual Appropriations Ordinance. The Appropriations Ordinance appropriates all of the anticipated revenue of the ensuing fiscal year which is received from any source whatsoever to the various specific projects and programs set forth in the budget estimates. Section 71 reads in relevant part:

Upon receipt of the Manager's estimate the Council shall prepare an appropriation ordinance using such estimate as a basis. . . . Following . . . public hearings the appropriation ordinances shall take the same course in the Council as other ordinances. . . . *The Council may reduce or eliminate any new item, may increase any amount or add any item for personal services, contractual services, materials, supplies, and equipment for any Department.* [Emphasis added.]

Under this charter scheme, the City Manager therefore proposes the City's annual budget and the City Council approves it. But reserved to the City Council is the legislative authority to increase, decrease, or even eliminate any item proposed by the City Manager.¹

The City Council is expressly prohibited from delegating this legislative responsibility. San Diego Charter section 11.1 provides that:

[t]he same prohibition against the delegation of the legislative power which is imposed on the State Legislature by Article XI, Section 11a of the Constitution of the State of California shall apply to the City Council of the City of San Diego, so that its members shall not delegate legislative power or responsibility which they were elected to exercise in the adoption of any ordinance or resolution which raises or spends public monies, *including but not limited to the City's annual budget ordinance or any part thereof*, and the annual ordinance setting compensation for City employees, or any ordinance or resolution setting public policy. [Emphasis added.]

¹ For a more thorough analysis of the history of the City's City Manager form of government and the respective legislative and administrative responsibilities of the City Council and the City Manager, *see*, Op. City Att'y 86-2 and Op. City Att'y 86-7.

ANALYSIS

Representatives of the City's Arts and Culture Commission have requested that an amendment to the Municipal Code be proposed for adoption by the City Council that would mandate that the City Council include in the Annual Appropriations Ordinance specific funding levels from capital improvement projects for public art projects. The adoption of such an ordinance, however, would be contrary to the provisions of San Diego Charter section 11.1.

As previously discussed, as the legislative body of the City, the City Council is responsible for enacting an appropriations ordinance to provide the funds necessary for the operation of the City. In its capacity as the legislative body, the City Council is responsible for reviewing the City Manager's proposed budget and reducing or eliminating items, or increasing amounts for projects or programs which it has determined are necessary for the operation of the City. The proposal of the Arts and Culture Commission would take away the City Council's discretion in such matters by mandating that specific funding levels be placed in the budget and adopted by the City Council through the annual appropriations ordinance. If the City Council adopts such an amendment to the Municipal Code, it would be abrogating its legislative responsibility to determine the nature and content of an ordinance which spends money. The adoption of the ordinance therefore would violate Charter section 11.1.²

The City Council may, however, adopt an ordinance that requires the City Manager to provide for certain percentages of monies in the City Manager's annual proposed budget for a particular department or program. *See, e.g.*, San Diego Municipal Code § 22.0228 and Council Policy 100-19 (City Manager is required to include in annual budget certain funding levels for library operations, maintenance, and supplies), copies of which are attached to this memorandum. However, in order to meet the requirements of San Diego Charter section 11.1, the ordinance must not mandate that the City Council adopt the City Manager's proposed budgetary levels.

CONCLUSION

Under San Diego Charter section 71, the City Council adopts the annual appropriations ordinance based on the estimated budget proposed by the City Manager. Reserved to the City Council is the legislative power to adopt an ordinance that may increase, decrease, or even eliminate an item from the Manager's proposed budget. Pursuant to San Diego Charter section 11.1, that legislative authority may not be delegated. The City Council may adopt an ordinance requiring the City Manager to propose a certain percentage of monies to be used for a certain department or program, provided that the ordinance does not mandate that the City Council

² In August 2000, an initiative was proposed to be placed on the November 2000 ballot that would require that the City Council annually appropriate an increasing amount of the general fund for library purposes. Although the initiative did not receive the requisite number of signatures to be placed on the ballot, the City Council considered using its initiative power to place a similar measure on the November ballot. The Office of the City Attorney opined that such a measure was prohibited under state law governing initiative measures, and under San Diego Charter section 11.1 as a delegation of the City Council's legislative powers. 2000 City Att'y MOL 302.

adopt an appropriations ordinance with such specific funding levels.

Kelly J. Salt
Deputy City Attorney

KJS:CCM:pev

Attachment

cc: Ed Ryan

Terri Webster

Lisa Irvine

Victoria Hamilton

Cristie McGuire

Eric Swenson

MS-2002-3

§ 22.0228 Preparation of Annual Budget; Library Appropriation

In preparing the budget required by Section 69 of the Charter, the City Manager shall include a proposed appropriation for general library operation, maintenance and supplies for the San Diego Public Library System, as follows:

(a) For Fiscal Year 2002, an amount equal to at least 4-1/2% of the proposed General Fund budget for Fiscal Year 2002;

(b) For Fiscal Year 2003, an amount equal to at least 5% of the proposed General Fund budget for Fiscal Year 2003;

(c) For Fiscal Year 2004, an amount equal to at least 5-1/2% of the proposed General Fund budget for Fiscal Year 2004;

(d) For Fiscal Year 2005, and for each Fiscal Year thereafter, an amount equal to at least 6% of the proposed General Fund budget for each such Fiscal Year.

The City Council, in considering the passage each year of the Annual Appropriation Ordinance pursuant to Section 71 of the Charter, shall consider this proposed appropriation and shall make any appropriation for general library operation, maintenance and supplies in accordance with Council Policy 100-19.

POLICY NO. 100-19

SUBJECT: ANNUAL APPROPRIATION FOR LIBRARY OPERATION AND MAINTENANCE

EFFECTIVE DATE: November 14, 2000

BACKGROUND:

Friends of the San Diego Public Library, concerned with the level of funding annually appropriated for the City's public libraries, circulated a proposed initiative petition that would have amended the City Charter to require the City Council to annually appropriate a set level of funding for library operation, maintenance and supplies. The petition was based on the Friends' observation, among other things, that the City's library funding has ranged for the past several years between 2-1/2 to 4% of the general fund, remaining around 4% for the four years preceding the circulation of the petition. The Friends further cited the City's 1998 Zero-Based Management Review report, which found that "the financial support for libraries can best be described as one of 'chronic underfunding,'" and that this underfunding would continue "unless drastic political and citizens involvement occurs and regional support is generated."

Based on these findings, the Friends requested the City Council to place its initiative measure on the November, 2000, ballot. The City Council declined to place it on the ballot, but agreed to consider an ordinance that would reflect the need for adequate library operations and maintenance funding. This policy, along with new Municipal Code section 22.0228, is intended to address the need for adequate library funding while retaining the necessary discretion in the City Council to annually appropriate the general fund for all of the City's needs. Pursuant to City Council direction, this policy is also intended to emphasize the importance of funding for basic neighborhood amenities.

PURPOSE:

The purpose of this policy is to articulate the sense of the City Council that library operations, maintenance and supplies must receive sufficient funding to sustain a viable public library system within the City of San Diego. Specifically, this policy expresses the support of the City Council for a proposal by the City Manager that will include sufficient funds to fulfill the purposes of San Diego Municipal Code section 22.0228, and this policy.

POLICY:

The City Council recognizes the need for adequate funding for the operation, maintenance and supply of the City's public libraries, as reflected in section 22.0228 of the San Diego Municipal Code which requires the City Manager's annual budget proposal to include funding for library operations, maintenance and supplies in an amount equal to up to 6% of the general fund. The City Council shall endeavor to retain the proposed level of funding in the adoption of the final budget ordinance each fiscal year.

The City Council further declares that basic neighborhood amenities, including active use parks and recreation centers, are important priorities and should be adequately funded to serve the needs of their communities. The City Manager shall ensure this priority for these parks and recreation facilities is reflected in the annual budget proposed to the City Council each fiscal year.

It is the intent of the City Council that there be no new taxes proposed or imposed for the purpose of meeting this policy goal.

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The adoption of this policy is not intended to be and shall not constitute an irrevocable commitment by the City Council to allocate monies for this purpose. Such a commitment may only be made, in the Council's discretion, at the time the annual budget ordinances are adopted, or as they may be amended from time to time.

HISTORY:

Adopted by Resolution R-294126 11/14/2000