

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

MEMORANDUM

DATE: January 29, 2013

TO: Rules and Economic Development Committee
Jeff Sturak, Deputy Director, Office of the Independent Budget Analyst
Francisco Estrada, Director of Council Affairs

FROM: City Attorney

SUBJECT: The Roles of the Mayor and City Council in Adopting and Implementing the City's Legislative Program

At the meeting of the Rules and Economic Development Committee on January 9, 2013, the Committee began a discussion of the City's legislative program for the coming year and the lobbying services contracts in place for implementation of that program. The Committee directed the Office of the Independent Budget Analyst (IBA) to create a report compiling the priorities presented at the meeting along with input from the Mayor's office.

After the meeting, the IBA learned that the City's contracts for lobbying services had been terminated by letter from the Mayor. The IBA raised a number of questions related to the contract terminations and adoption of a legislative program. Those questions are addressed here.

BACKGROUND

In June of 2012, the City entered into two contracts for lobbying services: one with Sloat Higgins Jensen & Associates for lobbying on the State level, and one with Patton Boggs for lobbying on the federal level. Each contract was for a term of twelve months ending June 30, 2013. The contracts provided for payment for services on a monthly retainer basis not to exceed \$160,000 for the Sloat Higgins contract and \$180,000 for the Patton Boggs contract. The contracts were procured on a sole source basis for the purpose of bridging the gap between expiration of the prior contracts on June 30, 2012 and providing sufficient time for a new mayoral administration to conduct an RFP process for new lobbying services agreements. Because these contracts were each for less than \$250,000 and for less than five years, they did not need to be authorized by the City Council. They were initiated by the Mayor's office and executed by the City's Purchasing and Contracting Department Director.

The lobbying services contracts preceding these one-year contracts were authorized by the City Council beginning July 1, 2007, with Patton Boggs for federal lobbying and with Sloat Higgins

and Marston & Marston, as a joint venture, for state lobbying. The June 2012 agreement for state lobbying services did not include Marston & Marston.

In a letter dated January 2, 2013, Mayor Bob Filner wrote to Sloat Higgins and Marston & Marston "to terminate your firm's current contract with the City of San Diego for state lobbying services." The June 2012 Sloat Higgins agreement includes a provision for termination of the contract by the City for its convenience, effective upon receipt of notice of termination from the City. The letter cites that provision. In a similar letter also dated January 2, 2013, Mayor Filner wrote to Patton Boggs terminating their contract for federal lobbying services.

QUESTIONS/ANSWERS

1. Does the Mayor have the ability to unilaterally terminate the City's current agreements for lobbying services?

Yes. The Mayor is responsible for administration of the affairs of the City, including the execution and administration of contracts for departments under the Mayor's control consistent with the City's laws, ordinances, and policies. The City's Intergovernmental Relations Department (IRD), is a department under the Mayor's control charged with developing a legislative agenda and overseeing lobbying efforts. SDMC § 22.1901. It is the responsibility of the IRD, and ultimately the Mayor, to administer the City's contracts for lobbyists. In this instance, where the contracts were entered into for the purpose of bridging the gap between the termination of the earlier contracts and the new Mayoral administration and included clauses for termination of the contract at the convenience of the City, the Mayor may terminate the contracts without involving the Council.

However, as discussed in the response to question 4 below, the Mayor remains responsible under the City's Charter and Municipal Code for implementing the legislative program approved by the City Council, and for drafting and submitting a legislative program to the City Council for the coming year. The Council may request and the Mayor and his staff are obligated to provide the City Council with information regarding the effect of the contract terminations on implementation of the City's legislative program and the Mayor's plans for carrying out the responsibilities listed in section 22.1901 and detailed in Council Policy 000-19.

2. Does the Mayor's agreement to notify the Council prior to reducing a service level have any effect on the Mayor's action to terminate the lobbying agreements?

It is not clear from the facts presented that the termination of the City's contracts for lobbying services is intended to be a reduction in a level of service rather than a change in service providers. Since outside lobbyists were being used to implement the City's legislative program, and the contracts for those services have been terminated, it is within the Council's purview under Charter sections 270(g) and (h) and 265(b)(13) to request and receive information from the Mayor and his staff regarding the termination of the contracts and the means for implementation of the City's legislative program.

3. Can the Mayor enter into an agreement with a new lobbying firm without an RFP or Council input?

No. The Mayor is bound by and must follow the City's laws, ordinances, and policies for City contracts and specifically for the hiring of consultants. Those include but are not limited to the requirements in Chapter 2, Article 2 of the Municipal Code for competitive bidding and Council approval depending upon the type and amount of the contract, and the specific process set forth in Council Policy 300-07 for the hiring of consultants. *See also* City Att'y MOL No. 2009-20 "Overview of City Charter and Municipal Code Requirements for City Contracts," Dec. 18, 2009.

4. What are the respective roles of the Mayor and City Council in adopting and implementing a legislative program for the state and federal legislative sessions?

The formulation, approval, and implementation of the City's state and federal legislative agenda is one of many examples in the City's Charter and Municipal Code where the Council and Mayor are required to work cooperatively for the benefit of the City within the boundaries of their respective powers. Pursuant to Municipal Code section 22.1901 enacted by the City Council, the IRD is charged with developing a legislative program and overseeing lobbying efforts. The IRD is a department under the Mayor's control. However its work "planning, recommending, coordinating and administering" the City's legislative program must be conducted "in accordance with legislative guidelines established by City Council Policy" and the legislative program itself must be approved by the City Council. *Id.*

This approach is consistent with the roles of the Council and Mayor set forth in the Charter. The City Council is vested with all of the City's legislative powers except for those legislative powers specifically reserved to the people. Charter § 11. The City Council's legislative responsibilities are extensive and include enacting the City's laws, adopting the City's budget and appropriations and salary ordinances (Charter §§ 11, 11.1, 290), determining the City's departments, divisions and boards and their respective responsibilities (Charter §§ 26, 43, 270, *and see* SDMC Chapter 2), and setting public policy (Charter §§ 11, 12). The Mayor is vested with the City's executive powers, with the powers previously held by the City Manager to administer the affairs of the City, and with the power to approve or veto certain actions by the City Council. Charter § 265. The Mayor is not a member of the legislative body, but is instead charged with carrying out and enforcing all of the laws, ordinances, and policies that are enacted by the City Council. Charter § 265(b). The Council must work through the Mayor or the Mayor's designees on administrative issues, but is entitled to information on the implementation of policies and decisions made by the Council. Charter §§ 270(f)-(h).

The Charter emphasizes the importance of ongoing communication between the Council and Mayor. While the Council may not interfere with the Mayor's exercise of administrative powers (Charter §§ 270(f) and (g)), the Mayor has the obligation under Charter section 265(b)(3) "[t]o recommend to the Council such measures and ordinances as he may deem necessary or expedient, and to make such other recommendations to the Council concerning the

affairs of the City as the Mayor finds desirable.” The Mayor has the right under the same section “to attend and be heard” at any open session meeting of the City Council.

5. Does the Mayor have the right to veto a resolution passed by the City Council adopting a legislative program?

Yes. The Mayor’s veto power extends to “all resolutions and ordinances passed by the Council” unless one of the stated exceptions applies. Charter § 280. A resolution passed by the City Council adopting a legislative program for the City does not come within any of the exceptions listed in section 280 and is subject to Mayoral veto. A Mayoral veto would require the Council to reconsider the item before final passage. Charter § 285. Now that the Council consists of nine seats, six votes are required to override a Mayoral veto. *Id.*

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CLG:mr

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