

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

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: March 1, 2013
TO: Councilmember David Alvarez
FROM: City Attorney
SUBJECT: Appointments to the San Diego Unified Port District Board of Commissioners

This memorandum will supplement two recent memoranda issued by this Office regarding the City Council's appointments to the San Diego Unified Port District Board of Commissioners (the Port District Board), and address questions raised by Councilmember David Alvarez. For convenience, the previous memoranda are attached. Questions are restated below with a corresponding response.

1. When multiple appointments are being made at the same hearing should the City Council appoint the candidates in one resolution together or two separate resolutions?

Please see Section I of our memorandum to the Mayor and Council, "Reconsideration of Resolution Vetoed by the Mayor," dated January 30, 2013. Multiple appointments have historically been placed in one resolution for the Council. However, consistent with past oral advice, the Council may direct the City Attorney to use two resolutions for future appointments. This is a matter that is for the Council to decide. The Council can provide direction to the City Attorney regarding its preference for a given item.

At the appointment hearing of January 7, 2013, one resolution was prepared and uploaded with the item on the docket. After the hearing, the names of the appointees were inserted in the blanks. After our Office was asked if two resolutions could be used, and stated that this could occur, it was up to the Council to provide that direction to this Office. The Council did not direct the City Attorney's Office to prepare two resolutions. Rather, at the hearing, Councilmember Faulconer asked for clarification as to whether one resolution would be used; Council President Gloria responded that one resolution was before the Council. (See January 30, 2013 Memorandum at p. 3.) This discussion occurred before the voting began.

2. Can the City Council change the timing and length of Port Commissioner terms to allow for staggered terms, making multiple vacancies coming before the City Council at the same time less likely? Can the City Council establish different terms for various seats, for instance having one seat be for a four-year term, while another seat be for a two-year term?

No. Consistent with our oral advice given on February 11, 2013, the timing and length of Port Commissioner terms is a matter of state law and not within the City's jurisdiction.

Terms on the San Diego Port District are defined by state law. State law requires four-year terms. (See Cal. Harb. & Nav. Code, app. 1. §17.) The Council does not have the jurisdiction or power to change the duration of terms. Section 17 of the Port Act states in relevant part:

Section 17. TERM OF COMMISSIONERS; VACANCIES; OATH; CERTIFICATE; REMOVAL.

The term of each commissioner shall be for four years, except as provided in this section.

Any vacancy shall be filled by appointment by the city council of the city from which the vacancy has occurred. Any appointment to fill a vacancy during the term of a commissioner shall be for the unexpired term.

Cal. Harb. & Nav. Code, app. 1. §17.

All terms begin on January 3 of a given year, and end on January 2. Moreover, terms are already staggered on the seven-member board; two of the City of San Diego's three positions on the Board have the same term dates (two terms will expire January 2, 2017; the third position expires January 2, 2015). For the seven-member board, which includes four members from other cities:

- three terms end in 2017;
- three terms end in 2015;
- one term ends in 2014.

(See City Clerk's website, <http://www.sandiego.gov/city-clerk/boards-commissions/port.shtml>, for chart of current Port District Commissioners and their terms, and resolutions appointing previous members representing the City of San Diego, also available on the City Clerk's website.)

3. Concerning the voting procedure during future City Council meetings, can Council Policy be amended to specify that the least vote getter is eliminated after every round and in the case of a tie, multiple candidates be "dropped?"

Yes, the voting procedure may be changed by the Council. The Council's voting procedures are discussed in the attached memoranda of January 17, 2013 and January 30, 2013.

However, Roberts Rules of Order disfavors this approach. Roberts Rules states the following, in relevant part, in its 10th edition, at pages 426-427:

“. . . When repeated balloting for an office is necessary, the names of all nominees are kept on the ballot. The nominee receiving the lowest number of votes is never removed from the next ballot unless the bylaws so require, or unless he withdraws – which, in the absence of such a bylaw, he is not obligated to do. The nominee in lowest place may turn out to be a “dark horse” on whom all factions may prefer to agree.” (Roberts Rules of Order, 426-427 (10th ed. 2000).)

4. In an instance where two vacancies occur at once, can candidates be limited to being nominated for a specific designated seat (if a process is in place as outlined in question number 2)?

As set forth above, the process outlined in question number 2 is beyond the Council’s jurisdiction. If, however, the Council wished to ensure that candidates were nominated for specific seats, the Council should give careful thought to the logistics of how this would work. For example, when nominations are taken, would an applicant be asked to apply for one spot or the other? What if all candidates that a Councilmember supports have signed up for the same position? What if there is no support for anyone who signs up for the second position? Does the applicant decide which position to apply for at the outset or later? How does the process provide for fairness and full consideration of all applicants? This suggestion also would affect the noticing of the positions. Assuming the Council desires to move forward with such a process, our Office would need to conduct additional research to determine if this suggestion would be feasible or ensures fair review of all applicants.

5. The fifth question requested a written response to questions from a January 7, 2013 memorandum from Councilmember Alvarez regarding Council Policy 000-13.

The majority of the questions posed in the January 7 memorandum ask this office to interpret specific words and phrases within Council Policy 000-13. The questions are designed to “provide a detailed rationale for the interpretation proposed by your office.” (*See* Question 1 of Memorandum from Councilmember Alvarez.) Our Office discussed its interpretation of the Council Policy with each Council office before the January 7 hearing, and later at two Council hearings on this issue. We acknowledge that certain Councilmembers disagree with the interpretation.

In response to the questions in the January 7 memorandum, we reiterate that the Council Policy must be read *as a whole*. Each section and phrase must be harmonized with the rest. In this regard, it is analogous to statutory interpretation. Fundamental rules of statutory interpretation require that a statute be read as a whole, and that the parts of a statute be read together and harmonized, when possible, in order to give effect to the intent of the Legislature. *Ingram v. Justice Court for Lake Valley Judicial District of El Dorado*, 69 Cal. 2d 832, 839 (1968); *Marrujo v. Hunt*, 71 Cal. App. 3d 972, 977 (1977). To construe the whole by focusing on single words would be misleading. Rather, we construe a rule to give force and effect to all its parts and sections. Cal. Code Civ. Proc. §1858.

To isolate a specific phrase for analysis takes the policy out of context, and will lead to a misleading interpretation of how the policy may be applied. Moreover, the questions ask about section (C)(4)(d), without considering other sections of the policy, including the section that states that anyone receiving at least five votes shall be appointed – regardless of the number of positions at issue.

Additionally, we note that Question 6 asks whether an interpretation of Council Policy 000-13 was “contemplated when the calls for nominations were made.” This Office did not participate in the nomination process, nor was it aware of when calls for nomination were made. As such, we cannot comment on the thought process of those nominating Councilmembers. Question 7 asked about consistency between past Port Commission nominations and the nominations of January 7, 2013. We note that Council Policy 000-13 was amended by the Council after the last round of Port appointments.

We reiterate that the legislative body is the sole judge of its procedural rules and can vote to waive them at any time. It is not the role of our Office to propose a new policy or a change, but we can assist as may be directed by the Council. Our Office remains available to assist with any amendments the Council may propose to Council Policy 000-13.

JAN I. GOLDSMITH, City Attorney

By /s/ Sharon B. Spivak
Sharon B. Spivak
Deputy City Attorney

SBS:jdf

Attachments

cc. Mayor Bob Filner

City Councilmembers

Andrea Tevlin, Independent Budget Analyst

Elizabeth Maland, City Clerk

MS-2013-4

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

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: January 30, 2013

TO: Honorable Mayor and City Councilmembers

FROM: City Attorney

SUBJECT: Reconsideration of Resolution Vetoed by the Mayor

INTRODUCTION

On January 18, 2013, the Mayor vetoed the City Council resolution appointing two members to the San Diego Unified Port District Board of Commissioners (Port District Board). In a memo accompanying the veto, the Mayor gave four reasons for the veto. The fourth reason stated that the procedure followed by the Council to make the appointments and the resolution prepared by the City Attorney were flawed. This memorandum discusses these issues.

DISCUSSION

I. The Use of One Resolution for Two Port District Board Appointments Follows Historical Practice and is Legally Permissible.

The Mayor's memo states that the resolution was flawed because both appointments were presented on a single resolution for signature even though the Council took two separate actions to fill two vacancies.

Charter section 270 states that, "All substantive actions of the Council shall be passed by adoption of an ordinance or resolution." Unlike ordinances, the Charter does not require resolutions to be limited to one subject.¹ Under general law, the "single subject" rule applies to matters that will be placed before voters in an election to bar the practice of combining two or

¹ Charter section 275 states that *ordinances*, except for "annual appropriation ordinances and ordinances codifying or rearranging existing ordinances shall be confined to one subject, and the subject or subjects of all ordinances shall be clearly expressed in the title."

more unrelated provisions into one measure, thereby forcing a single take-it-or-leave-it vote on matters that properly should be voted upon separately.” *Californians for an Open Primary v. McPherson*, 38 Cal. 4th 735 (2006) (*McPherson*). The goal in classic logrolling is to bundle a provision attractive to voters with one that is less attractive, “simply to increase the likelihood that the proponent’s desired proposal will be adopted.” *Senate of the State of Cal. v. Jones*, 21 Cal. 4th 1142, 1151 (1999).

The test of whether a particular measure submitted to voters meets or violates the separate vote rule is the same test used to determine a violation of the single subject rule. *McPherson*, 38 Cal. 4th at 763. The court construes both in an “accommodating and lenient manner so as not to unduly restrict the Legislature’s or the people’s right to package provisions in a single bill or initiative.” *Id.* at 764. The court has “found the single subject rules to have been satisfied so long as challenged provisions meet the test of being *reasonably germane* to a common theme, purpose, or subject.” *Id.* The court went on to note that, “[i]n setting forth the ‘reasonably germane’ test, several of our prior decisions have stated or repeated language suggesting the standard requires that each of a measure’s parts be reasonably germane *to one another* as well as reasonably germane *to a common theme, purpose, or subject*. . . . In applying the reasonably germane test, however, our decisions uniformly have considered only whether each of the parts of a measure is reasonably germane to a common theme, purpose, or subject, and have not *separately* or *additionally* required that each part also be reasonably germane to one another.” *Id.* at 764 n. 29 (citations omitted, emphasis in original).

The Council historically has voted to fill vacancies on the Port District Board as one action item. Consistent with this practice, the Council proceeded to make the appointments with one resolution used to fill the two vacancies. The two appointments to the Port District Board were joined together and noticed as one action on the Council’s docket. The Executive Summary stated: “Council is being asked to select one candidate for each vacancy for appointment to the San Diego Unified Port District Board of Commissioners to replace Scott Peters and Lee Burdick whose terms expired on January 2, 2013.” The summary listed the six nominees to be appointed for the four-year terms ending January 2, 2017. This placement on the docket also was consistent with Council Policy 000-13, which contemplates a situation where the number of nominees is greater than the number of vacancies. In that case, the policy provides that “an election to fill all the vacancies shall be held at one time.”

Also consistent with past practice, this Office prepared one resolution to reflect the two appointments.² The resolution was part of the backup materials provided to the Council and the public prior to the meeting. During the Council meeting, Council President Gloria confirmed that there was only one resolution for the two appointments:

² Historically, this Office has memorialized the Port District Board appointments in one resolution when more than one vacancy was filled by the Council at the same time. *See*, San Diego Resolutions R-275038 (Jan. 23, 1990); R-281511 (Feb. 22, 1993); R-300096 (Jan. 31, 2005); and R-304347 (Nov. 19, 2008).

Councilmember Faulconer: “Mr. Gloria, just before the City Clerk passes out the ballots, . . . We’re going to have one resolution with both names if we’re able to come to an agreement? I just wanted to . . .”

Council President Gloria: “There’s only one resolution in the backup, Mr. Faulconer.”

Absent further questions or discussion on the issue of one resolution, the Council proceeded with the election and voted for Marshall Merrifield to fill the first vacancy and Rafael Castellanos to fill the second vacancy. Although separate votes were used to select the appointees from a choice of six nominees, there is nothing impermissible about reflecting the appointments in a single resolution.³

The two appointments to the Port District Board are one subject matter – City representation on the Port District Board. In this particular appointment situation, the Council could decide how to present the resolution to the Mayor. We note that combining provisions into one legislative item often occurs on a federal and state level. As noted above, a court may decline to unduly restrict a legislative body’s right to package provisions into a single bill or initiative, or in this case, a resolution presented to the Mayor for approval or veto.

Whether these appointments should be presented in one resolution or two is a decision for the Council. The resolution and Council action followed historical practice and were entirely legal and appropriate.

II. The Council May Establish the Procedure for Making Appointments to the Port District Board.

The memo accompanying the Mayor’s veto stated the process used by the City Council to make the appointments to the Port District Board was “flawed.” The memo claims that the Council failed to follow the procedures outlined in Council Policy 000-13 and failed to formally waive the policy.

A legislative body’s actions are generally presumed to be valid. Municipal Law Handbook, § 2.54. The City Council is empowered to choose the rules it uses for its meetings. San Diego Charter §§ 14, 270(d) (“The Council shall have the right to determine its own rules and order of business as provided for in Charter section 14 . . .”). Although the City Council historically has applied Council Policy 000-13 to appointments to the Port District Board, the City Council may waive the Policy and adopt rules of its own choosing.⁴

³ Resolutions are used to memorialize policies or administrative decisions of a legislative body. California Municipal Law Handbook § 1.243; 5 McQuillin, *Municipal Corporations* § 15:2 (3d ed.) A legislative body may establish rules on the procedure to be followed in adopting resolutions, but when such rules are not complied with, that failure is not jurisdictional and does not invalidate an action that is otherwise valid. California Municipal Law Handbook § 1.246; *City of Pasadena v. Paine*, 126 Cal. App. 2d 93 (1954), (resolution valid when read by title only, although rules required full reading).

⁴ A city council has broad authority to appoint boards and commissions as part of the sub-government of the city, unless otherwise limited by city charter or, for general law cities, state law. California Municipal Law Handbook

Council Policy 000-13 was amended on February 16, 2012. For the recent Port District Board appointments, the Council was provided with an interpretation of the amended Council Policy 000-13 by the City Attorney's Office, and also told it could waive the policy and adopt a procedure of its choice to fill the appointments. After Council discussion, a majority of the Council voted to use Council Policy 000-13 as interpreted by the City Attorney's Office to make the appointments. This complied with governing law. (*See* Charter § 270(c), "No . . . action of the Council shall be passed or become effective without receiving the affirmative vote of five members of the Council . . .") This choice was within the Council's inherent powers, set forth in the City Charter and Municipal Code, to set its own rules for the conduct of its meetings. As a majority of the Council voted to choose a method to fill the appointments, it acted in accordance with its governing rules.

III. The Council Must Reconsider the Resolution Vetoed by the Mayor.

It is not the role of the City Attorney to determine whether the Mayor was justified in vetoing the resolution. The Charter states that if the Mayor decides to veto an ordinance or resolution, he must return it to the City Clerk "with his or her written objections." Charter § 280(c)(3). The Charter does not require that the Mayor's objections be valid or justifiable. The resolution must be reconsidered by the Council within thirty calendar days of the veto. Charter § 285. At that time, the Council can consider whether to override the Mayor's veto. If the Council fails to override the veto, the item will be deemed disapproved and have no legal effect. *Id.*

§ 1.249. The Port District Board appointments are governed by state law. *See*, San Diego Unified Port District Act (Act). However, the method of appointment by each city council is not prescribed by the Act. *Id.* at §§ 16-17. Unless limited by state law or city charter, the method of appointment should be established by the city council. California Municipal Law Handbook § 1.249.

CONCLUSION

Questions about the legality of the Council resolution confirming the appointments, and the Council's use of rules governing its meeting to make the appointments, lack merit. The resolution confirming the Council's recent appointments to the Port District Board is a legally appropriate document, complying with governing law. Additionally, the Council has the inherent authority to determine the rules governing its appointment process, and a majority of the Council voted to approve the procedure it used to appoint members of the Port District Board. The Charter requires the Council to reconsider the resolution vetoed by the Mayor.

Respectfully submitted,

JAN I. GOLDSMITH, City Attorney

By /s/ Catherine M. Bradley
Chief Deputy City Attorney

By /s/ Sharon B. Spivak
Deputy City Attorney

CMB:SBS:sc
MS-2013-2
Doc. No. 503919

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

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: January 17, 2013

TO: Honorable Mayor and City Councilmembers

FROM: City Attorney

SUBJECT: Appointments to the San Diego Unified Port District Board of Commissioners

INTRODUCTION

This Memorandum answers questions about City Council appointments to the San Diego Unified Port District Board of Commissioners.

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 Port District Board). 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)(12).¹

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.

I. The Process for Council Appointments to the Port District Board

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,

¹ Charter section 265(b)(12) gives the Mayor “[s]ole authority to appoint City representatives to boards, commissions, committees and governmental agencies, *unless controlling law vests the power of appointment with the City Council or a City Official other than the Mayor.*” Charter § 265(b)(12) (emphasis added).

and districts. The policy applies unless it conflicts with the City Charter, ordinance, corporate bylaws, or other controlling legal authority. The provisions of state law regarding the appointment of a Port Commissioner do not appear to conflict with Council Policy 000-13, and thus we have applied the policy to the Council's appointments to the Port District Board.²

When the Council considers nominees at an open session of the Council, the process includes a presentation by the candidate, questions by Councilmembers, and a procedure for voting if there are more nominees than vacancies. *See* Council Policy 000-13. If all nominees are denied, the Council President must reopen the opportunity to all Councilmembers to submit other nominees, and the Council President places these nominees for consideration on a regularly scheduled Council meeting docket. *Id.*

II. The Mayor's Authority to Veto or Approve Council Appointments to the Port District Board

Since the 2006 adoption of the Mayor-Council form of government, this Office has consistently opined that the Mayor has the authority to veto or approve the Council's appointments of Port Commissioners. In a February 28, 2006 report titled "Appointment Authority to Boards, Commissions, Corporations, and Agencies under the Mayor-Council Form of Government," this Office concluded that appointments to the Port District board are subject to veto. *See*, attachment to RC-2006-9 (Feb. 28, 2006), attached to this Memorandum. All Council appointments to the Port District Board since the Mayor-Council form of government went into effect were made subject to mayoral veto. *See*, Resolutions R-302704, R-304347, R-304957 and R-306512, attached to this Memorandum.³ Although not necessarily controlling, the contemporaneous administrative construction of governing law by those charged with its enforcement and interpretation is entitled to great weight. *Coca-Cola Co. v. State Board of Equalization*, 25 Cal. 2d 918, 921 (1945).

State law clearly vests the Council with the authority to appoint Commissioners for the Port District. As discussed above, the California Harbor and Navigation Code, app. 1, § 16 requires "[e]ach city council . . . shall appoint the . . . commissioners to which it is entitled . . . to represent that particular city on the board." *Id.* § 16. The Council's authority to make the Port District Board appointments remains unchanged by the Mayor-Council form of governance.

The power of appointment of Port Commissioners, however, must be distinguished from the power to veto. Thus, state law governing the appointment process must be harmonized with the City Charter's requirement that the Mayor be provided the authority to veto or approve appointments unless an exception applies, or there is clear authority to the contrary. Charter

² We note that Council Policy 000-13 was recently amended, with the current version effective as of February 16, 2012.

³ All substantive actions of the Council must be passed by adoption of an ordinance or resolution. Charter § 270(c). The Council's appointment of Port Commissioners is a substantive action that requires the affirmative vote of five Councilmembers. *Id.*

§ 280(a). Section 280(a) provides that “[t]he Mayor has veto power over all resolutions and ordinances passed by the Council” unless one of the enumerated exceptions applies.

This Office has consistently opined that none of the exceptions in the Charter apply to preclude the Mayor’s right to approve or veto the appointment of a commissioner to the Port District. The single enumerated exception in Charter section 280(a)(1) subject to analysis is the statement that, “[t]he Mayor’s veto power shall not extend to matters that are exclusively within the purview of Council, such as selection of the Independent Budget Analyst, the selection of a presiding officer, or the establishment of other rules or policies of governance exclusive to the Council and not affecting the administrative service of the City under the control of the Mayor.” Charter §280(a)(1).

This Office has noted that the examples provided in the Charter of matters *exclusively within the purview* of Council encompass only matters relating to the internal regulation of Council-oriented business. The Impartial Analysis by the City Attorney’s Office for the ballot measure that added the Strong Mayor sections to the Charter is consistent with this interpretation. The Impartial Analysis said in relevant part, “The Mayor retains the power to veto those resolutions and ordinances adopted by the Council establishing policy. *The veto power would not extend to matters of internal governance of the Council* or to the application of existing municipal rules to specific decisions of the Council, such as the issuance of land use permits.” The use of the phrase “such as” before the list also supports this interpretation. “The phrase “such as” is not a phrase of strict limitation, but is a phrase of general similitude indicating that there are includable other matters of the same kind which are not specifically enumerated.’ (Citation) The phrase is used in an illustrative, not an exhaustive sense. (Citations.)” *Shaddox v. Bertani*, 110 Cal. App. 4th 1406, 1414 (2003).⁴

The appointment of a Port Commissioner is not a matter of internal governance of the Council. Thus, the “Council purview” exception would not apply to prevent a Mayoral veto of a resolution by the City Council to appoint a City representative to an outside agency.

Moreover, the language in the controlling state law governing the appointments to the Port District Board does not address the issue of the Charter’s own procedures for Mayoral review of resolutions and ordinances. State law thus does not preclude the Mayor’s authority to review and veto the appointments. Accordingly, this Office does not believe the Council’s appointments to the Port District Board are matters “exclusively within the purview” of the

⁴ Additionally, the word “purview” has a number of meanings, the most common implying the scope or range of authority. The online version of Bouvier’s Law Dictionary defines purview as, “That part of an act of the legislature which begins with the words ‘Be it enacted,’” and “ends before the repealing clause.” Cooke’s R. 330 3 Bibb, 181. It is said to be derived from the French *pourvu*, or provided. It always implies a condition. Bouvier 1856. *Bouvier 6th edition*, <http://www.lawyerintl.com/law-dictionary/5564-purview>. *Wiktionary* and *Merriam-Webster* similarly define “purview” as the enacting part of a statute, the scope of a statute, the scope or range of interest or control, of the range of understanding. <http://www.merriam-webster.com/dictionary/purview>; <http://en.wiktionary.org/wiki/purview>.

Honorable Mayor and
City Councilmembers

January 17, 2013

Council, and thus finds, consistent with past practice, that the appointments are subject to Mayoral approval or veto.

Accordingly, the Mayor must act on a resolution passed by the Council to make appointments to the Port District Board within ten business days of receiving it from the City Clerk. Charter § 280(c). The Mayor must approve the resolution by signing and returning it to the City Clerk within the specified time limits, or veto the resolution and return it to the City Clerk with his written objections within the specified time limits. *Id.* Failure to return the resolution within the specified time limit shall constitute approval of such resolution. *Id.*

The Council is required to reconsider any resolution vetoed by the Mayor. Charter § 285. If a vetoed resolution does not receive sufficient votes to override the Mayor's veto within thirty calendar days of such veto, the resolution shall be deemed disapproved and have no legal effect. *Id.* Now that the Council consists of nine seats, the Charter directs that six votes would be required to override the Mayor's veto of a resolution that made appointments to the Port District Board.

CONCLUSION

California law vests the City Council with the authority to appoint Commissioners to the Port District Board. Such authority remains unchanged by the Mayor-Council form of governance. This power of appointment, however, must be harmonized with the City Charter's requirement that the Mayor have veto power over all resolutions and ordinances unless an exception applies. The enumerated exceptions do not apply to preclude the Mayor's power to approve or veto such appointments.

Respectfully submitted,

JAN I. GOLDSMITH, City Attorney

By /s/ Sharon B. Spivak

Sharon B. Spivak

Deputy City Attorney

SBS:CMB:jdf
MS-2013-1
Attachments
Doc. No. 496841.2

Mayoral Appointment Subject to Council Confirmation

Board/ Commission/ Advisory Body	Controlling Law
Arts and Culture, Commission for	San Diego Charter § 43; SDMC § 26.0703
Balboa Park Committee	San Diego Charter § 43; SDMC § 26.30(f)
Building Appeals and Advisors Board	San Diego Charter § 43; SDMC § 111.0207
Centre City Development Corporation, Inc. (CCDC)	Cal. Corp. Code §§ 5056, 5520; San Diego Charter § 265(b)(13)
Citizens Equal Opportunity Commission	San Diego Charter § 43; SDMC § 26.16
City of San Diego/MTDB Authority (JPA)	Cal. Gov't Code § § 6500, 6506; Resolution No. R-295434; RR-295434 (9-10-2001)
Civil Service Commission	San Diego Charter § 41(b)
Community Forest Advisory Board	San Diego Charter § 43; SDMC § 26.0502
Ethics Commission	San Diego Charter § 41(d); SDMC §§ 26.0403 -0405
Financial Reporting Oversight Board	San Diego Charter § 43; SDMC § 26.1702
Funds Commission	San Diego Charter § 41(a)
Historical Resources Board	San Diego Charter § 43; SDMC § 111.0206
Housing Advisory and Appeals Board	San Diego Charter § 43; SDMC § 98.0105(a)
Human Relations Commission	San Diego Charter § 43; SDMC § 26.0905(b)
International Affairs Board	San Diego Charter § 43; SDMC § 26.22(a)
La Jolla Shores Planned District Advisory Board	San Diego Charter § 43; SDMC § 103.0302.2(a)(1) and (2)
Library Commissioners, Board of	San Diego Charter § 43; SDMC § 26.0301(b)
Mission Bay Park Committee	San Diego Charter § 43; SDMC § 26.30(g)
Old Town San Diego Planned District Design Review Board	San Diego Charter § 43; SDMC § 103.0202(b)(1)
Parking Advisory Board	San Diego Charter § 43; SDMC § 26.1802
Parks and Recreation Board	San Diego Charter § 43; SDMC § 26.30
Planning Commission, City	San Diego Charter § 41(c)
Public Facilities Financing Authority (PFFA) (JPA)	Cal. Gov't Code § 6500; Resolution No. R-297255, RR-297255 (10-29-2002)
Public Utilities Advisory Commission, City	San Diego Charter § 43; SDMC § 26.1102
Qualcomm Stadium Advisory Board	San Diego Charter § 43; SDMC § 26.1302
Relocation Appeals Board	Cal. Health & Safety Code § 33417.5; SDMC § 98.0302
Retirement System Board of Administration	San Diego Charter § 144

Board/ Commission/ Advisory Body	Controlling Law
San Diego Convention Center Corporation Inc. (SDCCC)	Cal. Corp. Code §§ 5056, 5520; San Diego Charter § 265(b)(13)
San Diego County Water Authority Board	Cal. Water Code § 30000-33901
San Diego Housing Commission (SDHC)	Cal. Health & Safety Code § 34291; SDMC § 98.0301
San Diego Regional Airport Authority Executive Committee ¹	Cal. Pub. Util. Code § 170028(b)
Science and Technology Commission	San Diego Charter § 43; SDMC § 26.1402
Senior Affairs Advisory Board	San Diego Charter § 43; SDMC § 26.1502
Small Business Advisory Board	San Diego Charter § 43; SDMC § 26.06(b)
Southeast Economic Development Corporation, Inc. (SEDC)	Cal. Corp. Code §§ 5056, 5520; San Diego Charter § 265(b)(13)
Sustainable Energy Advisory Board	San Diego Charter § 43; SDMC § 26.04(b)
Wetlands Advisory Board	San Diego Charter § 43; SDMC § 26.1002
Youth Commission, San Diego	San Diego Charter § 43; SDMC § 26.1602

City Council Appointment Subject to Mayoral Approval/Veto

Board/ Commission/ Advisory Body	Controlling Law
Horton Plaza Theatres Foundation, Inc.	Cal. Corp. Code § 5220; Corp. bylaws
Local Agency Formation Commission (LAFCO) ²	Cal. Gov't Code § 56328
Otay Valley Regional Park Policy Committee (JEPA)	Cal. Gov't Code § 6500; R-300902, RR-300902 (10-10-2005)
San Diego Metropolitan Transit System Board (MTS) ³	Cal. Pub. Util. Code § 120050.2(b)
San Diego River Conservancy ⁴	Cal. Pub. Res. Code § 32634(b).
San Dieguito River Valley Regional Open Space Park Joint Powers Authority ⁵	Cal Gov't Code §§ 6500, 6506; R-273718, RR-273718 (6-12-89)
→ San Diego Unified Port District	Cal. Harb. & Nav. Code § 6200-6372

¹ The Mayor appoints 1 citizen member of the executive committee with Council approval. The Mayor has sole authority to appoint to the Regional Airport Authority Board.

² The Mayor may not serve as City representative to this commission.

³ The Mayor may not serve as City representative to this Board.

⁴ The Mayor holds one board seat by law, the City Council appoints one Council member to another seat.

⁵ The Mayor may not serve as City representative to this Board.

Mayoral Appointment/Council Confirmation not Required

Board/ Commission/ Advisory Body	Controlling Law
Citizens Review Board on Police Practices	San Diego Charter §§ 43(d), 260(b)
San Diego Data Processing Corporation, Inc. (SDDPC)	San Diego Charter §§ 260(b); R-299444 (7-2004)
San Diego Medical Services Enterprise, LLC. (SDMSE)	Cal. Corp. Code § 17000 et. seq.; San Diego Charter § 260(b); R-299840
San Diego Regional Airport Authority Board ⁶	Cal. Pub. Util. Code § 170016(a).
San Diego River Conservancy ⁷	Cal. Pub. Res. Code § 32634(b).

**Council President Appointment, with Council Confirmation,
Subject to Mayoral Approval/Veto**

Board/ Commission/ Advisory Body	Controlling Law
Local Enforcement Agency Hearing Panel, Waste Management	Cal. Pub. Res. Code § 44308

Note: The above list is provided to assist the Mayor and Council in making appointments of citizens and elected officials to various boards, commissions, and agencies. The list is not exhaustive and is subject to change by modifications to underlying authorities. Accordingly, a review of each board, commission, or agency should be conducted prior to making appointments.

⁶ The Mayor has sole authority under state law to appoint two members of the Board, one an elected official; the second, a member of the public. The Mayor also appoints 1 citizen member of the executive committee of the Airport Authority with Council approval.

⁷ The Mayor holds one seat on the Board by law. The City Council appoints a Council member to another board seat.

883

6/5

RESOLUTION NUMBER R- 302704

DATE OF FINAL PASSAGE JUN 13 2007

WHEREAS, appointments to boards and commissions are governed procedurally by Council Policy No. 000-13; and

WHEREAS, said policy permits recommendations of nominees by Councilmembers for appointments to those boards and commissions which the Council has the power of appointment; and

WHEREAS, an unscheduled vacancy now exists on the San Diego Unified Port District Board of Commissioners because of the resignation of Victor Vilaplana; and

WHEREAS, Laurie J. Black has been nominated for appointment to the Board of Commissioners by Councilmember Toni Atkins, Councilmember Kevin Faulconer, Councilmember Jim Madaffer, and Councilmember Ben Hueso; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the appointment of Laurie J. Black, to the San Diego Unified Port District Board of Commissioners for a term ending January 2, 2009, is hereby confirmed.

NAME	TERM ENDING
Laurie J. Black (Mission Hills, District 2) (Replacing Victor Vilaplana, who resigned)	January 2, 2009

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By *Catherine M. Bradley*
Catherine M. Bradley
Chief Deputy City Attorney

CMB:als
05/21/07
Or.Dept:Council-Atkins
R-2007-1025

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUN 05 2007.

ELIZABETH S. MALAND
City Clerk

By *Jara Richards*
Deputy City Clerk

Approved: 6.13.07
(date)

Jerry Sanders
JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

RESOLUTION NUMBER R-304347

DATE OF FINAL PASSAGE NOV 19 2008

WHEREAS, appointments to boards and commissions are governed procedurally by Council Policy No 000-13; and

WHEREAS, said policy permits recommendations of nominees by Councilmembers for appointments to those boards and commissions which the Council has the power of appointment, and

WHEREAS, two vacancies will exist on the San Diego Unified Port District Board of Commissioners on January 2, 2009, due to the expiration of the terms of Laurie J. Black and Sylvia Rios, and

WHEREAS, the following nominations have been made

(1) Laurie J. Black has been nominated for reappointment by Council President Pro Tem Jim Madaffer, and Councilmembers Tom Atkins and Kevin Faulconer,

(2) Robert A. McNelly has been nominated for appointment by Councilmember Anthony Young; and

(3) Scott H. Peters nominated for appointment by Councilmembers Tom Atkins and Ben Hueso, NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that Laurie J. Black is reappointed to the San Diego Unified Port District Board of Commissioners for a term ending January 2, 2013

BE IT FURTHER RESOLVED, by the Council of the City of San Diego, that Scott H. Peters is appointed to the San Diego Unified Port District Board of Commissioners for a term ending January 2, 2013.

APPROVED. MICHAEL J. AGUIRRE, City Attorney

By Catherine M Bradley
Catherine M Bradley
Chief Deputy City Attorney

CMB:als
11/13/2008
Or Dept Council President Pro Tem Madaffer
R-2009-647

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of NOV 10 2008

ELIZABETH S MALAND
City Clerk

By Jana Pichauer
Deputy City Clerk

Approved. 11-19-08
(date)

Jerry Sanders
JERRY SANDERS, Mayor

Vetoed _____
(date)

JERRY SANDERS, Mayor

(R-2009-1260)

MEET

200
6/08/09

RESOLUTION NUMBER R-304957

DATE OF FINAL PASSAGE JUN 12 2009

WHEREAS, appointments to boards and commissions are governed procedurally by Council Policy No. 000-13; and

WHEREAS, the Council Policy permits recommendations of nominees by Councilmembers for appointments to those boards and commissions for which the Council has the power of appointment; and

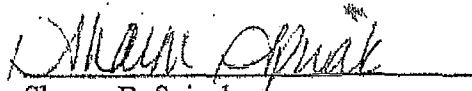
WHEREAS, a vacancy has existed on the San Diego Unified Port District Board of Commissioners since April 2009 due to the resignation of Laurie Black; and

WHEREAS, Councilmembers submitted nominations in compliance with Council Policy No. 000-13 to fill the position; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that Lee Burdick is appointed to the San Diego Unified Port District Board of Commissioners to complete the term of Commissioner Laurie Black, who has resigned, for a term that will end January 2, 2013.

APPROVED: JAN I. GOLDSMITH, City Attorney


By


Sharon B. Spivak
Deputy City Attorney

SBS:sbs
06/09/09
Or.Dept:Council President Hueso
R-2009-1260

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUN 08 2009.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 6-12-09
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

306512

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE JAN 10 2011

WHEREAS, appointments to boards and commissions are governed procedurally by Council Policy No. 000-13; and

WHEREAS, said policy permits recommendations of nominees by Councilmembers for appointments to those boards and commissions which the Council has the power of appointment; and

WHEREAS, one vacancy will exist on the San Diego Unified Port District Board of Commissioners on January 2, 2011, due to the expiration of the term of Stephen Cushman; and

WHEREAS, the following nominations have been made:

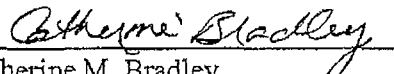
(1) Bob Nelson (Uptown, District 3) has been nominated for appointment by Council President Pro Tem Kevin Faulconer, Councilmember Marti Emerald, and Councilmember Todd Gloria; and

(2) Andrea Johnson (Mission Hills, District 6) has been nominated for appointment by Councilmember Tony Young; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that Bob Nelson is appointed to the San Diego Unified Port District Board of Commissioners for a term ending January 2, 2015.

APPROVED: JAN I. GOLDSMITH, City Attorney

By


Catherine M. Bradley
Chief Deputy City Attorney

CMB:jf
11/19/2010
Or.Dept: Council President

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of January 10, 2011

ELIZABETH S. MALAND
City Clerk

By Hevenson Cruz
Deputy City Clerk

Approved: 1-10-11
(date)

Jerry Sanders
JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor