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MEMORANDUM

TO: Hon. Chris Daly
Member, Board of Supervisors

FROM: Burk E. Delventhal
Thomas J. Owen
Deputy City Attorneys

DATE: January 10, 2007

RE: Binding Effect of Proposition I, a Declaration of Policy
Regarding the Mayor's Appearance at the Board of Supervisors

QUESTION PRESENTED:

Does Proposition I, a declaration of policy adopted by the voters regarding monthly appearances by the Mayor at meetings of the Board of Supervisors, have any legally binding effect on City officials?

SHORT ANSWER:

Within 90 days after the voters approve a declaration of policy such as Proposition I, the Charter requires the Board of Supervisors to study and take appropriate measures, consistent with its powers under the Charter, to carry out the new policy. The Board retains its broad discretion in fashioning an appropriate response to the new policy. But the Board's duty to implement a declaration of policy is limited to taking actions that are within the Board's Charter powers. The Charter does not require the Mayor or any other City officer or agency to take any steps to implement a declaration of policy.

Because it is a declaration of policy and not a Charter amendment, Proposition I does not alter the Board's authority over the Mayor. Accordingly, the Board lacks the authority to compel the Mayor to attend Board meetings. This conclusion is consistent

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with public Opinion No. 2005-01 in which we advised that the Board of Supervisors could not by ordinance or amendment to its Rules of Procedures command the Mayor's personal appearance once a month at its meetings to answer questions from Board members. We concluded that "such a requirement would conflict with separation of powers principles in the City Charter and the Board of Supervisors may not impose it by ordinance or by amendment to the Board's Rules. While the Board may request that the Mayor attend its meetings once a month to answer questions and the Mayor may decide to appear, the Board may not compel the Mayor to do so." (A complete copy of that opinion is available on our website at "[http://www.sfgov.org/site/uploadedfiles/cityattorney/opinions/sep_powr\(2\).pdf](http://www.sfgov.org/site/uploadedfiles/cityattorney/opinions/sep_powr(2).pdf).")

BACKGROUND:

Charter Section 2.113 empowers four or more individual members of the Board of Supervisors to place a declaration of policy on the ballot:

The Board of Supervisors, or four or more members, may submit to the voters declarations of policy, and any matter which the Board of Supervisors is empowered to pass.

Upon approval by the voters, the Board of Supervisors shall within 90 days of such approval take such actions within their powers as shall be necessary to carry such declarations of policy into effect. A special municipal election shall not be called with respect to a declaration of policy.

In accordance with this authority under the Charter, on July 25, 2006, four members of the Board submitted to the Department of Elections a proposed declaration of policy urging the Mayor to appear monthly at a Board of Supervisors meeting. At the November 7, 2006 election, the voters of San Francisco adopted this measure, Proposition I. Proposition I reads as follows:

Shall it be City policy to urge the Mayor to appear in person at one regularly scheduled meeting of the Board of Supervisors each month to engage in formal policy discussions with members of the Board?

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The Charter allows but does not require the Mayor to appear at Board of Supervisors meetings. Under Charter Section 3.100(9), the Mayor has the power to "[s]peak and be heard with respect to any matter at any meeting of the Board of Supervisors or any of its committees, . . ." While the Board has the power of inquiry under the Charter to seek specific information from the Mayor about governance of the City, it does not have the power to compel the Mayor to appear personally on a standing basis at Board of Supervisors meetings. The Charter does make the Mayor responsible for "[p]resentation before the Board of Supervisors of a policies and priorities statement setting forth the Mayor's policies and budget priorities for the City and County for the ensuing fiscal year. . . ." (SF Charter § 3.100(6).) But even that provision does not require the Mayor to appear personally, or to make the presentation more often, or at a time and date of the Board's choosing.

ANALYSIS:

I. A Declaration of Policy Requires the Board to Study and Take Appropriate Measures

In public Opinion No. 85-27, this office reached the following conclusions regarding the binding effect of a declaration of policy, which are still relevant under the current Charter:

San Francisco Charter Section 9.108 [now Section 2.113] imposes a duty upon the Board of Supervisors to implement the policies embodied in a declaration of policy. The Board of Supervisors is required to study and take appropriate legislative measures directed at the problem addressed in the declaration of policy, but the Board retains its broad discretion in fashioning an appropriate legislative response.

Charter Section 9.108 imposes no duty upon other City boards, commissions or officials to implement a declaration of policy. Their Charter-derived powers and discretion remain unaffected by the adoption of a declaration of policy.

(San Francisco City Attorney Opinion No. 85-27, dated October 21, 1985, at p. 1.) Although the Charter language establishing declarations of policy has changed since this office issued Opinion No. 85-27, those changes do not alter our conclusions.

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Charter Section 9.108 read as follows in 1985:

Any declaration of policy may be submitted to the electors in the manner provided for the submission of ordinances; and when approved by a majority of the qualified electors voting on said declaration, it shall thereupon be the duty of the Board of Supervisors to enact an ordinance or ordinances to carry such policies or principles into effect, subject to the referendum provisions of the Charter.

Section 2.113 of the 1996 Charter now provides:

The Board of Supervisors, or four or more members, may submit to the voters declarations of policy, and any matter which the Board of Supervisors is empowered to pass.

Upon approval by the voters, the Board of Supervisors shall within 90 days of such approval take such actions within their powers as shall be necessary to carry such declarations of policy into effect. A special municipal election shall not be called with respect to a declaration of policy.

There are two notable differences between the 1932 and the 1996 provisions, although those differences do not alter our conclusions in Opinion No. 85-27 regarding the binding effect of a declaration of policy. First, the Charter now imposes a 90-day deadline for Board action. But the deadline does not change the underlying scope or nature of the declaration of policy. The deadline simply limits when the Board of Supervisors must act; the duty to act is still specific to the Board. And notwithstanding the deadline, the Board still retains its discretion over the form and content of its response to the declaration.

Second, the Charter now requires that the Board take "such actions within their powers" as shall be necessary to implement the policy, rather than specifically requiring that the Board enact an ordinance or ordinances. This change reflects the fact that existing limits on the Board's powers may prevent the Board from adopting binding legislation to implement a declaration of policy. At the same time, this language does not affect the ability of the Board to use its legislative or administrative powers to otherwise express its support for the policy, as the Supreme Court recognized in *Farley*

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v. Healey (1967) 67 Cal.2d 325, 329. That decision recognized that even where the Board could not implement a policy by ordinance, it could engage in other administrative acts in support of the policy. The specific reference in Section 2.113 to actions "within [the Board's] powers," as established elsewhere in the Charter, makes clear that the adoption of a declaration of policy does not in any way enlarge the powers of the Board of Supervisors.

Thus, as a result of the voters' adoption of Proposition I, the Charter requires the Board of Supervisors to study that proposal—urging the Mayor to appear in person at one regularly scheduled meeting of the Board of Supervisors each month to engage in formal policy discussions with members of the Board. The Board may take any action it deems appropriate "within its powers" to give effect to that policy. But the Board remains unable to compel the Mayor's personal appearance at monthly Board meetings.

II. Our Conclusions in Opinion No. 2005-01 Apply to Proposition I.

We have previously advised that the Board may not by ordinance compel the Mayor's attendance. (San Francisco City Attorney Opinion No. 2005-01, dated December 9, 2005, at p. 1.) Under separation of powers principles incorporated in the City Charter, the Board may not adopt a measure that would purport to command the physical presence of the Mayor at a time and place of the Board's choosing. Such a measure would "improperly intrude upon a core zone of executive authority, impermissibly impeding the [Mayor] in the exercise of his or her executive authority or functions." (See *Marine Forest Society v. California Coastal Comm.* (2005) 36 Cal.4th 1, 45.)

The San Francisco Charter is the City's "constitution." (*City and County of San Francisco v. Patterson* ("Patterson") (1988) 202 Cal.App.3d 95, 102.) All City ordinances, including initiative ordinances, must be consistent with the Charter. (*Scott v. Common Council* (1996) 44 Cal.App.4th 684, 694; *Newsham v. Board of Permit Appeals* (1996) 46 Cal.App.4th 930, 937.) If the Board of Supervisors may not by ordinance compel the Mayor to appear at Board meetings, as concluded in Opinion No. 2005-01, then the voters may not do so by initiative ordinance. "[The Charter] defines the scope of the initiative power of the electorate congruent with that conferred on the board of supervisors. As a corollary, the electorate has no greater power to legislate than the board itself possesses." (*Patterson, supra*, 202 Cal.App.3d at p. 104.)

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An initiative ordinance may not amend a local charter. (*Citizens for Responsible Behavior v. Superior Court* (1992) 1 Cal.App.4th 1013, 1034.)

But Proposition I was not even framed as an initiative ordinance. Instead, the sponsors chose to submit it as a declaration of policy. As explained in Opinion No. 85-27, a declaration of policy is the least specific or binding type of initiative measure and expresses the will of the people in the most general terms. In these respects, it falls below both charter amendments and initiative ordinances in its legally binding effect.

If a declaration is adopted by the electorate, the Board of Supervisors has a duty to study the policy and to consider possible actions to give effect to it. The voters, in passing upon a proposed declaration of policy, are not addressing particular legislation. Rather, they are expressing their view of a concept or position, no matter how precise the articulation of that policy is. Except for the Board's duties under Section 2.113, a declaration of policy is not self-executing. It has no legal effect unless and until the Board acts to implement it.

But the Board's options for implementation are limited to what the Board can lawfully do under the Charter. As discussed above, if the Board could not adopt the policy in question by ordinance directly, it cannot do so responding to a declaration of policy. The passage of a declaration of policy does not alter or increase the Board's powers under the Charter. The charter amendment process is controlled by state law and a charter may only be amended in conformity with that law. (*Howard Jarvis Taxpayers Assn. v. City of San Diego* (2004) 120 Cal.App.4th 374, 387-89.) The declaration of policy process is not a substitute for a charter amendment. Nor may an ordinance adopted by the Board in response to a declaration of policy amend the Charter. (*Montgomery v. Board of Administration* (1939) 34 Cal.App.2d 514, 520.) Any actions the Board takes in response to a declaration of policy must be consistent with the Charter. (*Howard Jarvis Taxpayers Assn. v. City of Roseville* (2003) 106 Cal.App.4th 1178, 1186 [a charter city may not act in conflict with its charter].)

CONCLUSION:

Since Proposition I is a declaration of policy, its only binding effect is to impose a duty upon the Board of Supervisors to study and address the new City policy urging the

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Mayor's monthly appearance before the Board to engage in formal policy discussions. The Board retains its full legislative discretion to fashion a response to that policy. The Charter does not require the Mayor or any other City officer or agency to take any steps to implement a declaration of policy.

The proposition does not alter or increase the powers or duties of the Board or the Mayor under the Charter. Neither the voters' adoption of Proposition I nor any legislation adopted by the Board to carry out Proposition I can amend the Charter to impose a legal duty on the Mayor to appear each month at a Board of Supervisors meeting. While the Board may follow Proposition I's express policy by taking action urging the Mayor to attend its meetings once a month to engage in a formal policy discussion and the Mayor may choose to appear, such action would have to be entirely voluntary on the Mayor's part.

cc: Mayor Gavin Newsom
Members, Board of Supervisors
Cheryl Adams