



DENNIS J. HERRERA
City Attorney

KATHARINE HOBIN PORTER
Deputy City Attorney

DIRECT DIAL: (415) 554-4247
E-MAIL: katharine.porter@sfgov.org

MEMORANDUM

TO: San Francisco Police Commission
 CC: Assistant Chief Jeffrey Godown
 FROM: Katharine Hobin Porter *KHP*
 Deputy City Attorney
 DATE: January 12, 2011
 RE: Designation of Assistant Chief Godown to fulfill the duties of Chief of Police

Several members of the Police Commission have asked whether former Chief of Police George Gascón had the authority, while Chief of Police, to designate Assistant Chief Jeffrey Godown to discharge the powers and duties of the Chief of Police once Chief Gascón resigned.

The Charter does not address the management of departments when a department head position become vacant precipitously and before a successor department head assumes office. But the common law recognizes a rule of necessity applicable in that situation, based on the need to maintain continuity of governmental operations and to ensure that governmental agencies are continuously able to discharge their responsibilities. State law codifies this common law rule of necessity, and provides that a deputy to a public officer may exercise the full powers of his or her principal. *See e.g.*, California Gov't Code §§7, 1194, and 24100 (set forth at the end of this memorandum). For similar reasons, under the rule of necessity a public officer may hold over after the expiration of his or her term, when no successor is appointed or chosen and when no law bars hold over service. "Absent provisions to the contrary, the public interest requires that public offices should be filled at all times without interruption. Under this policy, an elected or appointed officer may remain in office after the expiration of its term until a successor qualifies, whether or not this is provided for by the statute creating the office." McQuillan, *The Law of Municipal Corporations* (2010) §12:105. In a conflict of interest context, Courts have applied the rule of necessity to permit a public official or body to make or participate in a governmental decision, despite having a conflict that would otherwise prohibit participation, where the official or body is legally required to make or participate in the decision. *See Affordable Housing Alliance v. Feinstein* (1986) 179 Cal.App.3d 484, 488-492 (under the rule of necessity, the mayor could take action on an ordinance despite having a financial interest in the subject matter of the ordinance); *see also Kunec v. Brea Redevelopment Agency* (1997) 55 Cal.App.4th 511, 520 ("The common law developed the rule of necessity to prevent the vital processes of government from being halted or impeded by officials who have conflicts of interest in the matters before them.").

Based on the rule of necessity, this Office's longstanding and consistent advice has been that in the absence of a Charter provision designating a succession process in the event an office becomes vacant, the authority vested in the department head devolves to the second in command whom the department head has designated to run the department when the department head is absent or unavailable to perform the duties of the office, including through resignation, disability or death.

Memorandum

TO: San Francisco Police Commission
CC: Assistant Chief Jeffrey Godown
DATE: January 12, 2011
PAGE: 2
RE: Designation of Assistant Chief Godown to fulfill the duties of Chief of Police

At the Police Department, there are three Assistant Chiefs and therefore three second-in-command personnel. But the Charter does not specify who is in charge in the event the Chief is absent or unavailable. We are informed that before leaving office, Chief Gascón designated Assistant Chief Godown from among the three Assistant Chiefs, to be in charge of the department once Chief Gascón resigned as Chief of Police. Former Chief Gascón has not appointed Assistant Chief Godown as his successor, but rather has simply identified Assistant Chief Godown as the second-in-command to discharge the powers and duties of the Chief of Police pending selection of a new Chief under the Charter process. In this capacity, Assistant Chief Godown may exercise all powers and perform all duties of the Chief of Police. However, Assistant Chief Godown retains his civil service rank of Assistant Chief during this period.

Chief Gascón's designation will stand until the Mayor appoints a new Chief of Police who has been nominated by the Police Commission. If the Commission wishes to install an interim Chief rather than relying on Chief Gascón's designation of Assistant Chief Godown, it may submit nominees to the Mayor for appointment as Chief while the Commission conducts a more comprehensive search process. The Mayor and Commission may consider this appointee as an interim Chief. But that appointee would have all the powers of the Chief of Police. When the Mayor was prepared to appoint a new Chief, the Mayor or the Commission could ask the interim Chief to resign. If the interim Chief declined to do so, the Commission or Mayor would have to remove that person in order to appoint a new Chief of Police.

Government Code Sections

Section 7. Public officers; exercise of powers and duties by deputies and others

Whenever a power is granted to, or a duty is imposed upon, a public officer, the power may be exercised or the duty may be performed by a deputy of the officer or by a person authorized, pursuant to law, by the officer, unless this code expressly provides otherwise.

Section 1194. Powers and duties

When not otherwise provided for, each deputy possesses the powers and may perform the duties attached by law to the office of his principal.

Section 24100. Deputy included in principal's name

Whenever the official name of any principal officer is used in any law conferring power or imposing duties or liabilities, it includes deputies.

K.H.P.