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OPINION NO. 2007-01

TO: Mayor Gavin Newsom
Members, Board of Supervisors

FROM: Jesse Capin Smith
Chief Assistant City Attorney
Buck Delventhal
Elizabeth Salvesson
Deputy City Attorneys

DATE: September 21, 2007

RE: Laws Governing Resignations of Appointed City Officers

In light of Mayor Newsom's request earlier this month that various City department heads and City commissioners, as well as all of his senior staff, offer to resign effective as of the last day of his current term, and the letters submitted in response to his request, our Office has received a number of questions about the laws that apply to resignations of City officers. Also, we received from Supervisor Daly a request for a written opinion relating to the effect of various resignation letters that officials submitted to the Mayor.

In an earlier public opinion we summarized the laws governing the Mayor's appointment of members of City boards and commissions and certain other related local government agencies, the legal requirements for appointing department heads under those boards and commissions, and the process for removing those commission members and department heads. (City Attorney Opinion No. 2004-01, dated March 31, 2004, and available on the City Attorney's website at <http://www.sfgov.org/site/uploadedfiles/cityattorney/opinions/boardmyr.pdf>). We also briefly described the process for City commissioners to resign. (Opinion No. 2004-01, page 9). In this memorandum, we expand our discussion in that earlier public opinion about the legal requirements for resignations of appointed City officers and we address a number of legal questions that have arisen in connection in the Mayor's request for certain appointed City officers and employees to submit offers to resign.

Summary

Generally, the Mayor has the authority to request voluntary offers to resign from appointed City officers even if he is not their appointing authority and does not have the power to remove them from office. But the officers have full discretion about whether and how to respond. The City's Administrative Code requires that resignation of an appointed City officer be in writing and addressed to the body or officer who appointed them. The legal effect of a written resignation depends on its content. Under the City's Administrative Code, a resignation by an appointed City officer becomes effective, unless otherwise stated, at the time the appointing authority receives the resignation. An appointed City officer may condition the effectiveness of the resignation on whatever conditions the officer decides to place in the written resignation, so long as those conditions are not prohibited by law.

Here, an appointed City officer could submit a written offer to resign as of January 7, 2008 that is conditioned on the Mayor's acceptance of the offer. Such resignations

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would become effective on January 7, 2008 only if the Mayor accepts them while the offer remains outstanding. Furthermore, as to any officer whom the Mayor does not appoint, the appointing body or officer would have to receive the resignation together with evidence of the Mayor's acceptance. The Mayor's acceptance of any offer to resign should be in writing, and, where the Mayor is not the appointing authority, the Mayor should transmit the written acceptance to the appointing body or officer as well as the individual who submitted the offer.

Generally, an officer who submitted a resignation effective as of January 7, 2008 may rescind the resignation at any time before January 7, 2008 if the officer does so in writing. But once the Mayor accepts the resignation or offer to resign in writing, the officer may not later withdraw the resignation. Also, there may be particular circumstances other than written acceptance where the Mayor or other appointing authority have acted in reliance on the resignation that would render ineffective an officer's later attempt to withdraw the resignation.

Resignations should ordinarily be interpreted by their express terms. If an officer submits a resignation that does not contain any stated conditions to its effectiveness—such as a future date, acceptance by the Mayor or any other conditions—the resignation is effective upon receipt by the appointing authority. The Mayor may request in writing that such an officer return to that position and agree to serve until a successor is appointed. The officer may do so if the officer agrees to the request in writing.

Background

On September 10, 2007, at his weekly department head meeting Mayor Newsom requested that City department heads, City commissioners appointed by the Mayor, and all of his senior staff offer to resign effective as of the last day of his current term in office, January 7, 2008. In a later clarifying memorandum to department heads, the Mayor stated that he was "requesting that all appointed department heads voluntarily provide [him] a letter . . . offering to resign effective . . . January 7, 2008." The Mayor asked that the letters "make clear that [the] offer of resignation will become operative only upon [his] acceptance of the resignation." The Mayor's memorandum also stated that "in the coming weeks [he] will decide whether or not to accept [the] offer of resignation . . ." The Mayor sent a similar memorandum to Mayor-appointed commissioners.

The Mayor's request for offers to resign included some City department heads whom the Mayor does not appoint, as well as some commissioners and department heads of San Francisco government agencies that are legally separate from the City. After the September 10th request, the Mayor excluded a number of City officers from his request, including members of boards or department heads that serve in an independent monitoring capacity, such as the Elections Director and Elections Commission, the Ethics Director and the Ethics Commission, and the Civil Service Commission and its Executive Officer.

In apparent response to the Mayor's request for letters by the close of business on September 15, 2007, many officials and commissioners submitted resignation letters and offers to resign, with varying form and content. Some of the letters were consistent with the language in the Mayor's clarifying memorandum and were phrased as offers to resign as of January 7, 2008, if the Mayor accepted the offer. Other letters were phrased as resignations as of January 7, 2008, without any reference to a condition that the Mayor accept them. Based on copies of the letters and information provided by the Mayor's Office, we understand that some of

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the letters were simply resignations, without any express reference to the Mayor's acceptance or effectiveness as of January 7, 2008, or even a statement that they are offers to resign.

After receiving the various letters, the Mayor sent a memorandum dated September 18, 2007 to department heads, Mayor-appointed commissioners and his senior staff stating that he would interpret all the letters as offers to resign, which would not be effective unless he accepted them, except if the officer or employee who submitted the letter informed him otherwise.

Discussion

- I. The Mayor May Request Voluntary Offers To Resign From City Officers Even If He Is Not Their Appointing Authority, But It Is In The Officers' Discretion About Whether And How To Respond.

Under the San Francisco Charter, the Mayor is the chief executive officer of the City and County and his responsibilities include general administration and oversight of all departments and governmental units in the executive branch of the City and County. (Charter Section 3.100). This authority includes the Mayor's ability to request that City officers or employees voluntarily offer to resign from their positions. The Mayor stated that he sought voluntary offers of resignation. In addition, as a general matter, neither the Charter nor state law prohibits the Mayor from requesting voluntary offers to resign from directors of departments outside the executive branch, or commission members who oversee such departments, or similar officials in other local government agencies.

But no law requires any officer or employee to submit a resignation or offer to resign in response to such a request. The law places the full discretion about whether and how to do so in the full discretion of each official or employee. An officer or employee declines to resign remains subject to removal from office or employment under the City or other laws that apply to an involuntary termination. The process for removing a City department head or commission member from office varies depending on the position. In City Attorney Opinion No. 2004-1, we describe the persons or agencies with the power to terminate the service of numerous different City officers.

Because the Mayor later clarified that his request for offers of resignation did not extend to members of the Ethics, Elections and Civil Service Commissions, or the department heads serving under those commissions, this opinion does not address any legal issue that may be raised under the Charter or otherwise by a Mayor's request for or receipt of an offer to resign by an official whose duties include overseeing a Mayoral election or enforcement of elections, ethics or civil service laws that may apply to the Mayor.

- II. City Officers And Employees May Offer To Resign Subject To The Mayor's Acceptance And The Offer To Resign May Designate A Future Effective Date.

All public employees, including officers who are also employees, have the power to resign from employment. No employer may compel an employee to work against the employee's will. *Beverly Glen Music, Inc. v. Warner Communications, Inc.*, 178 Cal. App. 3d 1142, 1144 (1986) ("unwilling employee cannot be compelled to continue to provide services to his employer . . . To do so violates the Thirteenth Amendment's prohibition against involuntary servitude").

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A. Article IV-A Of The Administrative Code Governs Resignations By City Officers.

For City officers, Article IV-A of the Administrative Code specifies the procedure for effecting a resignation. The Board of Supervisors adopted Article IV-A in 1979 following a sequence of events in which former Supervisor Dan White submitted his resignation as a Board member and then later, following the effective date stated in his resignation letter, said that he was rescinding that resignation. At that time, City law did not prescribe how City officers could submit resignations, and Supervisor White disputed the City's conclusion that he could not rescind the resignation once its effective date had passed.

Article IV-A of the Administrative Code requires that resignations be in writing, that elected officials submit their resignations to the Clerk of the Board of Supervisors, and that appointed officers submit their resignations to the body or officer who appointed them. (Administrative Code Section 16.89-15.) Section 1.50 of the Administrative Code defines who are City officers. City officers include elected officials, members of specified boards and commissions, including boards and commissions appointed by the Mayor, heads of departments under the Mayor, and executives appointed as chief executive officer under each board or commission.

Under Article IV-A, the effective date of the resignation from a City officer depends on the content of the resignation letter:

Such resignation shall become effective, unless the written resignation otherwise stated in the written resignation, at the time at which they are received:

(a) By the office of the Clerk of the Board of Supervisors, when submitted by an elected officer; or

(b) By the office of the appointing authority, when submitted by an appointed officer. (Administrative Code Section 16.89-16).

Thus, an appointee's unconditional written resignation, with no future effective date specified, such as "I hereby tender my resignation," becomes effective upon receipt by the appointing body or officer. But, as we discuss below, a written offer to resign with other stated terms may become effective at a later date or the effectiveness may depend on specific occurrences or conditions described in the letter.

B. Resignations By City Employees Who Are Not Officers Are Governed By The Civil Service Commission Rules.

For City employees who are not City officers, including senior staff members of the Mayor's office, the Civil Service Commission ("CSC") rules govern resignation. Rule 119 covers resignations of employees other than uniformed employees of the San Francisco Police Department and the San Francisco Fire Department, and service-critical employees of the Municipal Transportation Agency.

CSC Rule 119.1 provides:

A resignation shall be immediately reported on the prescribed form to the Department of Human Resources as provided below. If an employee

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resigns without completing the form, but otherwise gives notification in writing of the resignation, such notification shall be attached to the form.

The effective date of such a resignation is "the effective date entered on the resignation form." Such a resignation cannot thereafter be rescinded. (CSC Rule 119.3). The form prescribed by the Department of Human Resources ("DHR") contains a space for the employee's signature, confirming the employee's voluntary resignation. In those situations where an employee in good standing has indicated an intention to resign but has not completed a resignation form, the appointing officer may submit the unsigned resignation form with a letter of explanation in order to effectuate the resignation. (CSC Rule 119.6).

- C. City Officers And Employees May Expressly Condition The Effectiveness Of Their Resignations, And Offers To Resign Submitted To The Mayor That State That They Are Subject To The Mayor's Acceptance Are Not Effective Until The Mayor Accepts The Offer And Other Stated Occurrences Or Conditions To Effectiveness Are Satisfied.

In most instances, department heads, commissioners and the Mayor's senior staff submitted offers to resign, rather than unconditional resignations. Many of those offers to resign made clear they were intended to respond to the Mayor's request and were subject to the Mayor's acceptance. For City officers, Section 16.89-16 of the Administrative Code contemplates that a written resignation may contain terms that vary the effective date from the date of receipt by the appointing body or officer.

Under Administrative Code Section 16.89-16, those appointed City officers who have submitted an offer to resign subject to the Mayor's acceptance have not made their resignations automatically effective upon receipt. Those offers will become effective only if accepted according to their terms, consistent with Article IV-A of the Administrative Code. If an officer appointed by the Mayor submitted such an offer to resign to the Mayor, then it would become effective only upon two conditions: (1) the Mayor accepts it and (2) any stated future effective date has occurred. By contrast, if an officer who is not appointed by the Mayor submitted such an offer to the Mayor, the resignation would become effective only upon three conditions: (1) the Mayor accepts it, (2) the resignation is submitted to the appointing body or officer, and (3) any future effective date has occurred.

For resignations by employees, there is nothing in CSC Rules 119.1 or 119.3 that requires an employee's offer to resign to be an immediate resignation if the resignation is stated otherwise.

If the Mayor decides to accept any offers to resign, he should do so in writing. For any appointed City officers, he should deliver a copy of the written acceptance to the resigning officer and to the appointing body or officer if he is not the appointing authority.

- D. Resignations Made Effective As Of January 7, 2008 May Be Withdrawn In Writing By The City Officer Before That Date Unless The Mayor Has First Accepted The Resignation.

A City officer or employee may withdraw a resignation before the conditions to its effectiveness have been satisfied. In the absence of a law proscribing otherwise, "an employee is entitled to withdraw a resignation if she or he does so (1) before its effective date, (2) before it

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has been accepted, and (3) before the appointing power acts in reliance on the resignation." *Armistead v. State Personnel Board*, 22 Cal.3d 198, 206 (1978); *see also American Federation of Teachers v. Pasadena Unified School District* (1980) 107 Cal.App.3d 829, 839-840 (attempt to rescind resignation ineffective after resignation accepted by employer).

Here, for instance, some of the resignation letters submitted say that the City officer or employee is resigning effective as of January 7, 2008. Such resignations are not expressed as offers of resignation subject to the Mayor's acceptance. For appointed City officers, these resignations would automatically become effective on January 7, 2008 under Article IV-A of the Administrative Code. But the officers who submitted them may rescind such resignations if they do so in writing and before January 7, 2008 *and* before the Mayor accepts the resignations. Consistent with the legal principle established in *Armistead*, certain actions by the Mayor—or other appointing authority—in reliance on the resignation may be tantamount to acceptance for these purposes, and may prevent an officer from rescinding the resignation.

E. Resignations Must Be Interpreted According To Their Stated Terms Consistent With The Administrative Code Or CSC Rule 119, And Resignations By Appointed City Officers Without Stated Conditions Are Effective Upon Receipt By The Appointing Authority.

As previously mentioned, we understand that some of the letters provide for resignation with no specified date or other express condition to effectiveness or even a statement that they are offers to resign or are subject to the Mayor's acceptance. For letters from City officers for whom the Mayor is their appointing authority, these resignations became effective when the Mayor received them.

Resignations should ordinarily be interpreted according to their express language. If the wording of a resignation is unambiguous, the resignation must be construed according to its stated terms within the four corners of the document. Accordingly, any such resignation by a City officer that is not clearly conditioned becomes effective automatically upon receipt by the appointing authority. For example, a resignation that simply states "I hereby tender my resignation" is effective when the appointing authority receives it. Acceptance by the appointing authority is not required.

Where an officer has submitted a resignation that has become effective, the Mayor may request in writing that the official return to office until a successor is appointed. Section 16.89-18 of the Administrative Code states that "Upon the effective resignation of ... an appointed official...the Mayor may ask said official to return to his office until a successor is appointed." Section 16.89-18 further provides that "Upon the consent of said official, he shall so serve" and that "such request and agreement shall be in writing." If there is no such agreement then the office becomes vacant and is subject to the legal requirements for appointments.

III. Possible Financial And Other Legal Issues For The City Relating To Resignations.

In general, resignations are considered to be voluntary. *Turner v. Anheuser-Busch, Inc.*, 7 Cal. 4th 1238, 1244 (1994) (employee voluntarily severs relationship by resignation; employer by discharge). A voluntary resignation has no effect on an employee's entitlement to retirement benefits under the San Francisco Employee Retirement System, or rights to retiree health benefits. The Charter establishes entitlement to those benefits, which depends upon a number of

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factors, including length of service. Likewise, a voluntary retirement has no effect on an employee's entitlement to continuation of health benefits under COBRA established by federal law.

The availability of severance benefits turns on the specific facts that apply to a given individual and on the provisions of any Memorandum of Understanding ("MOU") or employment contract applicable to that officer or employee. State law governs the availability of unemployment benefits. (*See* Unemployment Ins. Code Section 1256—employee disqualified from benefits if he or she left work "voluntarily and without good cause").

The resignations of certain department heads or commissioner may present other legal issues for the City depending on the particular facts and circumstances. For example, there could be questions about whether to make public disclosures under certain City bonds or municipal debt issuances. We are prepared to examine these issues as they arise in consultation with relevant City departments and officers.

Conclusion

Generally, the Mayor has the authority to ask for offers to resign from appointed City officers and his employees and it is a personal question for each of them about how to respond. We describe above the City laws that generally apply to the resignation process, with an emphasis on the laws that apply to resignations, and offers to resign, by appointed City officers.

APPROVED:

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