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## MEMORANDUM

TO: San Francisco Fire Commission  
FROM: Buck Delventhal  
Thomas J. Owen  
Margaret W. Baumgartner  
Deputy City Attorneys  
DATE: December 23, 2004  
RE: Advice re Role of Fire Commission in Mid-Year Budget Cuts

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### Question Presented

You have asked this office to provide written advice about the process for mid-year spending cuts. The Mayor has instructed the Fire Chief to identify a program of spending cuts in response to the budget shortfall. Specifically, you have asked whether the Fire Commission has the authority to direct the Chief regarding compliance with the Mayor's directive.

### Short Answer

In general, there are three main processes for the City to effect mid-year budget adjustments for a department within the Executive Branch, such as the Fire Department, in response to revenue shortfalls: (i) the Mayor may request that departments reduce authorized expenditures, as is the case here; (ii) the Board of Supervisors and the Mayor may approve an amendment to the Annual Appropriations Ordinance reducing the annual appropriation to the department; and (iii) the Controller may impose spending limits if revenues appear insufficient to support anticipated expenditures.

With respect to the mid-year reduction proposal that the Mayor has requested from the Chief, the Fire Commission has the authority to direct the Chief to provide the Commission with the proposal, and to approve or disapprove it. If the Commission disapproves the proposal, the Commission may provide further direction to the Chief on any potential spending reductions. Commission rejection of a budget reduction proposal would not prevent the Board from amending the Annual Appropriations Ordinance to reduce the Department's authorized budget, or prevent the Controller from imposing spending limits.

### Background

Under the Charter, as part of the annual budget process the Fire Commission must consider the budget for the Department that the Chief forwards to the Mayor for inclusion in the proposed budget. Like any other commission in the Executive Branch, the Fire Commission must, "after public hearing, approve applicable departmental budgets or any budget modifications or fund transfers requiring the approval of the Board of Supervisors." (SF Charter § 4.102.) After the Commission approves the annual budget, the Mayor may either submit the Commission's approved budget to the Board, or may alter or amend the Commission's approved budget as he sees fit before presenting it to the Board.

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Consistent with this budget process, the Board of Supervisors and Mayor have approved the Annual Appropriations Ordinance (the "AAO") for fiscal year 2004-05, authorizing the Fire Department to expend certain sums. Because the voters rejected the proposed tax measures that were on the ballot this past November, the Controller has identified a budget shortfall for this fiscal year, and the Mayor has directed that the Fire Chief – together with all other City departments – work with the Mayor's budget office to attempt to close the gap between authorized expenditures and revenues. The Mayor requested that the Fire Department present a proposal on how to reduce its general fund expenditures by \$7.5 million over the next 18 months. The Chief has provided input to the Mayor's office on potential reductions, but there has been no final decision on how to reduce general fund expenditures.

**Discussion**

The Charter sets forth a detailed process for adoption of the annual budget, but it does not specifically address the process for mid-year cuts due to revenue shortfalls, other than the power of the Controller to impose spending limits as described below. In the first part of the discussion, we describe the responsibilities and authority of departments, the Mayor, the Board of Supervisors, and the Controller in the budget process and in addressing mid-year budget shortfalls. In the second part, we describe the authority of the Fire Commission regarding proposed spending reductions.

**I. Overview of Authority to Make Mid-Year Budget Reductions****A. Department's Expenditure Authority**

Once the Board of Supervisors approves its Annual Appropriations Ordinance, a department generally has the legal authority but not an obligation to expend the unencumbered sums that have been appropriated for the current fiscal year. (SF Admin. Code § 10.01) This expenditure authority remains subject to: (i) the authority of the Mayor to request that departments cut authorized expenditures; (ii) the ability of the Board of Supervisors and the Mayor to adopt an amendment to the AAO reducing the annual appropriation to the department; and (iii) the Controller's power to impose spending limits if revenues appear insufficient to support anticipated expenditures. (Charter § 3.105). If a department is subject to a legislatively imposed obligation to provide a particular level of service, then the department must determine how to provide this service consistent with its authorized budget.

**B. Mayor's Instructions to Departments to Reduce Spending**

The Mayor is the "chief executive officer" of the City. (SF Charter § 3.100.) He is responsible for the "[g]eneral administration and oversight of all departments and governmental units in the executive branch of the City and County," and "[c]oordination of all intergovernmental activities of the City and County." (SF Charter § 3.100(1), (2).) He also appoints most department heads (SF Charter § 3.100(18)) and most of the commissioners who oversee the various departments.

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The Charter gives the Mayor a significant degree of control over the City's finances through his power to propose a budget and because of limits on the Board of Supervisors' powers to modify the Mayor's proposed budget. Under the Charter, the Mayor is responsible for "[i]ntroduction before the Board of Supervisors of the annual proposed budget or multi-year budget which shall be initiated and prepared by the Mayor." (SF Charter §§ 3.100(7), 9.101.) The Board of Supervisors may amend the Mayor's proposed budget, but may not make any increase or decrease that would cause the expenditures from a particular fund to exceed the amount proposed by the Mayor. (SF Charter § 9.103.) The Mayor may exercise a line item veto over the budget as adopted by the Board, and the Board may only override that veto by a two-thirds vote. (SF Charter § 9.104.)

Consistent with his Charter powers, the Mayor instructs departments on the types and levels of expenditures that can be supported by anticipated City revenues. He directs departments regarding administrative policy, including service and expenditure reductions that he determines are necessary to bring expenditures into balance with revenues.

Departments in turn are responsible for executing the Mayor's policies. At the departmental level, commissions and department heads make the decisions to execute the Mayor's spending priorities. If the Mayor orders mid-year reductions in spending based on lack of revenue, and departments do not comply, the Controller has the authority to restrict a department's spending to available revenue. (See Section 1D, Controller's Allotments.)

Implementation of policies to reduce spending may include, but are not limited to, reducing the workforce or declining to fill vacant positions. The Mayor may enforce a directive to reduce departmental spending through his authority over the decision to fill new or vacant positions. The Charter states: "Whenever a position controlled by the civil service provisions of this Charter is to be filled, the appointing officer shall make a requisition to the department of human resources for a person to fill it." (SF Charter § A8.329.) The Annual Salary Ordinance (the "ASO") authorizes departments to "make or continue appointments" to positions enumerated in that ordinance; provided, however, "[a]ppointing officers shall not make an appointment to a vacancy in a permanent position until the requisition for such service is approved (when required) by the Mayor, the Controller and the Human Resources Department." (ASO § 1.1.) In the ASO, the Board has given the Mayor this approval power since at least 1935. The ASO does not specify the criteria that the Mayor applies in determining whether to approve a requisition. In the absence of stated criteria, the Mayor may determine whether the approval or disapproval is in the best interest of the City, including consideration of budget shortfalls. (ASO § 1.1.)

Additionally, a Department Head may determine to reduce spending by not filling vacant positions or by cutting personnel. Administrative Code Section 2A.30 provides, in relevant part, that "[e]ach department head, through the Mayor if part of the Executive Branch under the Charter, . . . may reduce the forces under his or her jurisdiction to conform to the needs of the work for which he or she is responsible." And the Board of Supervisors may, by ordinance, "freeze" hiring of employees to fill new or vacant positions.

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**C. Reduction of Appropriations**

The Board of Supervisors and Mayor may, by ordinance, reduce appropriations already made, to the extent that the funds have not yet been expended or encumbered or the expenditures are not mandated by preemptive or superseding law. (See SF City Attorney Opinion No. 85-28, dated October 25, 1985, at p. 5.) The Board's power to reduce appropriations may not affect funds already certified and encumbered by the Controller as available in connection with contracts for procurement of goods and personal services, construction, property purchases, or legally binding commitments between the City and a third party. (See SF City Attorney Opinion No. 82-24, dated March 24, 1982, at pp. 11, 17.)

**D. Controller's Allotments**

The Charter authorizes the Controller to restrict City spending whenever during the fiscal year he determines that there will not be sufficient revenues to cover the expenditures. (SF Charter Section 3.105.) If in his ongoing evaluation of revenues the Controller determines at any time that the City will take in less revenues than estimated from any identified funding source in the budget, the Controller may set a schedule of allotments for the various departments dependent on those funding sources, in effect putting them on a monthly or quarterly allowance. (SF Admin. C. § 10.05.) In setting the allotments, the Controller holds in reserve an amount equivalent to the anticipated revenue shortfall until the collection of the original estimate is assured. (*Id.*) Where a tax is levied for a department, the sum of the allotments to the department may not exceed the amount of tax revenues actually collected. (*Id.*)

After an allotment schedule is set, the Controller will only issue warrants against the allotted portions of an appropriation item. (*Id.*) And the Controller will not allow a department to incur liability in excess of the amount of such allotment. (*Id.*) The City may make an additional or increased allotment to a department in the case of an emergency or unusual and unanticipated circumstances, on the recommendation of the department head, and of the Mayor, board or commission responsible for the department and with the approval of the Controller. (*Id.*) It is unlawful for a department or an officer to spend more than the amounts provided in an allotment schedule. (*Id.*)

**II. Authority of the Fire Commission with Respect to Requested Budget Cut Proposal**

We now turn to the authority of the Fire Commission in relation to the mid-year reductions that the Mayor has requested of the Fire Chief.

As previously mentioned, the Mayor is responsible for managing the executive branch departments, including the Fire Department. (SF Charter § 3.100.) When mid-year budget cuts are necessary, the Mayor may request that the Board of Supervisors amend the AAO to reduce authorized spending. If the Mayor does so, the Charter provisions requiring that the Commission approve the department's budget would also require that the Commission hold a public hearing and approve the proposed spending reductions. And as with the annual budget, the Mayor may amend the Commission's approved modification before submitting it to the Board.

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But the Charter does not require the Mayor to cut spending through an amendment to the AAO. The Mayor may directly instruct department heads, including the Fire Chief, to reduce spending, as he has done here. Those reductions must be consistent with any legal mandate imposed on the Department, including any mandate regarding particular levels of service.

As previously mentioned, the Fire Commission also has the authority to approve, after a public hearing, applicable department budgets or any budget modifications or fund transfers requiring the approval of the Board of Supervisors." (SF Charter § 4.102.2.) A decision by the department not to expend previously appropriated funds does not constitute an amendment to the budget and therefore does not require Board of Supervisors approval. Nevertheless, the Commission, by virtue of its Charter conferred powers, may play a role in this process. Whether and how to institute mid-year spending reductions is a policy decision that falls within the Commission's authority to "formulate, evaluate and approve goals, objectives, plans and programs and set policies" for the Department. That policy must be "consistent with the overall objectives of the City and County, as established by the Mayor and the Board of Supervisors through the adoption of City legislation." (SF Charter § 4.102.1.) It follows that that the Fire Commission has the ability to approve mid-year expenditure reductions that the Chief may propose in response to a budget shortfall by providing direction to the Chief.

Therefore, the Commission may direct the Chief, or the Chief may decide on her own, to submit her proposed spending reductions to the Commission for its consideration. Upon review of the proposed reductions, the Commission may approve or disapprove the Chief's proposal, recommend or require changes to the proposal, or give other direction to the Chief on how to respond to the Mayor's request for a spending reduction proposal.

If you have any further questions about this matter, please feel free to contact us.