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City Attorney

January 30, 2003

OPINION NO. 2003-01

SUBJECT: The Roles of the Commission, Individual Commissioners and the Department Head.

REQUESTED BY: Honorable Members
Commission on the Status of Women

PREPARED BY: Amy S. Ackerman
Deputy City Attorney

Question Presented

You have asked for general advice about the roles and duties of the Commission on the Status of Women ("Commission"), individual Commissioners and the department head in administering the Department on the Status of Women ("department"). More specifically, you have asked what the roles and duties of the Commission and department head are in preparing the budget and in hiring department employees.

Short Answer

The roles of the Commission, individual commissioners and the department head are set forth in San Francisco's Charter and Administrative Code. As described more fully below, the Commission is authorized to establish plans, policies and goals for the department, while the department head is responsible for the day-to-day management and administration of the department. As a body, the Commission may set administrative policy for the department, provided that it gives its direction solely through the department head. If the department head does not follow the Commission's instructions on a particular administrative matter, the Commission may either accept the department head's decision or remove her. Except for purposes of inquiry, individual commissioners may not initiate or take actions in their official capacity without Commission authorization. Further, commissioners may not interfere with the administration of the department.

The department head or her designee is responsible for preparing the department's budget. The Commission must approve the budget or any budget modification or fund transfer requiring the approval of the Board of Supervisors. After the Commission approves the budget or modification, the Commission forwards it to the Mayor to initiate, prepare and submit the annual proposed budget to the Board of Supervisor on behalf of the executive branch.

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The department head is the appointing officer for the department under the civil service system. When filling a civil service position, the department head selects the employee from those qualified applicants identified by the Department of Human Resources, consistent with civil service rules and procedures. The Commission may set policies regarding the process for hiring for civil service positions, provided that such policies do not conflict with federal, state, or local law, civil service rules or Department of Human Resources policies.

The department head has sole discretion for filling a civil service-exempt position. The Commission may set policies governing the process for hiring exempt employees, provided that those policies do not conflict with any federal, state and local laws or rules governing the hiring of City employees. Again, if the department head chooses not to follow the Commission's policies, the Commission may either accept the department head's decision or remove her.

Analysis**The Role of the Commission**

San Francisco Charter section 4.102 sets forth the powers and duties of City commissions within the executive branch.¹ Each commission shall:

1. Formulate, evaluate and approve goals, objectives, plans and programs and set policies 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;
2. Develop and keep current an Annual Statement of Purpose outlining its areas of jurisdiction, authorities, purpose and goals, subject to review and approval by the Mayor and the Board of Supervisors;
3. After public hearing, approve applicable departmental budgets or any budget modifications or fund transfers requiring the approval of the Board of Supervisors, subject to the Mayor's final authority to initiate, prepare and submit the annual proposed budget on behalf of the executive branch and the Board of Supervisors' authority under [Charter] Section 9.103;²
4. Recommend to the Mayor for submission to the Board of Supervisors rates, fees and similar charges with respect to appropriate items coming within their respective jurisdictions;

¹ Unless otherwise specified, all further statutory references are to the San Francisco Charter.

² Each department is responsible for providing the Mayor and Board of Supervisors with a mission-driven budget that describes each proposed activity of the department and the cost of the activity. (§9.114.)

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5. Unless the Charter provides a different procedure for appointing department heads, submit to the Mayor at least three qualified applicants, and if rejected, to make additional nominations in the same manner, for the position of department head, subject to appointment by the Mayor;
6. Remove a department head; the Mayor may recommend removal of a department head to the commission, and it shall be the commission's duty to act on the Mayor's recommendation by removing or retaining the department head within 30 days; failure to act on the Mayor's recommendation shall constitute official misconduct;
7. Conduct investigations into any aspect of governmental operations within its jurisdiction through the power of inquiry, and make recommendations to the Mayor or the Board of Supervisors;
8. Exercise such other powers and duties as shall be prescribed by the Board of Supervisors; and
9. Appoint an executive secretary to manage the affairs and operations of the board or commission.

(§4.102.) To carry out their duties, commissions may hold hearings and take testimony.
(§4.102(10).)

The Charter also restricts how commissions may deal with administrative affairs:

Each board or commission, relative to the affairs of its own department, shall deal with administrative matters solely through the department head or his or her designees, and any dictation, suggestion or interference herein prohibited on the part of any member of a board or commission shall constitute official misconduct; provided, however, that nothing herein contained shall restrict the board or commission's power of hearing or inquiry as provided in this Charter.

As we have previously advised, this restriction, which originated in the 1932 Charter, “establishes a chain of command that governs the operation of departments under commissions. The commission sets policy and communicates that policy to the executive director, who in turn is responsible for its execution.”³ (City Attorney Opinion 90-01, p. 2.) As we stated:

[T]here is no prohibition . . . against a commission dictating administrative policy for its department, so long as the board or commission proceeds in the manner provided by the charter. . . . [a] board or commission may act only at a noticed meeting attended by a quorum of the commission or its committees, and only by means of a vote of the

³ See 1932 San Francisco Charter section 3.500(i).

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commission or its committees. So long as a commission complies with these Charter requirements, it enjoys a broad authority to address administrative matters within its own department.

(*Id.* at p. 3.)

Finally, the requirement that a commission deal with administrative matters solely through the department head does not apply to actions taken through the commission's power of hearing or inquiry. (§4.102.) "The commission's power of inquiry includes the authority to call any department officer or employee before the commission to answer questions regarding the operations of the department. But if the commission wants to make changes in departmental operations as a result of those inquiries, it must still address its directives to the department's chief executive officer." (City Attorney Opinion 90-01, p. 4.)

The Role of Individual Commissioners

The Charter reposes the power and duties of commissions in the commission, as a whole, and not individual members. (§4.102.) The Charter requires commissions to act at public meetings. (§4.104; see also Gov't. Code §54953 [requiring local commissions to act in public meetings].) In addition, a quorum of the commission must be present for it to act. (§4.104; see also Gov't. Code §54952.6 [defining "action taken" as a collective decision or commitment made by a majority of members of a commission].) Thus, a commission exercises its power as a body. Members lack the authority to exercise the powers of the commission as individuals, although commissions may designate individual commissioners to perform assigned duties, such as monitoring the progress of a departmental program and reporting information on the program to the commission.

In addition, as noted above, Charter section 4.102 imposes an additional restriction on individual commissioners. The section provides that "any dictation, suggestion or interference [in administrative affairs] herein prohibited on the part of any member of a board or commission shall constitute official misconduct . . ." Thus, in addition to requiring that a commission deal with administrative matters solely through the department head or his or her designees, section 4.102 prohibits *individual members* of boards and commissions from dictating, suggesting or interfering in administrative matters. (City Attorney Opinion 90-01, p.3.) The prohibition does not, however, prevent individual commissioners from seeking information from the department head about the department's operations. Further, with the department head's consent, commissioners may also seek information from department staff.

The president or vice-president of a commission does not enjoy any greater authority in this regard. The Charter permits a commission to adopt rules and regulations consistent with the Charter and City ordinances. (§4.104.) Under this authority, most commissions adopt rules providing for the election of a president to preside over meetings. Section 4.102 does not except commission officers from its prohibition against interference with administrative affairs. "[A]

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rule granting the president such authority would conflict with the Charter and be void.” (City Attorney Opinion 90-01, p.5.) Thus, except for the purposes of inquiry, individual commissioners may not initiate or take actions in their official capacity without commission authorization. Further, commissioners may not interfere with the administration of the department.

The Role of the Department Head

The Charter also sets forth the responsibilities of the department head. Charter section 4.126 provides that the department head is responsible for the "administration and management of" her department. The department head may:

1. Appoint qualified individuals to fill all positions within their departments that are *exempt* from the Civil Service provisions of this Charter;
2. Adopt rules and regulations governing matters within the jurisdiction of their respective departments, subject, if applicable, to Section 4.102; and
3. With the approval of the City Administrator, reorganize their respective departments.

(*Ibid.*, emphasis added.)

San Francisco Administrative Code section 33.3 expressly provides that the Executive Director of the Commission is the department head and authorizes her to carry out the functions enumerated in Charter section 4.126. San Francisco Administrative Code section 2A.30 further specifies the roles and duties of the department head. Section 2A.30 provides, "[e]ach department head shall be immediately responsible for the administration of his or her department . . . [and] shall act as the 'appointing officer' under the civil service provisions of the Charter for the appointing, disciplining and removal of such officers, assistants and employees as may be authorized."

The department head must "issue or authorize all requisitions for the purchase of materials, supplies and equipment required by [the] department . . ." (*Ibid.*) The department head must also recommend to the Board of Supervisors such ordinances as may be required to carry out the department's powers and duties. (*Ibid.*) Finally, through the Mayor, each department head "may suggest the creation of positions subject to the provisions of the Charter, and may reduce the forces under his or her jurisdiction to conform to the needs of the work for which he or she is responsible." (*Ibid.*) The authority to reduce workforces may be limited by collective bargaining agreements with covered employees.

The Budget Process

Each department must prepare a "mission-driven budget" that describes each proposed activity of the department and the cost of the activity. In addition, the budget must include the

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customers or clients served by the department, the service outcomes desired by the department's programs or activities, the strategic plans that guide each program and activity, the productivity goals that measure progress toward strategic plans, the extent to which the department achieved, exceeded or failed to meet its goals, objectives and any identified spending constraints. (§ 9.114.) The department must prepare its budget estimates in the form that the Controller, after consulting with the Mayor, directs in writing. (*Ibid.*)

As noted above, the Commission must approve the budget before its submission to the Mayor's Office and Board of Supervisors. (§4.102.) In addition, the Commission must approve any budget modifications or fund transfers requiring the approval of the Board of Supervisors. (*Ibid.*) After the Commission approves the budget or modification, the Commission forwards it to the Mayor to initiate, prepare and submit the annual proposed budget to the Board of Supervisors on behalf of the executive branch. (See Article IX.)

The Hiring Process

The San Francisco Charter establishes a civil service merit system governing the employment of City employees. The civil service system governs applications, examinations, eligibility, appointments, promotions, transfers, lay-offs, and designation of positions. (§10.101.) The Civil Service Commission is charged with adopting the rules, policies and procedures of the civil service system. (*Ibid.*) As the personnel department for the City, the Department of Human Resources carries out that system. (§10.102.) Accordingly, when a department is hiring for a civil service position, the Department of Human Resources is charged with selecting qualified candidates, on the basis of merit and fitness. (*Ibid.*) As appointing officer, the department head selects the employee from those qualified applicants, consistent with civil service rules and procedures. (S.F. Admin. Code §2A.30.) The Commission may set policies regarding the process for hiring for civil service positions, provided that such policies do not conflict with federal, state, or local law, civil service rules or Department of Human Resources policies.

The civil service system and its procedures do not govern the hiring for exempt positions. (§10.104.) As noted above, the department head is responsible for making exempt appointments. (§4.126.) Thus, the department head has sole discretion in filling those exempt positions. In the Ordinance establishing the duties of the Commission and its department, the Board of Supervisors has directed the Executive Director, as the department head, to ensure that the Commission's staff have "demonstrated commitment and expertise in working on behalf of women's issues and gender equity." (S.F. Admin. Code §33.3..)

Although the department head has sole discretion in filling exempt positions, as noted above, the Commission may set policies for the department and may direct the administration of the department through the department head. (§4.102.) Thus, the Commission may set policies governing the process for hiring exempt employees, provided that those policies do not conflict with any federal, state and local laws and rules governing the hiring of City employees. Again, if

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the department head chooses not to follow the Commission's policies, the Commission may either accept the department head's decision or remove her. (City Attorney Opinion 90-01, p.3.)

We hope you have found this information to be helpful. If we can provide any further assistance, please do not hesitate to call on us.

Very truly yours,

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/S/

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APPROVED:

/S/

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