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MEMORANDUM

TO: Mayor London N. Breed
Members, Airport Commission

cc: Kantrice Ogletree, Commission Secretary

FROM: Julie Veit, Airport General Counsel *JV*

DATE: May 14, 2024

RE: Airport Director Selection Process

In light of the Airport Director's announcement of his retirement by the end of the year, we prepared this summary of the main requirements under the Charter, the Administrative Code, and open meeting laws relating to the selection of the next Airport Director. We hope it helps inform your consideration of how to proceed and discussions about the selection process.

The Charter and Administrative Code

The Airport Commission (sometimes referred to below as the "Commission") has charge of the operation of San Francisco International Airport (Charter § 4.115). The Airport Director is the chief executive officer of the Airport Commission "with full power and authority to administer the affairs of the Commission" and serves at the pleasure of the Commission. (Administrative Code § 2A.171.) The Commission may not employ the Airport Director under an employment contract.

As with the selection of the directors of most other Charter commissions, the Charter effectively requires that the Mayor and the Commission agree about who will be the Airport Director. Under Charter Sections 3.100(19) and 4.115, the Mayor appoints the Airport Director from a list of three or more qualified candidates submitted by the Commission. Accordingly, the Mayor may only appoint an individual who the Commission has first submitted through an action of the Commission, acting as a body, and she may not appoint any other individual. And likewise, the Commission has no authority to independently appoint an Airport Director.

Although the Charter requires the Commission to submit to the Mayor at least three qualified applicants, the Mayor may reject all recommended nominees and request that the Commission provide additional nominees. (Charter § 4.102(5).) Also, as we have advised in the past, the Commission does not need to submit at least three qualified applicants where it understands the Mayor is willing to appoint an individual whom the Commission wishes to nominate to the Mayor, or where it believes that fewer than three applicants are ideally suited for the position. The requirement of at least three candidates is for the Mayor's sole convenience.

The Selection Process

The process begins with the Commission, which has sole authority to nominate candidates "on the basis of executive, administrative and technical qualifications." (Charter § 4.115.) The Commission has authority to determine the qualifications it deems necessary for the Airport Director. Specific examples of qualifications the Commission could consider for the Airport Director include, for example

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(and without limitation), educational background and level of academic or professional achievement, prior management experience, number of years working in the aviation industry, knowledge of the relationship between public enterprise agencies and their parent governmental entities, and knowledge of federal regulatory authority over municipal international airports. But the Airport Director need not have any of these particular qualifications by law as long as the Airport Commission has determined the adequacy of each nominee's executive, administrative, and technical qualifications.

The Commission may decide to form a subcommittee of commissioners to screen qualified candidates and oversee the process. The Commission or a subcommittee may decide whether and how to use internal and outside resources (at its expense) to develop qualifications and to recruit, identify, and evaluate potential candidates. The Commission may also choose to delegate tasks in the process to an individual commissioner in lieu of, or in addition to, forming a subcommittee.

The Commission may consult the current Airport Director concerning the process, qualifications, and potential candidates. The Commission should consult with the City's Department of Human Resources ("DHR") in connection with the selection process. In some instances, City commissions have used an independent search firm specializing in the relevant industry or field, or in executive hiring, to assist the commission in developing appropriate qualifications for the department head, or overseeing the recruiting or hiring process. DHR maintains a pool of pre-qualified recruiting firms available for this purpose. But the Commission is not required to retain a search firm.

The Commission may also request DHR to perform some or all of the selection tasks, such as developing qualifications and screening criteria, and recruitment. This delegation approach is permissible but not required. Also, some City commissions have sought input from the public and stakeholder groups in developing the candidate profile for the new department head by conducting community meetings or surveys, but this step also is not required.

Generally, when as here a director announces in advance that they are leaving office, City commissions begin the process of selecting a new director early enough for the Mayor to select a new director before the position of director becomes vacant. The Commission may forward nominees and the Mayor may appoint an individual to become Airport Director with the appointment becoming operational when the current director vacates the position and the appointee takes the oath of office.

In some past selection processes for City department heads, there have been commissioners overseeing the department who have sought the position. Likewise, there have been senior staff in the department or outside the department who have sought to become a candidate. If any commissioner or department or other City staff wishes to become a candidate, they should immediately recuse themselves from any part of the selection process and state why they are doing so. (S.F. Campaign & Governmental Conduct Code § 3.209.) For example, they should not weigh in on how the search should be conducted, what qualifications the Commission should establish for the position, or an evaluation of any particular candidates. Any participation in the selection process would very likely disqualify an interested commissioner or staff from future consideration.

Public Meeting Laws

All Commission meetings concerning the selection of the Airport Director are subject to the open meeting laws: the Brown Act (Gov't Code §§ 54950 *et seq.*) and the Sunshine Ordinance (Administrative Code §§ 67.3-67.17). If the Commission chooses to form a subcommittee to handle part of the process,

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then the subcommittee's meetings are also subject to Brown Act and Sunshine Ordinance requirements. As a general rule, the Commission must meet in open session to discuss and act on procedural matters, such as determining the overall selection process and the minimum qualifications for the position. The Commission should have at least one open session meeting to discuss and decide how to handle the selection process. The Commission may meet in closed session to review candidate resumes and background material, prepare interview questions, interview candidates, and deliberate and act on nominating one or more candidates.

If while in closed session the Commission selects candidates to nominate to the Mayor, then the Commission is not required to immediately announce the nominees. But if it does announce that it has selected nominees, then the Commission should avoid announcing them by name or other identifier if the Commission has assured the nominees confidentiality through the nomination process and has treated the names confidentially. Later, at the first Commission meeting after the Mayor announces the appointment of the Airport Director, the Commission must report in open session the closed session roll call vote for the Mayor's appointee and post written notice of that action by the next business day. The Commission is not required to disclose the identity of unsuccessful nominees. (*Gillespie v. San Francisco Public Library Commission*, 67 Cal. App. 4th 1168, 1173-77 (1998).) Again, if the Commission has treated candidate names confidentially, it is generally appropriate that the Commission not disclose those names.

All closed session meetings of the Commission or a subcommittee must be recorded. (Administrative Code § 67.8-1.) All Commission and subcommittee meetings, whether open or closed session, must be properly noticed by the Commission Secretary. (Administrative Code § 67.7, § 67.7-1.)

Please refer to the most recent City Attorney's "Good Government Guide—An Overview of the Laws Governing the Conduct of Public Officials," at pages 166-70, for a more in-depth discussion of these requirements. The Good Government Guide is available on the City Attorney's website (<http://www.sfcityattorney.org/good-government/good-government-guide>).

The Commission is embarking on an important process. As issues arise, our Office stands ready to provide legal advice to assist you. Please call me directly should you have any questions or concerns.

cc: Jonathan Rolnick, Chief Labor Attorney
Rose Darling, Assistant Chief Labor Attorney
Manu Pradhan, Deputy City Attorney