

**Office of  
The City Attorney  
City of San Diego**

**MEMORANDUM  
MS 59**

**(619) 236-6220**

**DATE:** January 17, 2013

**TO:** Honorable Mayor and City Councilmembers

**FROM:** City Attorney

**SUBJECT:** Appointments to the San Diego Unified Port District Board of Commissioners

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**INTRODUCTION**

This Memorandum answers questions about City Council appointments to the San Diego Unified Port District Board of Commissioners.

**DISCUSSION**

The San Diego Unified Port District (Port District) is a regional agency created and governed by state law - the San Diego Unified Port District Act (Act). Cal. Harb. & Nav. Code, app. 1, §§ 1-88. The Port District is governed by a seven-member board of commissioners representing the five incorporated cities that constitute the Port District (the Port District Board). The controlling state law requires that “[e]ach city council . . . shall appoint the . . . commissioners to which it is entitled . . . to represent that particular city on the board.” *Id.* § 16. The state law clearly vests the appointment authority with the City Council and such authority remains unchanged by the Mayor-Council form of governance. San Diego Charter § 265(b)(12).<sup>1</sup>

State law entitles the City of San Diego to appoint three commissioners. Cal. Harb. & Nav. Code, app. 1, § 16. Section 17 of the Act governs the terms of the board of commissioners, setting the term of each commissioner at “four years.” That section also permits city councils to fill vacancies and to remove commissioners by majority vote.

**I. The Process for Council Appointments to the Port District Board**

The City Council has adopted Council Policy 000-13 to establish a uniform procedure for the appointment and confirmation of members of commissions, boards, committees, authorities,

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<sup>1</sup> Charter section 265(b)(12) gives the Mayor “[s]ole authority to appoint City representatives to boards, commissions, committees and governmental agencies, *unless controlling law vests the power of appointment with the City Council or a City Official other than the Mayor.*” Charter § 265(b)(12) (emphasis added).

and districts. The policy applies unless it conflicts with the City Charter, ordinance, corporate bylaws, or other controlling legal authority. The provisions of state law regarding the appointment of a Port Commissioner do not appear to conflict with Council Policy 000-13, and thus we have applied the policy to the Council's appointments to the Port District Board.<sup>2</sup>

When the Council considers nominees at an open session of the Council, the process includes a presentation by the candidate, questions by Councilmembers, and a procedure for voting if there are more nominees than vacancies. *See* Council Policy 000-13. If all nominees are denied, the Council President must reopen the opportunity to all Councilmembers to submit other nominees, and the Council President places these nominees for consideration on a regularly scheduled Council meeting docket. *Id.*

## **II. The Mayor's Authority to Veto or Approve Council Appointments to the Port District Board**

Since the 2006 adoption of the Mayor-Council form of government, this Office has consistently opined that the Mayor has the authority to veto or approve the Council's appointments of Port Commissioners. In a February 28, 2006 report titled "Appointment Authority to Boards, Commissions, Corporations, and Agencies under the Mayor-Council Form of Government," this Office concluded that appointments to the Port District board are subject to veto. *See*, attachment to RC-2006-9 (Feb. 28, 2006), attached to this Memorandum. All Council appointments to the Port District Board since the Mayor-Council form of government went into effect were made subject to mayoral veto. *See*, Resolutions R-302704, R-304347, R-304957 and R-306512, attached to this Memorandum.<sup>3</sup> Although not necessarily controlling, the contemporaneous administrative construction of governing law by those charged with its enforcement and interpretation is entitled to great weight. *Coca-Cola Co. v. State Board of Equalization*, 25 Cal. 2d 918, 921 (1945).

State law clearly vests the Council with the authority to appoint Commissioners for the Port District. As discussed above, the California Harbor and Navigation Code, app. 1, § 16 requires "[e]ach city council . . . shall appoint the . . . commissioners to which it is entitled . . . to represent that particular city on the board." *Id.* § 16. The Council's authority to make the Port District Board appointments remains unchanged by the Mayor-Council form of governance.

The power of appointment of Port Commissioners, however, must be distinguished from the power to veto. Thus, state law governing the appointment process must be harmonized with the City Charter's requirement that the Mayor be provided the authority to veto or approve appointments unless an exception applies, or there is clear authority to the contrary. Charter

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<sup>2</sup> We note that Council Policy 000-13 was recently amended, with the current version effective as of February 16, 2012.

<sup>3</sup> All substantive actions of the Council must be passed by adoption of an ordinance or resolution. Charter § 270(c). The Council's appointment of Port Commissioners is a substantive action that requires the affirmative vote of five Councilmembers. *Id.*

§ 280(a). Section 280(a) provides that “[t]he Mayor has veto power over all resolutions and ordinances passed by the Council” unless one of the enumerated exceptions applies.

This Office has consistently opined that none of the exceptions in the Charter apply to preclude the Mayor’s right to approve or veto the appointment of a commissioner to the Port District. The single enumerated exception in Charter section 280(a)(1) subject to analysis is the statement that, “[t]he Mayor’s veto power shall not extend to matters that are exclusively within the purview of Council, such as selection of the Independent Budget Analyst, the selection of a presiding officer, or the establishment of other rules or policies of governance exclusive to the Council and not affecting the administrative service of the City under the control of the Mayor.” Charter §280(a)(1).

This Office has noted that the examples provided in the Charter of matters *exclusively within the purview* of Council encompass only matters relating to the internal regulation of Council-oriented business. The Impartial Analysis by the City Attorney’s Office for the ballot measure that added the Strong Mayor sections to the Charter is consistent with this interpretation. The Impartial Analysis said in relevant part, “The Mayor retains the power to veto those resolutions and ordinances adopted by the Council establishing policy. *The veto power would not extend to matters of internal governance of the Council* or to the application of existing municipal rules to specific decisions of the Council, such as the issuance of land use permits.” The use of the phrase “such as” before the list also supports this interpretation. “The phrase “such as” is not a phrase of strict limitation, but is a phrase of general similitude indicating that there are includable other matters of the same kind which are not specifically enumerated.” (Citation) The phrase is used in an illustrative, not an exhaustive sense. (Citations.)” *Shaddox v. Bertani*, 110 Cal. App. 4th 1406, 1414 (2003).<sup>4</sup>

The appointment of a Port Commissioner is not a matter of internal governance of the Council. Thus, the “Council purview” exception would not apply to prevent a Mayoral veto of a resolution by the City Council to appoint a City representative to an outside agency.

Moreover, the language in the controlling state law governing the appointments to the Port District Board does not address the issue of the Charter’s own procedures for Mayoral review of resolutions and ordinances. State law thus does not preclude the Mayor’s authority to review and veto the appointments. Accordingly, this Office does not believe the Council’s appointments to the Port District Board are matters “exclusively within the purview” of the

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<sup>4</sup> Additionally, the word “purview” has a number of meanings, the most common implying the scope or range of authority. The online version of Bouvier’s Law Dictionary defines purview as, “That part of an act of the legislature which begins with the words ‘Be it enacted,’” and “ends before the repealing clause.” Cooke’s R. 330 3 Bibb, 181. It is said to be derived from the French pourvu, or provided. It always implies a condition. Bouvier 1856. *Bouvier 6th edition*, <http://www.lawyerintl.com/law-dictionary/5564-purview>. *Wiktionary* and *Merriam-Webster* similarly define “purview” as the enacting part of a statute, the scope of a statute, the scope or range of interest or control, of the range of understanding. <http://www.merriam-webster.com/dictionary/purview>; <http://en.wiktionary.org/wiki/purview>.

Council, and thus finds, consistent with past practice, that the appointments are subject to Mayoral approval or veto.

Accordingly, the Mayor must act on a resolution passed by the Council to make appointments to the Port District Board within ten business days of receiving it from the City Clerk. Charter § 280(c). The Mayor must approve the resolution by signing and returning it to the City Clerk within the specified time limits, or veto the resolution and return it to the City Clerk with his written objections within the specified time limits. *Id.* Failure to return the resolution within the specified time limit shall constitute approval of such resolution. *Id.*

The Council is required to reconsider any resolution vetoed by the Mayor. Charter § 285. If a vetoed resolution does not receive sufficient votes to override the Mayor's veto within thirty calendar days of such veto, the resolution shall be deemed disapproved and have no legal effect. *Id.* Now that the Council consists of nine seats, the Charter directs that six votes would be required to override the Mayor's veto of a resolution that made appointments to the Port District Board.

#### CONCLUSION

California law vests the City Council with the authority to appoint Commissioners to the Port District Board. Such authority remains unchanged by the Mayor-Council form of governance. This power of appointment, however, must be harmonized with the City Charter's requirement that the Mayor have veto power over all resolutions and ordinances unless an exception applies. The enumerated exceptions do not apply to preclude the Mayor's power to approve or veto such appointments.

Respectfully submitted,

JAN I. GOLDSMITH, City Attorney

By 

Sharon B. Spivak  
Deputy City Attorney

### Mayoral Appointment Subject to Council Confirmation

Board/ Commission/ Advisory Body	Controlling Law
Arts and Culture, Commission for	San Diego Charter § 43; SDMC § 26.0703
Balboa Park Committee	San Diego Charter § 43; SDMC § 26.30(f)
Building Appeals and Advisors Board	San Diego Charter § 43; SDMC § 111.0207
Centre City Development Corporation, Inc. (CCDC)	Cal. Corp. Code §§ 5056, 5520; San Diego Charter § 265(b)(13)
Citizens Equal Opportunity Commission	San Diego Charter § 43; SDMC § 26.16
City of San Diego/MTDB Authority (JPA)	Cal. Gov't Code § § 6500, 6506; Resolution No. R-295434; RR-295434 (9-10-2001)
Civil Service Commission	San Diego Charter § 41(b)
Community Forest Advisory Board	San Diego Charter § 43; SDMC § 26.0502
Ethics Commission	San Diego Charter § 41(d); SDMC §§ 26.0403 -0405
Financial Reporting Oversight Board	San Diego Charter § 43; SDMC § 26.1702
Funds Commission	San Diego Charter § 41(a)
Historical Resources Board	San Diego Charter § 43; SDMC § 111.0206
Housing Advisory and Appeals Board	San Diego Charter § 43; SDMC § 98.0105(a)
Human Relations Commission	San Diego Charter § 43; SDMC § 26.0905(b)
International Affairs Board	San Diego Charter § 43; SDMC § 26.22(a)
La Jolla Shores Planned District Advisory Board	San Diego Charter § 43; SDMC § 103.0302.2(a)(1) and (2)
Library Commissioners, Board of	San Diego Charter § 43; SDMC § 26.0301(b)
Mission Bay Park Committee	San Diego Charter § 43; SDMC § 26.30(g)
Old Town San Diego Planned District Design Review Board	San Diego Charter § 43; SDMC § 103.0202(b)(1)
Parking Advisory Board	San Diego Charter § 43; SDMC § 26.1802
Parks and Recreation Board	San Diego Charter § 43; SDMC § 26.30
Planning Commission, City	San Diego Charter § 41(c)
Public Facilities Financing Authority (PFFA) (JPA)	Cal. Gov't Code § 6500; Resolution No. R-297255, RR-297255 (10-29-2002)
Public Utilities Advisory Commission, City	San Diego Charter § 43; SDMC § 26.1102
Qualcomm Stadium Advisory Board	San Diego Charter § 43; SDMC § 26.1302
Relocation Appeals Board	Cal. Health & Safety Code § 33417.5.; SDMC § 98.0302
Retirement System Board of Administration	San Diego Charter § 144

<b>Board/ Commission/ Advisory Body</b>	<b>Controlling Law</b>
San Diego Convention Center Corporation Inc. (SDCCC)	Cal. Corp. Code §§ 5056, 5520; San Diego Charter § 265(b)(13)
San Diego County Water Authority Board	Cal. Water Code § 30000-33901
San Diego Housing Commission (SDHC)	Cal. Health & Safety Code § 34291; SDMC § 98.0301
San Diego Regional Airport Authority Executive Committee <sup>1</sup>	Cal. Pub. Util. Code § 170028(b)
Science and Technology Commission	San Diego Charter § 43; SDMC § 26.1402
Senior Affairs Advisory Board	San Diego Charter § 43; SDMC § 26.1502
Small Business Advisory Board	San Diego Charter § 43; SDMC § 26.06(b)
Southeast Economic Development Corporation, Inc. (SEDC)	Cal. Corp. Code §§ 5056, 5520; San Diego Charter § 265(b)(13)
Sustainable Energy Advisory Board	San Diego Charter § 43; SDMC § 26.04(b)
Wetlands Advisory Board	San Diego Charter § 43; SDMC § 26.1002
Youth Commission, San Diego	San Diego Charter § 43; SDMC § 26.1602

**City Council Appointment Subject to Mayoral Approval/Veto**

<b>Board/ Commission/ Advisory Body</b>	<b>Controlling Law</b>
Horton Plaza Theatres Foundation, Inc.	Cal. Corp. Code § 5220; Corp. bylaws
Local Agency Formation Commission (LAFCO) <sup>2</sup>	Cal. Gov't Code § 56328
Otay Valley Regional Park Policy Committee (JEPA)	Cal. Gov't Code § 6500; R-300902, RR-300902 (10-10-2005)
San Diego Metropolitan Transit System Board (MTS) <sup>3</sup>	Cal. Pub. Util. Code § 120050.2(b)
San Diego River Conservancy <sup>4</sup>	Cal. Pub. Res. Code § 32634(b).
San Dieguito River Valley Regional Open Space Park Joint Powers Authority <sup>5</sup>	Cal Gov't Code §§ 6500, 6506; R-273718, RR-273718 (6-12-89)
→ San Diego Unified Port District	Cal. Harb. & Nav. Code § 6200-6372

<sup>1</sup> The Mayor appoints 1 citizen member of the executive committee with Council approval. The Mayor has sole authority to appoint to the Regional Airport Authority Board.

<sup>2</sup> The Mayor may not serve as City representative to this commission.

<sup>3</sup> The Mayor may not serve as City representative to this Board.

<sup>4</sup> The Mayor holds one board seat by law, the City Council appoints one Council member to another seat.

<sup>5</sup> The Mayor may not serve as City representative to this Board.

**Mayoral Appointment/Council Confirmation not Required**

<b>Board/ Commission/ Advisory Body</b>	<b>Controlling Law</b>
Citizens Review Board on Police Practices	San Diego Charter §§ 43(d), 260(b)
San Diego Data Processing Corporation, Inc. (SDDPC)	San Diego Charter §§ 260(b); R-299444 (7-2004)
San Diego Medical Services Enterprise, LLC. (SDMSE)	Cal. Corp. Code § 17000 et. seq.; San Diego Charter § 260(b); R-299840
San Diego Regional Airport Authority Board <sup>6</sup>	Cal. Pub. Util. Code § 170016(a).
San Diego River Conservancy <sup>7</sup>	Cal. Pub. Res. Code § 32634(b).

**Council President Appointment, with Council Confirmation,  
Subject to Mayoral Approval/Veto**

<b>Board/ Commission/ Advisory Body</b>	<b>Controlling Law</b>
Local Enforcement Agency Hearing Panel, Waste Management	Cal. Pub. Res. Code § 44308

Note: The above list is provided to assist the Mayor and Council in making appointments of citizens and elected officials to various boards, commissions, and agencies. The list is not exhaustive and is subject to change by modifications to underlying authorities. Accordingly, a review of each board, commission, or agency should be conducted prior to making appointments.

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<sup>6</sup> The Mayor has sole authority under state law to appoint two members of the Board, one an elected official; the second, a member of the public. The Mayor also appoints 1 citizen member of the executive committee of the Airport Authority with Council approval.

<sup>7</sup> The Mayor holds one seat on the Board by law. The City Council appoints a Council member to another board seat.

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6/5

RESOLUTION NUMBER R- 302704

DATE OF FINAL PASSAGE JUN 13 2007

WHEREAS, appointments to boards and commissions are governed procedurally by Council Policy No. 000-13; and

WHEREAS, said policy permits recommendations of nominees by Councilmembers for appointments to those boards and commissions which the Council has the power of appointment; and

WHEREAS, an unscheduled vacancy now exists on the San Diego Unified Port District Board of Commissioners because of the resignation of Victor Vilaplana; and

WHEREAS, Laurie J. Black has been nominated for appointment to the Board of Commissioners by Councilmember Toni Atkins, Councilmember Kevin Faulconer, Councilmember Jim Madaffer, and Councilmember Ben Hueso; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the appointment of Laurie J. Black, to the San Diego Unified Port District Board of Commissioners for a term ending January 2, 2009, is hereby confirmed.

NAME	TERM ENDING
Laurie J. Black (Mission Hills, District 2) (Replacing Victor Vilaplana, who resigned)	January 2, 2009



APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Catherine M. Bradley  
Catherine M. Bradley  
Chief Deputy City Attorney

CMB:als  
05/21/07  
Or.Dept:Council-Atkins  
R-2007-1025

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUN 05 2007.

ELIZABETH S. MALAND  
City Clerk

By Jara Richards  
Deputy City Clerk

Approved: 6.13.07  
(date)

Jerry Sanders  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

R 302704

RESOLUTION NUMBER R-304347

DATE OF FINAL PASSAGE NOV 19 2008

WHEREAS, appointments to boards and commissions are governed procedurally by Council Policy No 000-13; and

WHEREAS, said policy permits recommendations of nominees by Councilmembers for appointments to those boards and commissions which the Council has the power of appointment, and

WHEREAS, two vacancies will exist on the San Diego Unified Port District Board of Commissioners on January 2, 2009, due to the expiration of the terms of Laurie J. Black and Sylvia Rios, and

WHEREAS, the following nominations have been made

(1) Laurie J. Black has been nominated for reappointment by Council President Pro Tem Jim Madaffer, and Councilmembers Tom Atkins and Kevin Faulconer,

(2) Robert A. McNeely has been nominated for appointment by Councilmember Anthony Young; and

(3) Scott H. Peters nominated for appointment by Councilmembers Tom Atkins and Ben Hueso, NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that Laurie J. Black is reappointed to the San Diego Unified Port District Board of Commissioners for a term ending January 2, 2013

BE IT FURTHER RESOLVED, by the Council of the City of San Diego, that Scott H. Peters is appointed to the San Diego Unified Port District Board of Commissioners for a term ending January 2, 2013.

APPROVED. MICHAEL J. AGUIRRE, City Attorney

By Catherine M Bradley  
Catherine M Bradley  
Chief Deputy City Attorney

CMB:als  
11/13/2008  
Or Dept Council President Pro Tem Madaffer  
R-2009-647

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of NOV 10 2008

ELIZABETH S MALAND  
City Clerk

By Jana Pichara  
Deputy City Clerk

Approved. 11-19-08  
(date)

Jerry Sanders  
JERRY SANDERS, Mayor

Vetoed \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

RESOLUTION NUMBER **R-304957**

DATE OF FINAL PASSAGE JUN 12 2009

WHEREAS, appointments to boards and commissions are governed procedurally by Council Policy No. 000-13; and

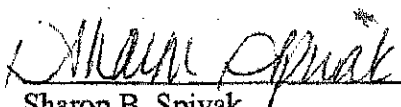
WHEREAS, the Council Policy permits recommendations of nominees by Councilmembers for appointments to those boards and commissions for which the Council has the power of appointment; and

WHEREAS, a vacancy has existed on the San Diego Unified Port District Board of Commissioners since April 2009 due to the resignation of Laurie Black; and

WHEREAS, Councilmembers submitted nominations in compliance with Council Policy No. 000-13 to fill the position; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that Lee Burdick is appointed to the San Diego Unified Port District Board of Commissioners to complete the term of Commissioner Laurie Black, who has resigned, for a term that will end January 2, 2013.


APPROVED: JAN I. GOLDSMITH, City Attorney

By   
Sharon B. Spivak  
Deputy City Attorney

SBS:sbs  
06/09/09  
Or.Dept:Council President Hueso  
R-2009-1260

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUN 08 2009.

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 6-17-09  
(date)

  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

**306512**

RESOLUTION NUMBER R-\_\_\_\_\_

DATE OF FINAL PASSAGE JAN 10 2011

WHEREAS, appointments to boards and commissions are governed procedurally by Council Policy No. 000-13; and

WHEREAS, said policy permits recommendations of nominees by Councilmembers for appointments to those boards and commissions which the Council has the power of appointment; and

WHEREAS, one vacancy will exist on the San Diego Unified Port District Board of Commissioners on January 2, 2011, due to the expiration of the term of Stephen Cushman; and

WHEREAS, the following nominations have been made:

(1) Bob Nelson (Uptown, District 3) has been nominated for appointment by Council President Pro Tem Kevin Faulconer, Councilmember Marti Emerald, and Councilmember Todd Gloria; and

(2) Andrea Johnson (Mission Hills, District 6) has been nominated for appointment by Councilmember Tony Young; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that Bob Nelson is appointed to the San Diego Unified Port District Board of Commissioners for a term ending January 2, 2015.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Catherine M. Bradley  
Catherine M. Bradley  
Chief Deputy City Attorney

CMB:jf  
11/19/2010  
Or.Dept: Council President

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of January 10, 2011

ELIZABETH S. MALAND  
City Clerk

By Levenson Cruz  
Deputy City Clerk

Approved: 1-10-11  
(date)

JSL  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor