

willingness to vacate the office, does not, by itself, constitute a resignation, even if in writing.

Once a resignation is effective, neither the member nor the appointing officer may rescind it. As a general rule, the appointing officer could appoint the former commissioner to the vacancy the resignation created. But the reappointment would be subject to the normal rules governing appointments to that board or commission.

For more information on the resignation process, see City Attorney Opinion No. 2007-01, "Laws Governing Resignations of Appointed City Officers," available through the Legal Opinions section of the City Attorney's website.

D. Resignation by operation of law

As previously discussed, if a commissioner no longer meets the eligibility requirements to serve on a board or commission, the commissioner may no longer serve, regardless of whether the commissioner has formally submitted a resignation.

E. Post-separation processes

Within 15 days after a member leaves office for any reason, the appointing officer must provide written notice to the Ethics Commission of the name of the person leaving office. C&GC Code § 3.1-105.

VI. The roles of commissions, their members, and their staff

A. Powers, duties, and restrictions relating to commissions

1. Powers and duties

Charter section 4.102 sets forth the powers and duties of boards and commissions in the executive branch. Section 4.102 provides that each board or commission shall:

- 1) Formulate, evaluate and approve goals, objectives, plans and programs and set policies consistent with the overall objectives of the City, as established by the Mayor and the Board of Supervisors through the adoption of 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 (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, under Charter § 9.114);

- 4) Recommend to the Mayor, for further submission to the Board of Supervisors, rates, fees and similar charges for items coming within the body's jurisdiction;
- 5) Unless the Charter provides a different procedure for appointing department heads, submit to the Mayor at least three nominees, and if rejected, make additional nominations in the same manner, for the position of department head, subject to appointment by the Mayor. (The three-nominee process is intended to give the Mayor a range of choices. If the Mayor does not object, the board or commission may submit fewer than three names. The Mayor may indicate a preferred nominee before the body submits its nominee(s), but the body does not have to honor the Mayor's preference. The Mayor may also decline to accept any of the body's nominees and ask for further nominations. See City Attorney Opinion No. 2010-01.);
- 6) Remove a department head; if the Mayor recommends removal of a department head to the board or commission, the body must act on the recommendation by removing or retaining the department head within 30 days; failure to act on the Mayor's recommendation is official misconduct (under Charter section 4.109, the Mayor, acting independently of the Police Commission, may remove the Chief of Police);
- 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 prescribed by the Board of Supervisors; and
- 9) Appoint an executive secretary to manage the affairs and operations of the board or commission.

To carry out its duties, a commission may hold public hearings and take testimony. Charter § 4.102(10). In addition, relative solely to the affairs under its control, a commission may examine the department's documents, hold public hearings, subpoena witnesses, and compel production of documents. Charter § 16.114.

2. Restrictions on commissions

Along with giving powers to commissions, Charter section 4.102 also restricts how a commission may deal with the administrative affairs of its department:

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.

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 department head, who in turn is responsible for its execution. See City Attorney Opinion 90-01. There is no prohibition against a board or commission dictating administrative policy for its department, so long as it proceeds in the manner provided by the charter.

The requirement that a commission address administrative matters solely through the department head does not apply to actions taken through the commission's power of hearing or inquiry. Charter § 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.

B. The role of and restrictions on individual commissioners

The Charter places the power and duties of a board or commission in the body as a whole, not in individual members. Charter § 4.102. The Charter, as well as State law and the City's Sunshine Ordinance, requires boards and commissions to act at public meetings. Charter § 4.104(a)(2); Cal. Govt. Code § 54953(a); Admin. Code § 67.5. A quorum of the board or commission must be present for the body to act. Charter § 4.104(b); see also Cal. Govt. Code § 54952.6 (defining "action taken" as a collective decision or commitment made by a majority of members of the body). Thus, commissioners lack the authority, as individuals, to exercise powers of the board or commission, although the body may designate individual commissioners to perform assigned duties, such as monitoring the progress of a departmental program and reporting on the program to the body.

In addition, as noted above, Charter section 4.102 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 board or commission deal with administrative matters solely through the department head or the department head's designees, section 4.102 prohibits individual members of boards and commissions from dictation, suggestion, or interference in administrative matters. This prohibition does not prevent individual commissioners from requesting information from the department head about the department's operations. With the department head's consent, commissioners may also seek information directly from department staff.

C. The role of commission officers

Unless the board or commission's rules or enacting legislation provide otherwise, neither the president nor vice-president of a body has any greater authority than any other member. As noted below, the Charter permits a board or commission to adopt rules and regulations consistent with the Charter and City ordinances. Charter § 4.104(a)(1). Under this authority, most Charter boards and commissions adopt rules providing for the election of a president and possibly other officers. The president presides over meetings and may call special meetings of the body. Cal. Govt. Code § 54956(a); Admin. Code § 67.6(f).

If the board or commission so chooses, it may give additional powers to the president in its rules or bylaws. Frequently, such rules authorize the president, operating often in conjunction with the department head, to set agendas for meetings. In addition, some rules authorize the body's president to create committees and/or assign members to committees, or to act as a spokesperson for the body. Even if not formalized by rule or bylaw, in some instances the longstanding custom or practice of a board or commission will include the president's exercising some of these powers, such as setting the agenda for meetings and on occasion serving as the body's spokesperson. When speaking publicly regarding the business of the body, the president must clearly state whether the president is speaking personally or for the body. If the latter, the president must have authority to do so.

Typically the vice-chair of a board or commission will preside over meetings in the chair's absence. If the vice-chair also is absent, the body should begin its meeting by voting to determine which member will serve as acting chair for that meeting.

D. The role of a department head

The Charter and Administrative Code set forth the responsibilities of department heads. The department head is responsible for the administration and management of the department. Charter § 4.126; Admin. Code § 2A.30. Among other things, department heads may:

- Appoint qualified individuals to fill positions within the department that are exempt from the civil service provisions of the Charter, and discipline or remove such employees. Charter § 4.126; Admin. Code § 2A.30.
- Act as the appointing officer under the civil service provisions of the Charter for the appointing, disciplining, and removal of employees. Admin. Code § 2A.30; Charter § A8.329.
- Issue or authorize requisitions for the purchase of materials, supplies, and equipment required by the department. Admin. Code § 2A.30.
- Adopt rules and regulations governing matters within the jurisdiction of the department, subject, if applicable, to Charter section 4.104(a)(1). Charter § 4.126.
- With the approval of the City Administrator, reorganize the department. Charter § 4.126.

Thus, the department head acts as the day-to-day manager of the department, subject to the direction of the board or commission and the Mayor. Unless the Charter or Municipal Code expressly provide otherwise, the law does not require the department head to seek the body's approval before signing contracts and making other decisions on behalf of the department. Nevertheless, the board or commission and the department head may choose as a matter of policy which matters warrant the body consideration.

Department heads under a board or commission generally serve at the pleasure of the body. Unless the Charter expressly provides otherwise, only the board or commission may remove the department head. One exception to this principle is that the Mayor acting alone, in addition to the Police Commission, may remove the Chief of Police. Charter § 4.109. And one exception to the principle that department heads serve "at will" is that, following a probationary period for the Director of Elections, the Elections Commission may remove the Director only "for cause." Charter § 13.104. Further, as previously noted, the Mayor may request that a board or commission remove its department head, and the body must act, one way or the other, on that request within 30 days. But the board or commission, not the Mayor, must make the final decision whether to remove the department head. Charter § 4.102(6).

The Charter does not specify who becomes department head when the position becomes vacant, for example, due to resignation, retirement, death, or incapacity to serve. Yet at all times someone must have the powers of the department head. The person who is serving in the next highest position in the department, i.e., the person whom the department head typically designates to run the department when the department head is absent, will function as department head until a new department head is appointed. See, for instance, Memorandum to San Francisco Police Commission re Designation of Assistant Chief Godown to fulfill the duties of Chief of Police, dated January 12, 2011, available on the Legal Opinions section of the City Attorney's Office's website.

E. The role of commission secretary

Subject to the budgetary and fiscal provisions of the Charter, each Charter board or commission may appoint a secretary to manage the affairs and operations of the body. Charter § 4.102(9). Generally, the secretary is responsible for: arranging board or commission meetings; preparing and distributing notices, agendas, minutes, and resolutions of the body; providing information to the public regarding the body's affairs; maintaining its files and records; and carrying out additional duties as directed by the body. The secretary is also responsible for notifying commissioners of mail, including e-mail, addressed to them, and for ensuring that they have an opportunity to read such mail if they so choose.

Usually, a board or commission secretary is appointed by and serves at the pleasure of the body. The secretary's duty is to the body as a whole, not to individual members. Accordingly, a commissioner does not have the right to demand from the secretary reports, favors, or special considerations beyond what the commissioner is entitled to as a member of the public. If a commissioner wants information that will require a significant amount of

staff or secretarial time, the commissioner should bring the request to the commission to determine whether the secretary (or other staff) should pursue the task.

F. The role of the City Attorney

The City Attorney is the legal counsel for the City. In that capacity, the City Attorney's Office represents the City and its officers and employees in lawsuits; drafts and approves legislation, contracts, and other documents; and provides legal advice to the City and its officers and employees. Charter § 6.102. The City Attorney's powers and duties include the broad range of functions that attorneys customarily perform for clients in both the public and the private sectors. Likewise, the attorneys in the City Attorney's Office are subject to the same rules of professional conduct that apply to all attorneys in California.

1. The City is the client of the City Attorney's Office

The City as a whole is the client of the City Attorney. While the City can act only through individual officers and employees or constituent bodies, such as boards and commissions, those City actors are not separate clients of the City Attorney's Office. Accordingly, the Office does not have a conflict of interest in advising multiple City officers and departments, who often may have differing policy views about issues giving rise to the need for legal advice. See, e.g., *Ward v. Superior Court*, 70 Cal.App.3d 23 (1977). The Office does not have a separate attorney-client relationship with individual officers or entities who act on the City's behalf.

A Deputy City Attorney assigned as counsel to a department will typically become familiar with and often expert in laws affecting that department, and may gain an understanding of its special needs and interests. But, based on subject matter expertise, the Deputy may be assigned a task, such as drafting an ordinance for a member of the Board of Supervisors, that is at odds with the department's views or preferences. In a similar vein, a Deputy City Attorney may be responsible for drafting, for different Supervisors, different ordinances on the same subject that may have policy objectives that are sharply at odds with each other.

For more information on the City as a whole being the client of the City Attorney, see the memorandum entitled "Client of the City Attorney" (December 12, 2003), available online at the City Attorney's website.

This legal principle stems from two authorities: San Francisco's Charter and the California Rules of Professional Conduct. Charter section 6.102 designates the elected City Attorney as the legal representative of the City as a whole. The purpose of creating an elected City Attorney was to ensure that the City Attorney would serve the people of San Francisco rather than any particular City official. "Made appointive by either a Mayor or Chief Administrative Officer, [the City Attorney] would be exposed to the possibility of conflicting allegiances." Francis V. Keesling, *San Francisco Charter of 1931*, at p. 41 (1933). With one City Attorney representing the City as a whole, the City speaks with one voice on legal issues and avoids the chaos, as well as taxpayer expense, that would result if each City department could hire its own counsel to represent its view of the City's interests.