



California Fair Political Practices Commission

June 2, 1989

Randy Riddle
Deputy City Attorney
City and County of San Francisco
City Hall, Room 206
San Francisco, CA 94102

Re: Your Request for Informal Assistance
Our File No. I-89-096

Dear Mr. Riddle:

This is in response to your letter requesting informal assistance regarding the application of the mass mailing provisions of the Political Reform Act (the "Act").^{1/} Since your advice request does not refer to a specific governmental decision, we are treating your question as a request for informal assistance.^{2/}

QUESTIONS

1. For the purposes of Regulation 18901, under what circumstances is an elected officer considered affiliated with an agency that distributes a mass mailing?
2. Is a mass mailing that is distributed by a city office but totally funded by federal grants a "mass mailing sent at public expense"?
3. If a mass mailing is sent by an agency responsible for administering a government program and is mailed only to persons subject to that program, may photos and other references to elected city officials be included?

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

CONCLUSIONS

1. An elected official is affiliated with an agency that produces or distributes the mass mailing when the elected official is a member, officer or employee of the agency or a subunit (such as a committee) of that agency; the elected official has supervisory control over the agency; or, the elected official appoints any of the members of the agency.

2. "Public moneys" includes all moneys, bonds, and evidence of indebtedness received or held by state, county, district, city, town, or public agency officers in their official capacity. Thus, mailings sent by city officials, but paid for by the federal government must still comply with the mass mailing regulation. Where the mass mailing regulation would directly conflict with federal law, the state regulation is superseded.

3. A mass mailing sent by an agency responsible for administering a government program and mailed only to persons subject to that program is permitted, provided the mailing is essential to the functioning of the program. The use of the names, photographs or other references to elected city officials is permitted only when they are also essential to the program.

FACTS

The San Francisco Charter sets up a complex system of interrelated government agencies. You have asked how the city is to determine which official is "affiliated" with which agency for the purposes of Regulation 18901.

San Francisco also maintains an office of community development which is funded entirely by a federal block grant. The grant money is awarded by the office of community development to community organizations for operating costs and the costs of construction and rehabilitation projects sponsored by the community organizations. Municipalities that accept the block grants are required by the federal government to provide information about the program to the community. The topics that are required to be disseminated in the public information mailing include the amount of funds available for the program, program objectives and the proposed use of program funds. You have asked if such a mailer falls within the coverage of the Act's mass mailing provisions.

ANALYSIS

Affiliation with an Agency

Regulation 18901(c) (copy enclosed) provides that a newsletter or other mass mailing may not be sent within the mean-

ing of Section 89001 if:

(1) The name of the elected officer or his or her photograph appears on the document; and

(A) The elected officer exercises direction or control over the content, production, or distribution of the document, or

(B) The document is sent at the request or suggestion of the elected officer or his or her agent; or

(C) The document is signed by, or is designated as being from, the elected officer or his or her office; or

(2) (A) The elected officer is affiliated with the agency which produces or distributes the document; and

(i) The elected officer is featured in the document; or

(ii) The name, office or other reference to the elected officer or his or her photograph appears on the document and the document is prepared or sent in cooperation, consultation, coordination or concert with the elected officer.

You have posed 24 hypotheticals concerning when an "elected officer is affiliated with the agency which produces or distributes" a mass mailing. Generally, the Commission will not answer purely hypothetical questions. (Regulation 18329(b)(8)(D), copy enclosed.) We can, however, provide general guidelines regarding the "affiliation" question that may be of some assistance.

First, you have asked whether the "agency which produces or distributes" a mass mailing refers to the City and County of San Francisco or each of its constituent departments. Clearly, if a mass mailing is "the city newsletter," the agency that produces and distributes the newsletter would be the city. (Whelihan Advice Letter, No. I-89-063, copy enclosed.) If the mailing is a parks and recreation department newsletter, the agency that produces and distributes the newsletter would be the parks and recreation department. Thus, the determination of which agency is the agency of production and distribution is necessarily a factual question.

You have also asked when an elected official is "affiliated" with another agency that produces or distributes a mass mailing.

Regulation 18901(c)(2)(C) defines affiliation as follows:

An elected officer is "affiliated with an agency" if he or she is a member, officer, or employee of the agency or a subunit such as a committee, or has supervisory control over the agency, or appoints one or more members of the agency.

Regulation 18901(c)(2)(C) sets out three tests. If any of the tests apply, the elected official is deemed to be affiliated with the agency that produces or distributes the mass mailing. These tests are:

1. Is the elected official a member, officer or employee of the agency or a subunit (such as a committee) of that agency?
2. Does the elected official have supervisory control over the agency?
3. Does the elected official appoint any of the members of the agency?

Each of these tests is necessarily fact oriented. For example, a supervisor is a member of the board of supervisors and thus deemed to be affiliated with the board of supervisors. Or, if by ordinance or in fact the mayor supervises boards and commissions beneath him or where the mayor appoints the chief administrator or members of other various boards or commissions, the mayor is deemed to be affiliated with these entities for the purposes of Regulation 18901.

However, the analysis does not end with a determination of affiliation. The second question is whether the mailing is prepared or sent in cooperation, consultation, coordination or concert with the elected officer.

If the mailing has not been prepared or sent in cooperation, consultation, coordination or concert with the elected officer, use of the elected officer's name is permitted provided the official is not featured in the mailing. (Regulation 18901(b)(2)(A)(i).) An elected officer is "featured" in a mass mailing if he or she is singled out for attention of the reader by use of his or her signature, inclusion in any photograph, or the manner of display of his or her name or office in the layout of the document such as by headlines, type size, or typeface. (Regulation 18901(b)(2)(B).)

Where the mailing has been prepared or sent in cooperation, consultation, coordination or concert with the elected officer, any use of the elected officer's name, photograph or office, or any reference to the officer is prohibited. (Regulation 18901(b)(2)(A)(ii).) Of course the issue of whether the mailing

has been prepared or sent in cooperation, consultation, coordination or concert with the elected officer is once again a factual question.

To summarize, the analysis required to determine if a mass mailing is prohibited under Regulation 18901 is a multifaceted one. The first question is whether the elected official is "affiliated" with the agency that produces or distributes the mass mailing. The elected official is affiliated with the agency when the official is a member, officer or employee of the agency or a subunit (such as a committee) of that agency; has supervisory control over the agency; or appoints any of the members of the agency.

The second question is whether the mailing is prepared or sent in cooperation, consultation, coordination or concert with the elected officer? If the answer is yes, then any use of the elected officer's name, photograph or office, or any reference to the officeholder is prohibited. If the answer is no, then use of the elected officer's name is permitted provided it is not featured in the mailing.

Is a Federally Funded Mass Mailing Subject to Section 89001

Section 89001 provides that no newsletter or other mass mailing shall be sent at public expense. Regulation 18901 specifies that a mass mailing is "sent at public expense" within the meaning of Section 89001 if any of the costs of design, production, printing or distribution is paid for with public moneys as defined in Section 85102(e). Section 85102(e) defines "public moneys" as having the same meaning as Section 426 of the Penal Code. Penal Code Section 426 provides:

The phrase "public moneys" as used in Sections 424 and 425 includes all bonds and evidence of indebtedness, and all moneys belonging to the state, or any city, county, town, district, or public agency therein, and all moneys, bonds, and evidence of indebtedness received or held by state, county, district, city, town, or public agency officers in their official capacity.

[Emphasis added.]

Since the federal funds at issue in your letter are held and distributed by the city's office of community development, those funds would appear to be "public moneys" as defined by Penal Code Section 426 because they are "moneys ... received or held by ... officers in their official capacity." Therefore, these funds would be subject to the restrictions of Section 89001 and Regulation 18901.

A second issue is whether the supremacy clause of the federal constitution would preclude state regulation of federal grant

money. In this case, the federal law does not directly require the inclusion of photographs of city officials in the community development brochure. Thus, the mass mailing restrictions are not in conflict with the federal requirement that the program information be made public.^{3/}

The Essential Mailings Exception

Regulation 18901(f)(5) provides an exception for mass mailings sent by an agency responsible for administering a government program to persons subject to that program provided the mailings are essential to the functioning of the program. You have asked whether inclusion of photographs, names and other references to elected officials is permitted under this "essential mailings exception."

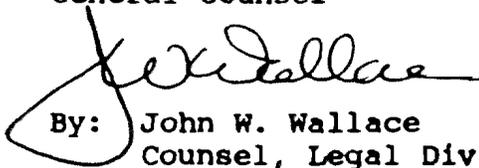
This exception applies to the use of the names, photographs or any other references to an elected official only when their use is essential to the program. (Harlan Advice Letter, No. A-89-081, copy enclosed.) Therefore, if the photographs, names or other references to elected officials are essential to the program, they may be included.

In this case, however, while the federal government requires the dissemination of the information to the public, it does not require inclusion of the photographs of city officials. Moreover, while a roster listing of the names of the officials responsible for the program might be essential to its functioning, inclusion of photographs is clearly not essential. Thus, because the photographs are not required by law nor essential to the functioning of the program, they may not be included in the mailing.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel


By: John W. Wallace
Counsel, Legal Division

KED:JWW:aa
Enclosures

^{3/} Were the federal law to require the inclusion of photographs of city officials, the inclusion would be permitted under the Act as well. Regulation 18901(f)(6) provides that mailings sent as required by law are not prohibited by Section 89001.



Louise H. Renne,
City Attorney

PPC
FEB 9 10 23 AM '89

February 6, 1989

Kathryn E. Donovan
Fair Political Practices Commission
Legal Division
428 J Street, Suite 800
Sacramento, California 95814

Dear Ms. Donovan:

We write to seek advice concerning application of the mass mailing provisions of Proposition 73 and its implementing regulations to mailings by departments of the City and County of San Francisco ("City.") We have enclosed the San Francisco Charter provisions relevant to our questions.

First, we seek advice regarding when an official is deemed to be "affiliated with an agency." This determination bears on what standard will be used to determine whether Proposition 73 prohibits a particular mailing. 2 Cal.Admin. Code Section 18901(c). The regulations adopted by the Commission provide:

An elected officer is "affiliated with an agency" if he or she is a member, officer, or employee of the agency or subunit such as a committee, or has supervisory control over the agency.

The question is how broadly the Commission construes "agency." For the purposes of this regulation, does "agency" refer to the City and County of San Francisco or each of its constituent departments?

As explained below, if "agency" refers to the constituent departments of the City, then elected City officials are not affiliated with all City departments, within the meaning of the mass mailing regulations. If "agency" is construed as the City and County of San Francisco, then all elected City officials would appear to be affiliated with all City departments, since all elected officials are officers of the City and County of San Francisco. This would mean that the Sheriff would be affiliated with the Office of the Treasurer, even though the Sheriff exercises no supervisory control over any aspect of the Treasurer's Office.

The question of whether certain City officials are "affiliated" with all City departments arises because the San Francisco Charter, which governs the administration of City

departments, clearly restricts the power of many officials with respect to other departments. An understanding of the relationships among officers and other departments requires a brief review of the Charter's distribution of powers.

Under the Charter, some departments are administered by boards and commissions the members of which are appointed by the Mayor. Each board and commission appoints a director to oversee the day to day operation of the department. Other departments are administered by executive officers appointed by the Chief Administrative Officer. The Chief Administrative Officer is appointed by the Mayor and confirmed by the Board of Supervisors. Charter Section 3.200. He or she serves a ten year term and may be removed by a two-thirds vote of the Board of Supervisors upon written charges. Charter Section 3.200. Finally, some departments, such as the Office of the City Attorney, the Office of the Treasurer and the Office of the Sheriff are administered by elected officials. See e.g. Charter Sections 3.401 and 3.405.

Charter Section 3.100 provides that the Mayor "shall supervise the administration of all departments under boards and commissions appointed by him" The Mayor is also charged with coordinating and enforcing cooperation among all City departments. The Mayor must also investigate and respond to complaints from the public.

Charter Section 3.101 restricts the power of the Mayor in dealing with departments under the Chief Administrative Officer, other elected officials and boards and commissions appointed by the Mayor. Section 3.101 provides:

Except for the purpose of inquiry, the mayor shall deal with the administrative service for which the chief administrative officer is responsible solely through such officer, and for administrative or other functions for which elective officials or boards or commissions are responsible, solely through the elective official, the board or commission or the chief executive officer of such board or commission concerned.

With certain limited exceptions, the Mayor may remove the members of boards or commissions which he or she appoints. The Mayor enjoys no such power with respect to departments administered by directors appointed by the chief administrative officer or other elected officials. While the Mayor may urge the chief administrative officer or elected official to take particular actions, the Mayor may not compel such actions.

Section 2.401 imposes even greater restrictions on the Board of Supervisors:

Non-Interference in Administrative Affairs

Except for the purpose of inquiry, the board of supervisors shall deal with the administrative service for which the chief administrative officer is responsible solely through such officer, and for administrative or other functions for which elective officials or boards or commissions are responsible, solely through the elective official, the board or commission or the chief executive officer of such board or commission concerned. [¶] Neither the board of supervisors, nor its committees, nor any of its members shall dictate, suggest or interfere with appointments, promotions, compensations, disciplinary actions, contracts, requisitions for purchases or other administrative recommendations or actions of the chief administrative officer, or of department heads under the chief administrative officer, or under the respective boards and commissions. The board of supervisors shall deal with administrative matters only in the manner provided by this charter, and any dictation, suggestion or interference herein prohibited on the part of any supervisor shall constitute official misconduct, provided however that nothing herein contained shall restrict the power of hearing and inquiry as provided in this charter.

Finally, similar questions concerning Proposition 73 and the "affiliation" issue arise with respect to the San Francisco Unified School District, which this office also represents. The boundaries of the San Francisco Unified School District and the San Francisco Community College District are coterminous with the boundaries of the City and County of San Francisco. Pursuant to Article IX, Section 16 of the California Constitution, the San Francisco Charter prescribes "the manner in which, the times of which, and the terms for which members of the boards of education shall be elected" See San Francisco Charter Sections 5.100 et seq. Members of the boards of education are elected and are designated by the Charter as city officers. Charter Section 1.103. State law, however, makes manifest that the City and school districts are separate political entities, and that school districts are agencies of the state and not municipal corporations. Butler v. Compton Junior College District (1947) 77 Cal.App.2d 719; Hall v. City of Taft (1956) 47 Ca.2d 177.

Based on these facts, we ask the following questions:

(1) Within the meaning of Proposition 73, is the Mayor affiliated with:

- (a) the Board of Supervisors?
- (b) the Board of Education of the San Francisco Unified School District or the Community College District?
- (c) the office of the Chief Administrative Officer?
- (d) a department administered by a board or commission appointed by the mayor?
- (e) a department administered by a director appointed by the chief administrative officer?
- (f) a department administered by an elected official such as the City Attorney, Treasurer or Sheriff?

(2) Within the meaning of Proposition 73, are members of the Board of Supervisors affiliated with:

- (a) the Mayor?
- (c) the Board of Education of the San Francisco Unified School District or the Community College District?
- (d) the office of the Chief Administrative Officer?
- (e) a department administered by a board or commission appointed by the Mayor?
- (f) a department administered by a director appointed by the chief administrative officer?
- (g) a department administered by an elected official such as the City Attorney, Treasurer or Sheriff?

(3) Within the meaning of Proposition 73, are members of the Board of Education of the San Francisco Unified School District or Community College District affiliated with:

- (a) the Mayor?
- (c) the Board of Supervisors?
- (d) the office of the Chief Administrative Officer?
- (e) a department administered by a board or commission appointed by the Mayor?
- (f) a department administered by a director appointed by the chief administrative officer?
- (g) a department administered by an elected official such as the City Attorney, Treasurer or Sheriff?

(4) Within the meaning of Proposition 73, is an elected official such as the City Treasurer affiliated with:

- (a) the Mayor?
- (c) the Board of Supervisors?
- (d) the office of the Chief Administrative Officer?
- (e) a department administered by a board or commission appointed by the Mayor?
- (f) a department administered by a director appointed by the chief administrative officer?
- (g) a department administered by another elected official such as the City Attorney or Sheriff?

In light of the complex Charter-defined inter-relationships among the various departments, offices and officials in San Francisco, please do not hesitate to contact me to discuss any questions you may have pertaining to these issues.

Our other questions involve the applicability of Proposition 73's mass mail restrictions to the Mayor's Office of Community Development. This office is funded entirely by Federal Community Development Block Grants ("CDBG"). No City or state monies are expended for or by the Office of Community Development. The Office is charged with distributing block grant monies to community organizations.

There are two basic purposes for which the money may be used. First, community organizations may use the money for operating costs. For example, an organization may be awarded funds to pay for personnel. The organization initially pays the costs. The Office of Community Development reimburses the organization by requesting the Controller to draw a warrant on the City Treasury. The United States Department of Housing and Urban Development then reimburses the City Treasury for the full payment authorized by the Office of Community Development to the organization.

Second, monies may be awarded for construction or rehabilitation projects sponsored by the organization. Generally, once the project is completed, the organization submits to the Office of Community Development the contractors' bills. The Office of Community Development pays the contractors and again the Treasury is reimbursed in full for payments authorized by the Office of Community Development.

As a part of the grant application process, the Office of Community Development must meet certain citizen participation requirements. 24 C.F.R. Section 570.302. Among other things, the Office of Economic Development must (1) "furnish citizens with information concerning the amount of CDBG funds expected to be available . . . for community development and housing activities, and the range of activities that may be undertaken with those funds;" (2) "[p]ublish community-wide its proposed statement of community development objectives and projected use of funds so as to afford affected citizens an opportunity to examine its contents;" and (3) "[p]repare its final statement of community development objectives and projected use of funds The [Office of Community Development] shall make the final statement available to the public." Id.

To meet these three requirements, the Office of Community Development annually issues three publications containing information about the CDBG funds and the various plans and proposals for use of the funds. These publications are sent to all organizations currently receiving grants through the Office of Community Development, organizations that have applied for grants in the past or have expressed an interest in applying in the future, and other members of the community who have requested to be added the mailing list. The publications are also mailed to the public libraries. Members of the public may pick up copies of the publication at the Office of Community Development. The question is whether these publications may contain photographs of or other references to the Mayor or other elected City officials.

The initial issue is whether any publication distributed by the Office of Community Development is subject to Proposition 73. As noted, the Office of Community Development is funded entirely by the United States government. The question is whether a mailing paid for exclusively from federal funds are mailings "sent at public expense" within the meaning of Proposition 73. Assuming Proposition 73 was intended to apply to such mailing, there is a significant question regarding whether state voters may dictate how a City expends its federal monies.

Second, as noted, the Office of Community Development is required to make certain information public. The particular publications in question are sent pursuant to this requirement. Such a publication may be subject to the exception set out in 2 Cal.Admin.Code Section 18901(f):

The following newsletters or other mass mailings are not prohibited by Government Code Section 89001 if the mailing is sent to the persons specified in each instance below and the mailing consists of:

* * *

(5) Mailings sent by an agency responsible for administering a government program to persons subject to that program when such mailings are essential to the functioning of the program.

Does this exception apply to the Office of Community Development documents discussed above? If so, are these documents exempt from Proposition 73 regardless of whether the documents contain photographs or other references to the Mayor or other elected officials?

Please feel free to telephone me at (415) 554-4211 if you have any further questions concerning these matters. Thank you for your assistance.

Very truly yours,

LOUISE H. RENNE
City Attorney



RANDY RIDDLE
Deputy City Attorney

ARTICLE I

THE EXISTENCE AND POWERS OF THE CITY AND COUNTY

1.100 Name and Boundaries of the City and County

The City and County of San Francisco shall continue as a municipal corporation known by name as San Francisco. The boundaries of the municipal corporation are those set forth in the Government Code of California and as such may be extended as provided by law.

1.101 Rights and Powers of the City and County

The City and County of San Francisco shall have perpetual succession; may appear, sue and defend in all courts and places in all matters and proceedings; may have and use a common seal and alter same at pleasure; may, subject to the restrictions contained in this charter, purchase, receive, hold and enjoy, sell, lease and convey real and personal property; receive bequests, gifts and donations of all kinds of property in fee simple, or in trust for charitable and other purposes; and do all acts necessary to carry out the purposes of such gifts, bequests and donations, with power to manage, sell, lease or otherwise dispose of the same in accordance with the terms of the gift, bequest or trust.

The city and county may make and enforce all laws, ordinances and regulations necessary, convenient or incidental to the exercise of all rights and powers in respect to its affairs, officers and employees, and shall have all rights and powers appropriate to a county, a city, and a city and county, subject only to the restrictions and limitations provided in this charter, including the power to acquire and construct plants, works, utilities, areas, highways and institutions outside the boundaries of the city and county, and maintenance and operation of the same, and the exercise of functions or maintenance of services outside the boundaries of the city and county, including the expenditure of funds therefor through any agency. The specification or enumeration in this charter of particular powers shall not be exclusive. The exercise of all rights and powers of the city and county when not prescribed in this charter shall be as provided by ordinance or resolution of the board of supervisors.

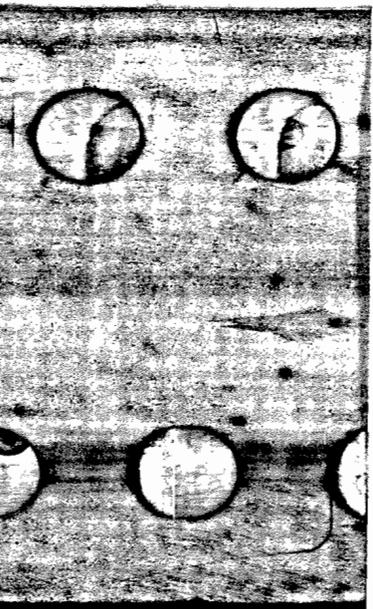
1.102 Use of State Law Procedures

Where a procedure for the exercising of any rights or powers belonging to a city, or a county, or a city and county is provided by statute of the State of California, said procedure shall control and be followed unless a different procedure is provided in, or by ordinance enacted under authority of, this Charter.

1.103 Officers of the City and County

The officers of the city and county shall be the officers elected by vote of the people, members of the board of education, members of boards and commissions appointed by the mayor, members of the juvenile probation and adult probation

boards or committees, members of the board of law library trustees, the superintendent of schools, the clerk of the municipal court, the secretary and jury commissioner of the superior court, the executive appointed by each board or commission as the chief executive officer under such board or commission, the controller, the chief administrative officer, the head of each department under the chief administrative officer and the coroner, public administrator, county clerk, tax and license collector, recorder, registrar of voters, horticultural commissioner, sealer of weights and measures, and such other officers as may hereafter be provided by law or so designated by ordinance.



the other requirements hereof, or to produce such books, shall be deemed in contempt and subject to proceedings and penalties as provided by general law in such instances.

2.401 Non-Interference in Administrative Affairs

Except for the purpose of inquiry, the board of supervisors shall deal with the administrative service for which the chief administrative officer is responsible, solely through such officer, and for administrative or other functions for which elective officials or boards or commissions are responsible, solely through the elective official, the board or commission or the chief executive officer of such board or commission concerned.

Neither the board of supervisors, nor its committees, nor any of its members shall dictate, suggest or interfere with appointments, promotions, compensations, disciplinary actions, contracts, requisitions for purchases or other administrative recommendations or actions of the chief administrative officer, or of department heads under the chief administrative officer, or under the respective boards and commissions. The board of supervisors shall deal with administrative matters only in the manner provided by this charter, and any dictation, suggestion or interference herein prohibited on the part of any supervisor shall constitute official misconduct; provided, however, that nothing herein contained shall restrict the power of hearing and inquiry as provided in this charter.

ARTICLE III

THE EXECUTIVE BRANCH

CHAPTER ONE: MAYOR

3.100 Functions, Powers and Duties

The mayor shall be the chief executive officer of the city and county upon whom process issued by authority of law shall be served. He shall be an elective officer and his compensation shall be fixed in accordance with the salary standardization provisions of this charter. The mayor shall devote his entire time and attention to the duties of the office, and shall not devote time or attention to any other occupation or business activity.

He shall furnish an official bond in the sum of \$25,000.

He shall appoint, and at his pleasure may remove, an executive secretary and one confidential secretary, and one stenographer. The board of supervisors may annually appropriate additional sums to be expended by the mayor for purposes and duties incidental to the administration of the office of mayor, which shall be subject to the provisions of this charter relative to appropriations and the payment of claims.

He shall, at the first meeting of the board of supervisors in October of each year, communicate by message to the supervisors a general statement of the condition of the affairs of the city and county, and recommend the adoption of such measures as he may deem expedient and proper.

The mayor shall be responsible for the enforcement of all laws relating to the municipality and for the review and submission of the annual executive budget; he shall supervise the administration of all departments under boards and commissions appointed by him; he shall receive and examine, without delay, all complaints relating to the administration of the affairs of the city and county, and immediately inform the complainant of findings and actions thereon; and he shall coordinate and enforce cooperation between all departments of the city and county. The mayor shall have the power to postpone final action on any franchise that may be passed by the supervisors until such proposed franchise shall have been voted on at the next election.

The mayor shall appoint such members of boards or commissions and other officers as provided by this charter.

He shall appoint for the unexpired term of the office vacated, a qualified person to fill any vacancy occurring in any elective office.

The mayor shall have a seat but no vote in the board of supervisors and in any board or commission appointed by him, with the right to report on or discuss any matter before such board or commission concerning the departments or affairs in his charge. He shall have power to designate a member of the board of supervisors to act as mayor in his absence. Should he fail, neglect or refuse so to do, the supervisors shall elect one of their number to act as mayor during his absence. When a vacancy occurs in the office of mayor, it shall be filled for the unexpired portion of the term by the supervisors. In case of a disaster which causes the mayor to be absent or unavailable and the supervisors for any reason whatsoever are

unable to elect one of their number to act as mayor or to fill any vacancy that might occur in the office of mayor, the following persons shall act as mayor in the order of succession hereinafter designated: (1) president of the board of supervisors, (2) chairman of the finance committee of the board of supervisors, (3) senior member of the board of supervisors, who is that member having the greatest number of years of service as a member of the board, and in the event that one or more members have equal seniority then by alphabetical order of surname among such members, and (4) chief administrative officer. Said person so designated shall act as mayor during such period of absence or unavailability of the mayor until such time as the supervisors can take appropriate action either to elect an acting mayor or to fill the vacancy as the case may be. Every person who has served as mayor of the city and county, so long as he remains a resident thereof, shall have a seat in the board of supervisors and may participate in its debates, but shall not be entitled to a vote or to compensation.

In case of public emergency involving or threatening the lives, property or welfare of the citizens, or the property of the city and county, the mayor shall have the power, and it shall be his duty, to summon, organize and direct the forces of any department in the city and county in any needed service; to summon, marshal, deputize or otherwise employ other persons, or to do whatever else he may deem necessary for the purpose of meeting the emergency. The mayor may make such studies and surveys as he may deem advisable in anticipation of any such emergency.

3.100-1 Emergency Powers; Limitations

Notwithstanding any of the provisions of Section 3.100 or any other provisions of this charter, the mayor, in meeting a public emergency involving or threatening the lives, property or welfare of the citizens, or the property of the city and county, shall act only with the concurrence of a majority of all the members of the board of supervisors, or a majority of the members thereof who shall be immediately available in the event of a disaster which causes any member of said board to be absent or unavailable, both as to the need to declare an emergency and as to the action proposed to be taken by the mayor to meet the purported emergency. The provisions of Section 2.201 of the charter shall not be applicable thereto.

3.101 Non-Interference in Administrative Affairs

Except for the purpose of inquiry, the mayor shall deal with the administrative service for which the chief administrative officer is responsible, solely through such officer, and for administrative or other functions for which elective officials or boards or commissions are responsible, solely through the elective official, the board or commission or the chief executive officer of such board or commission concerned.

3.102 Office of Risk Management

There is established under the mayor an office of risk management which shall review, analyze and report to the mayor, the chief administrative officer and the finance committee of the board of supervisors the practices of the several departments, boards and commissions of the city and county regarding loss prevention and risk management, including the insurance requirements of the city and

NOTE: Additions and substitutions are indicated by bold face type; deletions are indicated by strike-out type.

2.203-2 Employee Relations Director

~~Notwithstanding the provisions of Section 3.510 of this charter, the employee relations director shall be appointed by the board of supervisors and shall hold office at the pleasure of said board.~~

3.100-2 Meet and Confer Authority

Subject to this charter and consistent with state law, the mayor or his/her designee shall be responsible for meeting and conferring with employees or their recognized employee organizations regarding salaries, working condition benefits and other terms and conditions of employment to be embodied in memoranda of understanding. The mayor shall assume all labor relations responsibilities previously vested in the board of supervisors. This section shall not modify the salary and benefit methodology set forth in sections 8.401, 8.403, 8.404, 8.405, 8.407 and 8.407-1 of this charter, nor does this transfer diminish in any way the managerial power over city affairs vested in the mayor by this charter.

The mayor shall submit proposed memor-

anda of understanding including, where applicable, schedules of compensation, benefits and working conditions to the board of supervisors for determination by a majority vote. The board of supervisors shall have the power to accept or reject such memoranda of understanding. It shall be the duty of the board of supervisors, upon approval of any such memoranda of understanding to enact appropriate ordinances authorizing payment of any compensation or benefits or other terms and conditions of employment so approved.

Nothing in this section shall supersede the dates specified in charter sections 8.401, 8.403, 8.404, 8.407 and 8.407-1, except that the board of supervisors by motion may extend by up to thirty days the date for final adoption of ordinances approving salary and benefits pursuant to those sections. Should the board of supervisors reject any memorandum of understanding and/or schedule of compensation and benefits, the board of supervisors shall by motion simultaneously extend by sixty days the date for final adoption of ordinances approving salary, benefits, and/or working conditions pursuant to those sections.

(added November 8, 1988: Proposition F)

3.101 Non-Interference in Administrative Affairs

Except for the purpose of inquiry, the mayor shall deal with the administrative service for which the chief administrative officer is responsible, solely through such officer, and for administrative or other functions for which elective officials or boards or commissions are responsible, solely through the elective official, the board or commission or the chief executive officer of such board or commission concerned.

3.102 Office of Risk Management

There is established under the mayor an office of risk management which shall review, analyze and report to the mayor, the chief administrative officer and the finance committee of the board of supervisors the practices of the several departments, boards and commissions of the city and county regarding loss prevention and risk management, including the insurance requirements of the city and

county. The office shall also establish and assist in the implementation of planning and operational guidelines regarding risk management and loss prevention for each department, board or commission. The mayor may appoint, at his or her pleasure, or contract with, a qualified individual or organization for the operation of the office. The qualifications of the individual or organization operating the office shall include relevant education, training and experience in insurance and risk management. (Added June, 1986)

CHAPTER TWO: CHIEF ADMINISTRATIVE OFFICER

3.200 Appointment; Qualifications; Term of Office

The mayor shall appoint a qualified person as chief administrative officer, subject to confirmation and approval by the board of supervisors.

The appointee shall have been a resident of the State of California for at least five years immediately preceding his appointment. The requisite qualifications of such appointee shall be administrative and executive ability and experience for the position to be filled. No person appointed and qualified as chief administrative officer shall serve a term of office longer than 10 years; provided, however, that the term of the person so appointed shall not extend beyond the age of compulsory retirement as set forth in the retirement provisions of this charter.

He shall be subject to suspension and removal in the same manner as elective officers. He shall also be subject to removal by a vote of not less than two-thirds of the board of supervisors, on the basis of written charges, and, if he so requests, only after a public hearing on such charges before the board of supervisors not less than five days nor more than 15 days after the filing thereof, and prior to the date on which the supervisors shall vote on the question of his removal, but on the filing of written charges, and pending and during such hearing, the supervisors, by majority vote, may suspend him from office. The written charges and any reply thereto by the chief administrative officer shall be entered at length in the journal of the board of supervisors. The action of the board of supervisors in removing the chief administrative officer shall be final.

3.201 Functions, Powers and Duties

The chief administrative officer shall be responsible to the mayor and to the board of supervisors for the administration of all affairs of the city and county that are placed in his charge by the provisions of this charter and by ordinance, and to that end, except as otherwise provided in Section 9.102 of this charter, and the general laws of this state respecting the registration of voters, the holding of elections and all matters pertaining to elections in a city and county, he shall have power and it shall be his duty to exercise supervision and control over all administrative departments which are under his jurisdiction; to appoint the heads of departments under his control and the members of advisory and other boards provided by this charter or by ordinance to be appointed by the chief administrative officer; to prescribe general rules and regulations for the administrative service under his control; to have a voice but no vote in the board of supervisors, with the right to report on or to discuss any matter before the said board concerning the affairs of the departments in his charge; to make such recommendations and

propose such measures to the mayor, the board of supervisors, or committees thereof, concerning the affairs of the city and county in his charge as he may deem necessary; to coordinate the functioning of the several departments of the city and county charged with powers and duties relating to control of traffic; and to provide for the budgeting and control of publicity and advertising expenditures of the city and county.

The chief administrative officer may designate an officer or an employee in any department under his jurisdiction to exercise the powers and perform the duties of any county office not specifically designated by this charter.

The recorder shall be separate officer of the City and County of San Francisco.

The chief administrative officer shall appoint his executive assistant who shall serve at his pleasure, and which position shall not be subject to the civil service provisions of this charter; provided, however, that any person who has civil service status to the position of executive assistant on the date of approval of this amendment by the electorate shall continue to have civil service status to said position under the civil service provisions of this charter.

The chief administrative officer shall appoint a confidential secretary who shall serve at his pleasure, and which position shall not be subject to the civil service provisions of this charter. (Amended June, 1984)

CHAPTER THREE: CONTROLLER

3.300 Appointment; Qualifications.

There shall be a controller, who shall be appointed by the mayor, subject to confirmation and approval by the board of supervisors. Such appointment shall be made solely on the basis of qualifications by training and experience for the position to be filled. He may be removed by the supervisors by a two-thirds vote.

3.301 General Powers and Duties

The controller shall have the powers and duties of a county auditor, except as in this charter otherwise provided. He shall be the auditor and chief accounting officer of the city and county, and shall exercise general supervision over the accounts of all officers, commissions, boards and employees of the city and county charged in any manner with the receipt, collection or disbursement of city and county funds or of other funds, in their capacity as city and county officials or employees. He shall have the power and duty of prescribing the method of installing, keeping and rendering accounts of, and the financial reports to be rendered by, the several officers, boards and employees of the city.

The controller shall keep accounts showing the financial transactions of all departments, offices and other subdivisions of the city and county. Such accounts and the accounting procedure shall be adequate to record:

- (a) all budgeted revenues and appropriations, together with additions or transfers thereto, and to show at all times the amount of encumbrances, expenditures or transfers therefrom, and the balances therein;
- (b) all revenues accrued and liabilities incurred;
- (c) all cash receipts and disbursements; and

least once in every six months examine all official bonds and investigate the sufficiency and solvency of the sureties thereon, and forthwith report in writing the facts to the mayor. Upon receipt of such report, the mayor shall take such action as shall be necessary to protect the city and county, and may require new bonds and may suspend any officer or employee until a sufficient bond is filed and approved. The mayor shall make similar periodic examination of the controller's bond.

3.305 Audit of Controller's Books

The board of supervisors shall order an annual audit of the controller's books of accounts, records and transactions, to be made by one or more certified public accountants. The report of such auditor or auditors for the fiscal year shall be printed and a copy thereof furnished to the mayor, each member of the board of supervisors, the chief administrative officer, and the controller, and to such citizens as may apply therefor.

CHAPTER FOUR: OTHER ELECTED OFFICIALS

3.400 Assessor

The assessor shall be an elective officer. He shall furnish an official bond in the sum of \$50,000. He shall appoint, and at his pleasure may remove, one chief assistant or deputy and one confidential secretary.

3.401 City Attorney

(a) The city attorney shall be an elective officer. He shall furnish an official bond in the sum of \$10,000. He shall appoint, and at his pleasure may remove, all assistants and employees of his office. He shall devote his entire time and attention to the duties of his office. He must, at the time of his election, be an elector of the city and county; qualified to practice in all the courts of the state, and he must have been so qualified for at least 10 years next preceding his election.

The city attorney must represent the city and county in all actions and proceedings in which it may be legally interested, or, for or against the city and county, or, any officer of the city and county in any action or proceeding, when directed so to do by the supervisors, except where a cause of action exists in favor of the city and county against said officer. Whenever any cause of action exists in favor of the city and county, the city attorney shall commence the same when within his knowledge or when directed so to do by the supervisors. He shall give his advice or opinion in writing to any officer, board or commission of the city and county when requested. Except as otherwise provided in this charter, he shall not settle or dismiss any litigation for or against the city and county, unless, upon his written recommendation, he is ordered so to do by ordinance.

The city attorney shall prepare, or approve as to form, all ordinances before they are enacted by the supervisors. He shall approve, by endorsement in writing, the form of all official or other bonds required by this charter or by ordinance before the same are submitted to the proper commission, board or office for final approval, and no such bonds shall be finally approved without such approval as to form by the city attorney. Except as otherwise in this charter provided, he shall

prepare in writing the draft or form of all contracts before the same are executed on behalf of the city and county. He shall examine and approve the title of all real property to be acquired by the city and county.

He shall keep on file in his office copies of all written communications and opinions, also all papers, briefs and transcripts used in matters wherein he appears; and books of record and registers of all actions or proceedings in his charge in which the city and county or any officer or board thereof, is a party or is interested.

(b) The duties of the city attorney in connection with the bureau of delinquent revenue collection shall be transferred to and performed by the attorney for said bureau who shall be subject to the civil service provisions of this charter.

(c) There is established in the office of the city attorney a bureau of claims investigation and administration which shall have the responsibility of investigating, evaluating and processing for the several boards, commissions and departments all claims for money or damages made upon the city and county pursuant to Section 7.703 or this charter or the general law of the State of California. Claim investigation functions of the police department in existence on June 4, 1986, shall continue as an adjunct to the bureau established under this section. Claims functions of the public utilities commission shall remain under that commission unless transferred to the bureau of claims investigation and administration by ordinance of the board of supervisors.

Notwithstanding any other provision of this charter, the bureau shall also have the power to investigate events and occurrences giving rise to potential civil liability against the city and county and adjust and settle demands, within dollar limits to be established by ordinance, prior to their presentment at claims. There shall be established by ordinance a revolving fund to satisfy such demands adjusted prior to their presentment as claims. The bureau shall be responsible for the investigation of all claims and the analysis of city policies and practices upon which the bureau shall report and advise the several departments.

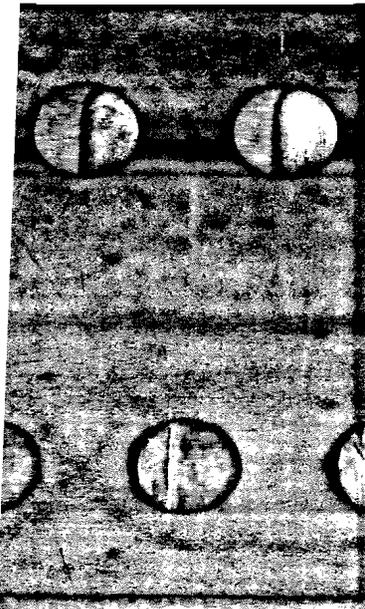
The city attorney shall appoint a chief of the bureau who shall serve at his or her pleasure. The chief of the bureau may appoint, subject to confirmation by the city attorney, investigators who shall serve at the pleasure of the chief; provided, however, that any person who has civil service status to the position of civil claims investigator or any equivalent classification on the date of approval of this amendment by the electorate shall continue to have civil service status to said position under the civil service provisions of this chapter. (Amended June, 1986)

3.402 District Attorney

The district attorney shall be an elective officer. He shall furnish an official bond in the sum of \$10,000. He must, at the time of his election, be qualified to practice in all the courts of this state and must have been so qualified for at least five years next preceding his election. He shall appoint, and at his pleasure may remove, all assistants and employees in his office.

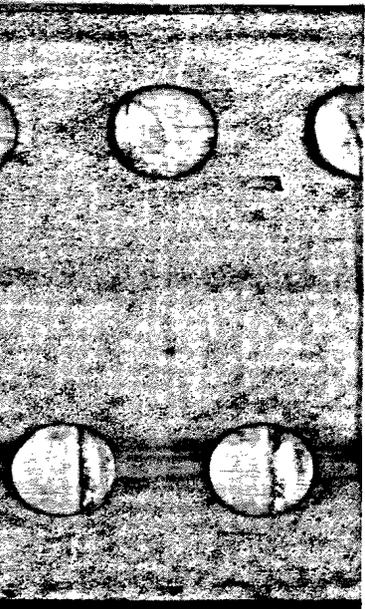
The district attorney, either in person or by his assistants, shall prosecute all criminal cases in the municipal and superior courts, draw all complaints, and issue warrants for the arrest of persons charged with crime who are to be prosecuted in such courts.

Any amount required by the district attorney from time to time from the district attorney's special fund shall be requisitioned by the district attorney, stating



the general purpose for which required, whereupon the controller shall draw his warrant therefor and the claim be paid as provided for payment of other warrants by the treasurer. All such sums may be used by the district attorney solely as provided by general law and he shall file vouchers with the controller at the end of each fiscal year showing what disposition he has made of any moneys received by him from such fund and the particular purpose for which it was disbursed, provided that, if a criminal proceeding be pending or under investigation, vouchers for moneys disbursed in such proceeding or investigation, need not be filed until the trial of the criminal proceeding be ended or the investigation concluded. No portion of the fund shall be used for compensation or remuneration of full time assistants or employees.

There shall be a warrant and bond office. The district attorney shall appoint an assistant to have charge of the warrant and bond office to be designated warrant and bond deputy, and such additional assistants and clerks as may be provided by the budget and appropriation ordinances. No person shall be appointed warrant and bond deputy who is not at the time of his appointment qualified to practice law in all the courts of this state. The warrant and bond deputy shall keep his office open continuously night and day for the transaction of business; he shall draw and approve with his signature all complaints and warrants in criminal actions to be prosecuted in the municipal courts and any inferior court established by law in this city and county and possessing criminal jurisdiction; he shall have custody of all bail bonds and appeal bonds taken in such courts.



The warrant and bond deputy may issue bail bonds and appeal bonds and order the discharge from custody of the persons for whom such bonds are approved by a magistrate. He may fix cash bail in misdemeanor cases where arrests are made without warrants and may take cash bail in all cases arising in the municipal court and any inferior court established by law in this city and county and possessing criminal jurisdiction, and may order the discharge from custody of the persons for whom cash bail is deposited with him.

In the matter of fixing bail and ordering the release of prisoners the warrant and bond deputy shall be subject to the judges of the municipal court and the judges of any court in the city and county empowered by law to act as magistrates.

3.403 Public Defender

The public defender shall be an elective officer. He shall furnish an official bond in the sum of \$10,000. He must, at the time of his election, be qualified to practice in all the courts of this state and must have been so qualified for at least five years next preceding his election. He shall appoint, and at his pleasure may remove, such assistants and employees in his office as may be provided by budget and appropriation ordinances. He shall immediately upon the request of a defendant who is financially unable to employ counsel, or upon order of the court, defend or give counsel or advice to any person charged with the commission of a crime.

3.404 Sheriff

The sheriff shall be an elective officer. His salary shall be established by salary standardization procedures.

He shall furnish an official bond in the sum of \$50,000. He shall appoint, and at his pleasure may remove, an attorney, one under-sheriff, one assistant sheriff and one confidential secretary. (Amended November, 1981)

3.405 Treasurer

The treasurer shall be an elective officer. He shall furnish an official bond in the sum of \$200,000. He shall appoint, and at his pleasure may remove, one chief assistant.

Effective July 1, 1979, the office and duties of tax collector are consolidated into the office of treasurer. The treasurer shall appoint a tax collector who shall hold office at his pleasure and which position shall not be subject to the civil service provisions of this charter; provided, however, that any person who has civil service status to the position of tax collector on the effective date of this amendment shall continue to have civil service status for said position under the civil service provisions of this charter. (Amended Nov., 1978)

3.406 Assistants and Employees in Elective Offices

The elective officers of the city and county may appoint such assistants and employees as are authorized by the supervisors upon the recommendation of the mayor, in the annual budget and annual or supplemental appropriation ordinances, and may discipline and remove the same, subject to the civil service provisions of this charter except as otherwise specifically exempted by the provisions of this charter. Each assistant attorney in the offices of the city attorney, the district attorney and the public defender must, at the time of his appointment, be qualified to practice in all of the courts of the state. The salaries, wages and compensation of every kind and nature, except pensions and retirement allowances, for assistants and employees in such elective offices, shall be fixed as provided by the salary standardization provisions of this charter.

Notwithstanding any other provisions of this charter, occupants of all positions in the office of city attorney and the public defender, except assistant attorneys in the offices of the city attorney and the public defender, and a confidential secretary for the city attorney and a confidential secretary for the public defender, shall be subject to the civil service provisions of this charter.

Notwithstanding any other provisions of this charter, occupants of all positions in the office of district attorney, except assistant attorneys, one confidential secretary and occupants of positions classified as senior investigator or investigator, shall be subject to the civil service provisions of this charter.

**CHAPTER FIVE: ADMINISTRATIVE DEPARTMENTS,
BOARDS AND COMMISSIONS****PART ONE: GENERAL POWERS AND DUTIES****3.500 Boards and Commissions**

Each board and commission appointed by the mayor, or otherwise provided by this charter, shall have powers and duties as follows:

(a) To prescribe reasonable rules and regulations not inconsistent with this charter for the conduct of its affairs, for the distribution and performance of its business, for the conduct and government of its officers and employees, and for the administration, custody and protection of property under its control and books, records and papers appertaining to its affairs; provided, however, that each board

(2) confer with legal counsel under circumstances in which the lawyer-client privilege conferred by the laws of the State of California may lawfully be claimed; and

(3) confer with the attorney general, district attorney, sheriff or chief of police or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public's right of access to public services or public facilities. Except as hereinabove set forth, any action taken at a meeting other than a regular or special open and public meeting provided for by this subsection, shall be void.

(g) To hold special meetings for the purpose and in the manner provided by the board of supervisors by ordinance, provided that no matter may be considered at any special meeting unless specifically designated in the notice calling such special meeting.

(h) To appoint a secretary, a superintendent, or other executive to be the administrative head of the affairs under its control who, unless otherwise specifically provided, shall not be subject to the civil service provisions of this charter, and shall hold office at its pleasure.

(i) To require a bond or other security from each such executive officer and from any employee in such form as the board of supervisors may authorize and in such amount as the mayor, on the recommendation of the controller, may approve, the premiums on such bond to be paid by the city and county.

A quorum for the transaction of official business shall consist of a majority of all the members of each board or commission, but a smaller number may adjourn from time to time and compel the attendance of absent members in the manner and subject to penalties to be provided by ordinance. A majority, two-thirds, three-fourths, or other vote specified by this charter for any board or commission shall mean a majority, two-thirds, three-fourths, or other vote of all the members of such board or commission. Each board or commission shall keep a record for the proceedings at each meeting and a copy thereof shall be forwarded promptly to the mayor. Except for the purpose of inquiry, each board or commission, in its conduct of administrative affairs under its control, shall deal with such matters solely through its chief executive officer.

Each board or commission relative to the affairs of its own department, shall deal with administrative matters only in the manner provided by this charter, 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 power of hearing and inquiry as provided in this charter.

3.501 Department Heads

Each elective officer in charge of an administrative office, the chief executive appointed by each board or commission, the controller, the chief administrative officer, and each department head appointed by the chief administrative officer shall have the powers and duties of a department head, except as otherwise specifically provided in this charter.

Each appointive department head shall be immediately responsible to the chief administrative officer or the board or commission, as the case may be, for the administration of his department, and shall file an annual report and make such

other reports, estimates and recommendations at the time and in the manner required by law, or as required by the chief administrative officer, board or commission.

He shall act as the "appointing officer" under the civil service provisions of this charter for the appointing, disciplining and removal of such officers, assistants and employees as may be authorized. On the written recommendation of the department head concerned and the approval of the chief administrative officer, board or commission to whom such department head is responsible, the head of any utility, institution, bureau or other subdivision of such department may be designated as the "appointing officer" for such utility, institution, bureau or other subdivision. Non-civil service appointments and any temporary appointments in any department or subdivision thereof, and all removals therefrom shall be made by the department head or bureau head designated as the appointing officer only with the approval of the chief administrative officer or the board or commission in charge, as the case may be.

He shall issue or authorize all requisitions for the purchase of materials, supplies and equipment required by such department, provided that, on the written approval of the chief administrative officer or the board or commission in charge of any department, the head of any utility, institution, bureau or other subdivision of a department may likewise be vested with such power. Each department head or the head of a utility, institution, bureau or other subdivision of each department shall be responsible for the proper checking of all materials, supplies and equipment ordered for its purposes, and for the approval or disapproval of bills for claims rendered for such materials, supplies or equipment.

The head of any department, through the chief administrative officer or the board or commission in charge thereof shall recommend to the board of supervisors such ordinances as may be required to carry out the powers vested and the duties imposed, and to establish or readjust fees or charges for permits issued to or work performed for persons, firms or corporations when these are subject to his or its jurisdiction.

Each department head may suggest the creation of positions subject to the provisions of this charter, and may reduce the forces under his jurisdiction to conform to the needs of the work for which he is responsible, any other provisions of this charter to the contrary notwithstanding.

The mayor, the chief administrative officer, or the board or commission concerned, on the recommendation of any department head, or on his or its own motion, may combine or may transfer and redistribute among departments or offices under his or its authority, respectively, any function or duty assigned to or continued by this charter in any department.

**PART TWO: ADMINISTRATIVE DEPARTMENTS
UNDER THE CHIEF ADMINISTRATIVE OFFICER**

**3.510 Governmental Services, Purchasing, Real Estate, Public Works,
Electricity, County Agricultural Department; Coroner's Office and
Convention Facilities Management**

The functions, activities and affairs of the city and county that are hereby placed under the direction of the chief administrative officer by the provisions of

ARTICLE V
THE SCHOOLS

5.100 Board of Education

All of the public schools of the school district of the city and county shall be under the control and management of a board of education, composed of seven commissioners, who, commencing with a special municipal election to be consolidated with the direct primary in 1972, shall be elected at large by the voters of the city and county and who shall be subject to recall, and to suspensions and removal in the same manner as elective officers, as provided by this charter. The compensation of each member shall be \$500 per month. Vacancies occurring on said board shall be filled by the mayor for the unexpired terms. (Amended November, 1983)

5.101 Powers and Duties

In addition to the powers conferred by the general laws of the state and other provisions of this charter, the board of education shall have power to establish and maintain such schools as are authorized by the laws of the state as the board may determine, and to change, modify, consolidate or discontinue the same as the public welfare may require.

The board shall also have power to employ such teachers and other persons as may be necessary to carry into effect its powers and duties; to fix, alter and approve their salaries and compensations, except as in this charter otherwise provided, and to withhold for good and sufficient cause the whole or any part of the wages, salary, or compensation of any person or persons employed as aforesaid; and, to promote, transfer and dismiss teachers, but no teacher shall be dismissed from the department except for insubordination, immoral or unprofessional conduct, or evident unfitness for teaching. Appointment, promotion, assignment and transfer of deputy superintendents, principals, assistants, teachers and all other certificated employees shall be made by the board of education upon the recommendation of the superintendent of schools. All promotions of teachers shall be based solely on merit. Nothing in this section shall be construed to prevent the board from removing teachers as provided in this charter and the laws of the state. Charges against teachers must be made in writing by the superintendent after investigation and shall be finally passed upon by the board after giving the accused teacher a fair and impartial hearing before said board.

All teachers shall be classified as permanent employees in their respective positions after they have been successfully employed in such positions in the school department for a probationary period of three years. All heads of departments, vice principals, principals, supervisors and directors who are appointed prior to July 1, 1971 shall be classified as permanent employees in their respective positions after they have been successfully employed in such positions in the school department for a probationary period of three years. In the absence of any action to the contrary by the board of education at the end of the third year of such employment, the classification shall be considered as permanent. All heads of departments, vice principals, principals, supervisors and directors who are appointed on or after July 1, 1971 or who are otherwise determined not to be permanent employees shall be

employed pursuant to four year contracts with the board of education which contracts shall be subject to renewal based upon achieving and maintaining standards of performance, which standards of performance shall be governed by rules and regulations as promulgated by the board of education.

Non-teaching and non-technical positions, and positions not required by law to be filled by a person holding a teaching or other certificate as required by law, shall be employed under the civil service provisions of this charter and the compensations of such persons shall be fixed in accordance with the salary standardization provisions of this charter.

The board of education shall have power to grant and to renew, and, for insubordination, immoral or unprofessional conduct or unfitness for teaching, to revoke teachers' certificates.

The board shall establish regulations subject to the approval of the controller for the disbursement of all moneys belonging to the school department or the school fund or funds, and to secure strict accountability in the expenditure thereof, and to provide for the prompt payment of all salaries due and allowed to officers, teachers, and other employees of the school department.

Notwithstanding any other provision of this charter to the contrary, the board of education of the San Francisco Unified School District may authorize payment of the annual compensation of certificated employees in 12 equal payments, the first such equal payment being made on or before the fifth day of August of each school year, and continuing each month thereafter until the full annual compensation shall be paid, provided that the last equal payment shall be made not later than the fifth day of July of the succeeding school year, and provided further that in the event that the certificated employee for any reason does not perform the full year of service, said certificated employee shall receive only such amount as is authorized by the school code of the State of California. In the event said certificated employee has been paid an amount greater than such employee is entitled to receive under the provisions of the school code of the State of California, said certificated employee shall be liable therefor and within 30 days after such excess payment said certificated employee shall reimburse the San Francisco Unified School District for the excess, and said certificated employee shall not be paid any of his retirement accumulations or credits until the San Francisco Unified School District has been reimbursed for the said excess.

The board shall, between the 1st and 21st days of May of each year, adopt a schedule of salaries for the next ensuing fiscal year for teachers and other employees of the school department. Compensations of non-teaching and non-technical employees shall be fixed in accordance with the salary standardization provisions of this charter.

5.102 Superintendent of Schools

The county superintendent of schools shall be the executive officer of the board of education. He shall be employed by said board to serve for a term of not more than four years.

During his term of office the superintendent may be removed from his office, as in this section hereinafter provided, for cause after charges setting forth the nature and character of said cause are filed against the said superintendent. Said charges must be in writing and shall be signed by at least two members of the board

