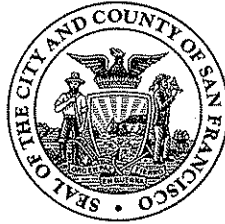


克里斯·戴利
CHRIS DALY



Board of Supervisors
District 6

November 23, 2009

David Chiu, President
San Francisco Board of Supervisors
City Hall, Room 244
1 Carlton B. Goodlett Place
San Francisco, CA 94102

Dear President Chiu,

I am writing to you regarding Item 32 on Tuesday's Board agenda:

File #091202 [Appropriating \$7,953,732 to fund the restoration of positions in the Department of Public Health for FY 2009-2010].

Yesterday, we received correspondence from our Clerk indicating that the City Attorney had just advised them that this ordinance would require a two-thirds vote to be passed. This advice from the City Attorney is incorrect.

The San Francisco Charter is clear in Section 2.105. "Except as otherwise provided in this Charter, passage of an ordinance or a resolution shall require the affirmative vote of a majority of the members of the Board." Since no other section of the Charter plainly states otherwise, Charter Section 2.105 needs to be honored and upheld on Tuesday.

The Rules of Order of the San Francisco Board of Supervisors provide that "The President shall decide all questions of order, subject to appeal to the Board by any Supervisor." (4.11) Pursuant to this rule, Mr. President, I ask that **you uphold the San Francisco Charter as it is written and declare this ordinance passed on first reading with 6 votes at the Board of Supervisors.**

You may remember that a substantively different ordinance, file #091246, failed to pass on first reading on November 10th with the support of 7 Supervisors. Even though it was not properly noticed on our agenda, this ordinance required the affirmative votes of two-thirds of Supervisors for passage due to Charter Section 9.113(c). In its entirety 9.113(c) reads...

In the event the Mayor or a member of the Board of Supervisors recommends a supplemental appropriation ordinance after the adoption of the budget for any fiscal year and prior to the close of the fiscal year containing any item which had been rejected by the Mayor in his/her review of departmental budget estimates for the fiscal year or which had been rejected by the Board of Supervisors in its consideration of the Mayor's proposed budget for the fiscal year, it shall require a vote of two-thirds of all members of the Board of Supervisors to approve such supplemental appropriation ordinance.

In the case of file #091246, the supplemental appropriation proposed using General Fund Reserve to restore positions in the Department of Public Health that the Mayor had rejected in his review of the departmental submission. The *Source and Uses* of the supplemental appropriation were identical to those that were previously rejected by the Mayor. Therefore, Charter Section 9.113(c) clearly and plainly otherwise provides for the higher vote threshold contemplated in Charter Section 2.105.

COMMITTEES

Rules Committee, Chair
City Operations & Neighborhood Services

MEMBER

Bay Area Air Quality Management District
Joint Powers Committee
Metropolitan Transportation Commission
SF County Transportation Authority
Transbay Joint Powers Authority
Treasure Island Development Authority, Ex Officio

However file #091202, which is before us this Tuesday, is substantively different from file #091246, because instead of General Fund Reserve, the Source is deappropriated funds from salaries and fringe benefits in the San Francisco General Hospital Fund. These are funds that have been appropriated and are currently on Budget and Finance Committee reserve.

As you know, appropriation ordinances necessarily include *both* Source and Uses. While appropriations can be divided into separate items, they cannot be divided by Source and Use. For example, a member of the Board of Supervisors would not even be allowed to introduce an appropriation that included a Use without a Source. All appropriations need to have both Sources and Uses that inform one another.

In the case of file #091202, Charter Section 9.113(c) could only apply if the Mayor rejected any of the line items contained within – but for both Uses and Source, as they cannot stand alone. Clearly, the Mayor made no such rejection in his budget submission. Since 9.113(c) does not apply with respect to our decision on Tuesday, Charter Section 2.105 speaks – only an affirmative vote of the majority of the Board of Supervisors is required.

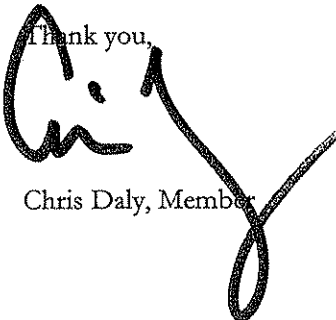
While I have seen no written opinion from the City Attorney, I understand that they are arguing 2 points against upholding Charter Section 2.105 -- past practice and legislative intent. Neither of these types of arguments, however, can trump the statutory language of the Charter, which, understanding the necessary composition of appropriation ordinances, is unambiguous.

Our current City Attorney has even issued a written opinion overturning past practice with respect to Charter Section 9.118(b). In this case, no law was changed. The City Attorney simply changed the opinion on the existing law. In addition, if the past practice of decoupling Use from Sources was consistently applied, then any time the Mayor or the Board rejected any Use in the budget that was funded with General Fund (which happens every year), any subsequent supplemental appropriation that used General Fund Reserve as its Source would be subject to the provisions of 9.113(c). Charter Section 9.113(c) uses the phrase “any item” and not “any Use” which would have narrowed its application. In other words, every supplemental appropriation using General Fund Reserve would be required to get 8 votes for passage. This has clearly not been the past practice.

Further, if the City Attorney’s opinion that Uses can be separated from Source pursuant to 9.113(c) is allowed to prevail, this would unnecessarily compromise the powers of the Board contemplated in Section 2 of the Charter. For example, file #091202 proposes to deappropriate monies currently scheduled for salaries and fringe benefits in the San Francisco General Hospital Fund. The action of the Board to deappropriate these funds is equally significant to the action of the Board to appropriate these funds elsewhere. Decoupling Uses from Source with respect to 9.113(c) adds the unnecessary and illegal burden of a two-thirds threshold to the deappropriation action.

Mr. President, I realize that it is not commonplace for you to overrule the opinion of the City Attorney. However, I strongly believe that you must do this to honor your duty to uphold the Charter of San Francisco and to defend the institution of the Board of Supervisors.

Thank you,

A handwritten signature in black ink, appearing to read "Chris Daly". The signature is stylized and includes a long, sweeping underline that loops back under the name.

Chris Daly, Member