



THE CITY OF SAN DIEGO

April 17, 2009

**Honorable Mayor and Members of the City Council
City of San Diego, California**

AUDIT OF ACCOUNTS OF MICHAEL AGUIRRE, FORMER CITY ATTORNEY

Article VII, Section 111 of the City Charter, requires that upon the death, resignation or removal of any officer of the City, an audit and investigation of the accounts of such officer be made and a report provided to the Manager and the Council. To comply with this requirement, the Office of the City Auditor performed a close-out audit on Mr. Michael Aguirre, former City Attorney who termed office on December 5, 2008.

We found that Mr. Aguirre had no outstanding debt to the City. However, our audit revealed that the City Attorney is the only elected City official that receives Annual Leave benefits. The City Attorney position is considered a member of the executive group in the Salary Ordinance, which allows the City Attorney to receive Annual Leave benefits. By comparison, the other elected officials (the Mayor and City Council) are paid a biweekly salary regardless of the number of hours worked, and they do not accrue Annual Leave. Additionally, the City Attorney position is part of the legislative group for retirement benefits.

Annual Leave that is accrued and not used can be cashed out by the City Attorney. As a result of receiving Annual Leave benefits, the City paid Mr. Aguirre an additional **\$59,162** in accrued Annual Leave that he did not use during his four year term in office. Although, no regulations or City policies were violated, the City should consider the appropriateness of having the City Attorney position in both the executive group for Salary / Annual Leave benefits and the legislative group for retirement benefits.

We determined the potential additional cost to the City if the City Attorney does not use any of the Annual Leave accrued while in Office. For example, a newly elected City Attorney will accrue approximately 704 hours in a four year term and 1,408 hours during an eight year term. Using the current City Attorney hourly wage, the City could potentially pay out an additional **\$65,542** for a four year term and **\$131,085** for an eight year term if no Annual Leave time is used and is subsequently cashed out. We should note that the City Attorney is also granted an additional 80 hours of Administrative Leave each year, which can be used for time-off in lieu of regular Annual Leave.



We also found that the process used to set the City Attorney's salary is not fully in compliance with the City Charter Section 40 and the Salary Ordinance Section 7. These governing documents state the City Attorney's salary shall be fixed by Council and set forth in the Annual Appropriation Ordinance. Additionally, City Charter Section 290(a)(3) states the Annual Salary Ordinance passed by Council shall become a controlling document for preparation of the Annual Appropriation Ordinance for the ensuing fiscal year. The City Council has approved the Annual Salary Ordinance that provides a range of \$73,260 - \$292,596 for the City Attorney's salary, and approved the Annual Appropriations Ordinance, which includes the budgeted amount for the City Attorney's salary; however, there was no supporting documentation to demonstrate that City Council was involved in setting Mr. Aguirre's actual salary when he took office, and the City Attorney's actual salary amount is not included in the Annual Salary Ordinance as are the City's other elected officials. We found that Mr. Aguirre assumed his predecessor's ending salary.

We originally planned to recommend the Human Resources Department research and review the issues surrounding the City Attorney position in the salary ordinance; however based on San Diego City Charter Section 70 authority, only the City Council has jurisdiction over setting the salary and benefits of the City Attorney. Additionally, preparation and approval of the Annual Appropriation Ordinance is the responsibility of the City Council, as stated in San Diego City Charter Sections 71 and 290.

Based on our audit we recommend:

1. The Independent Budget Analyst in consultation with the City Council research and review the appropriateness of having the City Attorney position in the executive group in the salary ordinance, which allows for Annual Leave and other leave benefits to be earned.
2. The Independent Budget Analyst in consultation with the City Council should establish a process to approve the City Attorney's salary in order to be in compliance with the salary ordinance and Charter Section 40.

The Independent Budget Analyst's written response to our audit report recommendation is attached.

No other issues came to our attention requiring further review. To reach these conclusions, we reviewed financial records, including payroll, travel advances, and procurement card activity. Additionally, audit staff has verified that system access and payment approval authority was revoked.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We evaluated specific internal controls related to the audit objectives, and our conclusions on the effectiveness of the controls we reviewed related to the close-out procedures are detailed in our audit report.

Respectfully submitted,

A handwritten signature in cursive script that reads "Eduardo Luna".

Eduardo Luna
City Auditor

cc: Jay M. Goldstone, Chief Operating Officer
Jan Goldsmith, City Attorney
Scott Chadwick, Human Resources Director
Hadi Dehghani, Personnel Director
Steve Grant, Audit Committee Member
Wade McKnight, Audit Committee Member
Charles Sellers, Audit Committee Member
Michelle Lawrence, Payroll Manager
Stanley Keller, Independent Oversight Monitor
Andrea Tevlin, IBA

**OFFICE OF INDEPENDENT BUDGET ANALYST
CITY OF SAN DIEGO
M E M O R A N D U M**

DATE: April 15, 2009

TO: Eduardo Luna, City Auditor

FROM: Andrea Tevlin, Independent Budget Analyst *Andrea*

SUBJECT: AUDIT OF ACCOUNTS OF MICHAEL AGUIRRE, FORMER CITY ATTORNEY

In the audit referenced above, you made two recommendations for the IBA. This memo constitutes our response:

1. The Independent Budget Analyst in consultation with the City Council research and review the appropriateness of having the City Attorney position in the executive group in the salary ordinance, which allows for Annual Leave and other leave benefits to be earned.

IBA Response: Agree. We will work with the City Council to review the appropriateness of having the City Attorney position in the executive group that allows for Annual Leave and other leave benefits.

2. The Independent Budget Analyst in consultation with the City Council should establish a process to approve the City Attorney's salary in order to be in compliance with the salary ordinance and Charter Section 40.

IBA Response: Agree. We will work with the City Council to establish a process for Council to approve the City Attorney's salary.