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MEMORANDUM

TO: Members of the San Francisco Health Commission
Daniel Tsai, Director of Health

FROM: Arnulfo Medina
Deputy City Attorney

DATE: November 14, 2025

RE: Guidance on the Health Commission's Duties and Powers Regarding Contracts and Grants Executed by the San Francisco Department of Public Health

INTRODUCTION

This memorandum provides an overview of the Health Commission's duties and powers with respect to contracts and grants (collectively, "Agreements") executed by the San Francisco Department of Public Health ("SFDPH").

Under the Charter, the Director of Health has authority to manage the day-to-day administrative affairs of SFDPH, which includes executing Agreements. Although the Charter does not confer on the Health Commission a duty to review or approve SFDPH Agreements, it does authorize the Health Commission to adopt policies, including policies requiring Health Commission review and/or approval of Agreements. The Health Commission has adopted such a policy, which generally requires SFDPH to provide the Health Commission with a monthly report summarizing several categories of Agreements that SFDPH intends to execute in the following month. It has been the practice of the Health Commission to agendize the monthly report at meetings of the full Commission, and to vote to approve the report without voting to approve each Agreement on the list.

In addition, City laws require the Health Commission and other commissions to make certain findings before the department they oversee may enter into sole source Agreements. Unlike the Health Commission's contract review policy, which requires only that SFDPH submit a report to the Commission, these laws require that the Commission act as a body to examine a department's rationale for the sole source Agreement and take formal action to certify that the required conditions have been met. Because making these findings requires discretion, the Health Commission may not delegate this function to the Director of Health or another individual.

ANALYSIS

I. The Charter Does Not Require Health Commission to Review or Approve SFDPH Agreements.

Charter Section 4.102 outlines the general powers of all boards and commissions in the executive branch, including the Health Commission. The Health Commission's specific powers

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and duties are further detailed in Charter Section 4.110. Neither of these Charter provisions confers on the Health Commission the duty to review or approve SFDPH Agreements. Instead, the Director is responsible for departmental administration and management, including contract and grant approval. (Charter § 4.126).

Other City laws address the authority of the Board of Supervisors (the "Board") and the Purchaser to approve Agreements. Under Charter Section 9.118, certain Agreements require Board approval by resolution, based on value and term. Additionally, the Purchaser has approval authority for most commodity and service contracts. (See Admin. Code § 21.03).

II. The Health Commission May Adopt a Policy Requiring Review and/or Approval of Certain SFDPH Agreements.

The Health Commission has authority to adopt policies for the department if the policies are consistent with the overall objectives of the City. (Charter § 4.102). Additionally, Charter Section 4.104 requires the Health Commission and other commissions to adopt rules and regulations governing their own operations. The Health Commission may adopt a rule requiring the Director of Health to seek its approval before executing any or certain types of Agreements. In line with this authority, the Health Commission adopted a contract review policy in 2015 (see Attachment A), requiring that SFDPH submit a monthly report to the Health Commission that includes an explanation of the following categories of contracts that SFDPH intends to execute in the following month, with the expectation that the Health Commission may choose to discuss any Agreement in the report during the meeting:

1. Contracts with an annual amount over \$500,000 (excluding contingency);
2. Modifications resulting in an annual amount of \$500,000 or more;
3. Contracts requiring Board of Supervisors approval;
4. Contract renewals with an active Corrective Action Plan, regardless of funding level;
5. Contracts with an initial term longer than 5.5 years (excluding optional City extensions);
6. Contracts for new services with an annual amount over \$100,000 (presented via summary memo); for existing services awarded to a new vendor, the \$500,000 threshold applies; and
7. Contracts over \$100,000 awarded to a new vendor due to the previous vendor's performance or financial issues.

The Health Commission's current policy requires Commission review of these categories of Agreements, not their approval. The Health Commission may, however, amend the policy to require its approval of these or other categories of Agreements, provided the policy complies with City law. For example, the policy may require SFDPH to take categories or specific types

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of Agreements to the Commission for pre-approval before the Director of Health executes the Agreement or submits it to the Board or the Purchaser for approval.

While the Health Commission may direct the Director of Health in managing departmental affairs, it may not stand in the shoes of the Director. If the Director refuses to follow the Health Commission's decision with respect to a particular Agreement or category of Agreements, the Commission may direct the Director to comply with the decision. In extreme cases if the Director of Health fails to comply with Health Commission direction, the Commission may seek removal of the Director. (Charter § 4.102(6)).

III. The Municipal Code Requires that the Health Commission Make Findings Under Limited Circumstances before the Director Executes an Agreement.

Although the Charter does not expressly require commissions to approve Agreements, the Board has adopted legislation requiring commissions to approve sole source Agreements, and to make findings relating to the need for such agreements. And local law requires the Commission President to approve emergency contracts proposed by the Director of Health.

A. Administrative Code Section 21G.8– Sole Source Grants

Generally, SFPDH and other departments may only award grants after a competitive procurement process. (Admin. Code § 21G.3). But the Board has authorized departments to forego that process and award sole source grants if their governing commission approves the department's recommendation that the grant be awarded as a sole source. (Admin. Code § 21G.8(a)). Additionally, the Purchaser issued regulations further clarifying that departments seeking a sole source waiver must provide specific and comprehensive information and sufficient supporting documentation to justify approval of the waiver. (See Attachment B, Rules and Regulations Pertaining to the SF Admin. Code, Ch. 21G).

In 2024, our Office issued a public memo to all City commissions providing guidance about the questions commissioners should consider when deciding whether to authorize a sole source grant. (See Attachment C, memorandum dated April 9, 2024, on "Guidance to Commissions Reviewing Requests to Approve Sole Source Grants"). In short, Commissioners must consider the facts presented by SFPDH to decide whether (1) SFPDH provided sufficient justification to forego an open and competitive solicitation process, and (2) only one entity can fulfill the grant's public purpose and scope of work. If the Commission agrees with the recommendation, it must take action as a body to make the necessary findings and approve SFPDH's proposal, which most commissions do by adopting a resolution approving the sole source justification and the department's award of the grant. (Admin. Code § 21G.8(a); See Attachment D for examples of resolutions and motions by other commissions to approve sole source Agreements).

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B. Administrative Code Section 21.42 – Sole Source Professional Health & Mental Services Contracts

Administrative Code Section 21.42 authorizes the Health Commission to authorize SFDPH to enter into professional services contracts with nonprofit organizations without conducting a competitive procurement process. Specifically, under Section 21.42, the Health Commission may approve that a professional services contract be designated as a sole source agreement if it finds that:

1. The agreement would fund health or behavioral health services and support;
2. The sole source agreement would effectively extend services provided by non-profit organizations under an expiring agreement;
3. The Director of Health, prior to the contract's expiration, has surveyed the availability of nonprofits that can provide the needed services;
4. The proposed services:
 - a. are unique to SFDPH;
 - b. are consistent with SFDPH's mission and goals; and
 - c. require specialized knowledge, training, personnel, facilities or other resources that are known to be provided by a limited number of non-profit contractors; and
5. The Director of Health has provided the Commission with the survey findings and has recommended that the Commission approve a sole source designation.

While Section 21.42 does not explicitly require the Health Commission to designate these contracts as sole source by resolution as required for sole source grants, other commissions commonly use resolutions or motions to memorialize their actions. (See samples in Attachment D). Regardless of which method the Health Commission uses to effectuate its approval of these sole source contract designations, the approval must be clear and must indicate that the Commission considered the results of the Director's survey findings and justifications in approving the Director's sole source designation recommendation.

C. Administrative Code Sec. 21.15 – Commodities and Services for Emergencies

In certain emergency situations, a department may execute a contract for commodities or services without a competitive solicitation. In those circumstances, the Director of Health must obtain written approval for the contract from the Health Commission President prior to execution of the contract, if the circumstances of the emergency permit. If an emergency contract exceeds the Minimum Competitive Amount, currently \$230,000 for commodities and professional services and \$1,170,000 for general services, the Director of Health must also obtain approval for the contract from the Board as soon as feasible.

Although Administrative Code Section 21.15 does not prescribe a specific method for obtaining a Commission President's written approval, written approval by email, letter, or memorandum is acceptable.

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IV. The Health Commission May Not Delegate its Discretionary Duties

Under California law, commissions may only delegate discretionary powers if expressly authorized by the statute conferring that power. (See *California School Employees Assn. v. Personnel Commission*, 3 Cal.3d 139, 144 (1970)). Discretionary powers require the exercise of personal judgment and generally may not be delegated. (*Brown v. City of Berkeley*, 57 Cal.App.3d 223 (1976)). In contrast, ministerial duties typically involve factual investigations or routine determinations and may generally be delegated because they do not involve independent decision-making or discretion. (*California School Employees*, at 144).

The duties imposed by Administrative Code sections 21G.8, 21.42, and 21.15, described above, require the Health Commission and the President of the Commission to exercise subjective judgment. Because these duties require subjective judgment and the Board did not authorize commissions or presidents of commissions to delegate them, the Health Commission and President of the Commission must perform them directly.

CONCLUSION

The Health Commission has no duty under the Charter to approve or review SFDPH Agreements. The Municipal Code grants limited duties to the Health Commission to approve sole source designations for certain grants and professional services contracts as described above.

The Health Commission may amend its current contract review policy if it wishes to change the scope of the Agreements it reviews, or to require Commission approval of certain categories of Agreements.

Where City law requires the Health Commission to make findings to authorize the department to execute a sole source grant or professional services contract, it must formally act as a body to make those findings and approve the department's proposed action. Because those decisions involve personal judgment and discretion, the Health Commission may not delegate these responsibilities to others. Similarly, the Health Commission President may not delegate the responsibility to approve emergency contracts under Admin Code Section 21.15.