



THE CITY OF SAN DIEGO

DATE: December 30, 2009

TO: Ken Whitfield, City Comptroller

FROM: Eduardo Luna, City Auditor

SUBJECT: **City Charter Requirements for Unclaimed Funds**

During the course of conducting the Purchasing and Contracting performance audit, the issue of unclaimed monies came to our attention. Although not directly related to the City's Purchasing and Contracting Department, accounts payable-related issues are an element of the purchasing or expenditure cycle and therefore warranted our review. Currently, approximately \$778,000 in unclaimed money is in the City Treasury. Based on our review we found the process followed by the City Comptroller regarding the disposition of unclaimed monies is not in compliance with City Charter section 86. The Comptroller's Office follows the California Government Code procedures for unclaimed funds, which is in conflict with the City Charter regarding the time period that must pass before unclaimed monies are transferred to the general fund.

The objective of this review was to determine if the process followed by the City regarding the disposition of unclaimed monies is in compliance with the City Charter. To accomplish this objective, we reviewed the City Charter section 86, state laws governing unclaimed monies, the process followed by the City Comptroller's Office regarding the disposition of unclaimed monies, and the current amount of unclaimed monies in the City Treasury. We evaluated internal controls related to the audit objectives. Our review focused on controls related to compliance with the City Charter. Our conclusions on the effectiveness of the controls we reviewed are detailed below.

We conducted this 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 the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

City Charter Requirement Regarding Unclaimed Monies

The City Charter section 86, Disposition of Public Monies, states that “all funds which may remain in the possession of the City unclaimed after a period of one year from the date when due and payable, shall be credited to the general fund of the City, and shall be applicable to any purpose to which the Council may appropriate them...” However, per the Comptroller’s staff, the process followed at the City regarding the treatment of unclaimed money follows California Government Code section 50050. This Code section states that money in the treasury of a local agency after a period of three years becomes the property of the local agency after appropriate notice is made.

Additionally, Government Code section 50053 goes on to state that once the monies become the property of the public agency, the legislative body (Council) may transfer it to the general fund.

Due to the conflict between the City Charter and the California Government Code regarding the period of time that must pass before the unclaimed monies can be transferred to the general fund, we asked the City Attorney’s Office for a preliminary opinion regarding which regulation would take precedence. The preliminary opinion offered by the Deputy City Attorney suggested that the City Charter would take precedence as the unclaimed monies are a matter of municipal concern and not a statewide concern.

Unclaimed Monies in the City Treasury

Unclaimed monies held in the City Treasury with a check date prior to December 31, 2008, total \$777,832. Compliance with the City Charter requires these funds to be transferred to the general fund as they are older than one year. However, under the current process followed by the City Comptroller’s Office regarding the disposition of unclaimed monies, only amounts older than three years are to be transferred to the general fund.

Type of Unclaimed Money	Amount Older than 1 year	Amount Older than 3 years	Difference
Accounts Payable	\$578,470	\$119,633	\$458,837
Payroll	\$121,632	\$66,812	\$54,820
Pension	\$77,730	\$76,049	\$1,681
Total	\$777,832	\$262,494	\$515,338

Recommendation:

We recommend that the Office of the City Comptroller consult with the City Attorney to determine the legality of transferring the \$777,832 in unclaimed money to the general fund to be in compliance with the City Charter. If compliance with the City Charter supersedes the California Government Code, the Office of the City Comptroller should ensure appropriate processes and procedures are in place to ensure compliance.

City Comptroller Response:

We agree with the recommendation. The Office of the City Comptroller has requested a formal opinion from the Office of the City Attorney regarding the legality of whether or not our City Charter supersedes the California Government Code regarding the time requirement to escheat unclaimed money back to the City's general fund. Based upon that completed legal opinion, we will take the appropriate action in aligning our operating procedures and timing for the escheatment of unclaimed money. Our expectation for completion of the recommendation is within 90 days from receipt of the formal legal opinion.

Respectfully Submitted,



Eduardo Luna
City Auditor

cc: Honorable Mayor Jerry Sanders
Honorable City Council Members
Honorable Audit Committee Members
Jay M. Goldstone, Chief Operating Officer
Wally Hill, Assistant Chief Operating Officer
Mary Lewis, Chief Financial Officer
Jan Goldsmith, City Attorney
Andrea Tevlin, Independent Budget Analyst
Stanley Keller, Independent Oversight Monitor