

File No. 100099

Committee Item No. 6

Board Item No. 17

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee BUDGET AND FINANCE

Date 2/24/10

Board of Supervisors Meeting

Date 3/2/10

Cmte Board

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OTHER

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Completed by: Gail Johnson

Date 2/19/10

Completed by: HQ

Date 2/25/10

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

41

of side

FILE NO. 100099

ORDINANCE NO. _____

RO#10026

SA#26

1 [Appropriating ~~\$1,813,616~~ \$1,233,664 of General Fund Reserve to the Public Defender for
2 Salary Expenditures.]

3
4 **Ordinance appropriating ~~\$1,813,616~~ \$1,233,664 from the General Fund Reserve to the
5 Public Defender for salary expenditures in Fiscal Year 2009-2010.**

6 Note: Additions are single-underline italics Arial;
7 deletions are ~~strikethrough italics Arial~~.
8 Board amendment additions are double underlined.
9 Board amendment deletions are ~~strikethrough-normal~~.

10 Be it ordained by the People of the City and County of San Francisco:

11
12 Section 1. The sources of funding outlined below are herein appropriated to reflect the
13 funding available for Fiscal Year 2009-2010.

14
15 **SOURCES Appropriation**

Fund	Index Code	Subobject	Description	Amount
1G AGF AAA - GF-	*CON1GAGFAAA	098GR	General Fund	\$1,813,616
Non-Project-			Reserve	<u>\$1,233,664</u>
Controlled				
Total SOURCES Appropriation				<u>\$1,813,616</u>
				<u><u>\$1,233,664</u></u>

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23 Section 2. The uses of funding outlined below ~~are~~ is herein appropriated in Subobjects 00100
24 Salaries ~~and 01300 Fringe Benefits~~, and reflects the projected uses of funding to support
25 Public Defender salary expenditures in Fiscal Year 2009-2010.

Supervisor Mar
Board of Supervisors

Page 1 of 3

1 **USES Appropriation**

2	Fund	Index Code	Subobject	Amount
3	1G AGF AAA – GF-Non-Project-	055002	00100 Salaries	\$1,344,113
4	Controlled			<u>\$1,233,664</u>
5				
6	1G AGF AAA – GF-Non-Project-	055002	01300 Fringe Benefits	\$469,503
7	Controlled			
8	Total USES Appropriation			\$1,813,616
9				<u><u>\$1,233,664</u></u>

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11
12 Section 3. The Fiscal Year 2009-2010 Annual Appropriation Ordinance includes the rejection
13 of ~~\$1,813,616~~ \$1,233,664 in Salaries ~~and Fringe Benefits~~ by the Mayor, which is subject to
14 appropriation in this legislation. Pursuant to Charter Section 9.113, the funding of any item
15 previously rejected by the Mayor or the Board of Supervisors in consideration of the annual
16 budget shall require a two-thirds vote of all members of the Board of Supervisors for approval.
17 Therefore, the appropriation of ~~\$1,813,616~~ \$1,233,664 within this appropriation is subject to a
18 two-thirds affirmative vote of all members of the Board of Supervisors.

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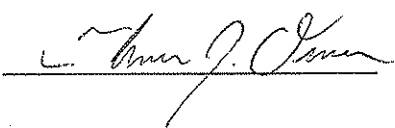
FUNDS AVAILABLE

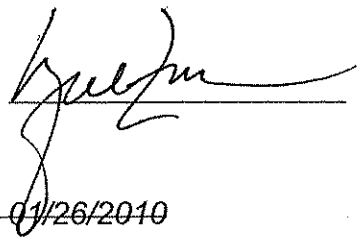
APPROVED AS TO FORM:

BEN ROSENFELD

DENNIS J. HERRERA, City Attorney

Controller

By: 

By: 

Deputy City Attorney

Date: 01/26/2010

Amended Date: 02/24/2010

Item 6
File 10-0099

Department(s):
Public Defender's Office

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed ordinance would appropriate \$1,813,616 from the General Fund Reserve to the Public Defender's Office to fill vacant positions and to resolve a budgetary shortfall in FY 2009-2010, requiring two-thirds affirmative vote of all members of the Board of Supervisors, per San Francisco Charter Section 9.113.

Fiscal Impacts

- The proposed supplemental appropriation of \$1,813,616 would be funded with monies from the General Fund Reserve. On February 9, 2010, the Controller certified the availability of General Fund Reserve monies for this proposed supplemental appropriation.

Key Points

- The proposed \$1,813,616 supplemental appropriation would provide (1) \$1,411,425 to pay for a projected FY 2009-2010 salary and fringe benefit deficit, and (2) \$402,191 to pay for salaries and fringe benefits to fill 10 vacant positions.
- Although the Public Defender is requesting \$1,411,425 to pay for a projected salary and fringe benefit deficit in FY 2009-2010, the Controller projects that the FY 2009-2010 salary and fringe benefit deficit is \$881,802. The Budget and Legislative Analyst concurs with this Controller's estimate, and therefore, recommends disapproval of \$529,623 (which is the difference between the Public Defender's requested amount and the Controller's projections).
- The Public Defender is requesting \$402,191 to pay for salaries and fringe benefits to fill 10 vacant positions. The Public Defender has not provided sufficient workload justification to fill these 10 vacant positions. Further, until the City Service Auditor completes a pending report that will include an analysis of the Public Defender's historical caseload and staffing requirements, adequate workload justification will not be available. Therefore, the Budget and Legislative Analyst recommends the disapproval of this requested \$402,191 to fill 10 vacant positions.
- As noted in File 10-0059, neither the Public Defender nor the Superior Court's Indigent Defense Program can provide an explanation for the increased number of cases referred by the Public Defender to the Indigent Defense Program nor if these cases are due to a conflict of interest or unavailability of Public Defender's staff.

- The District Attorney's Office, which files the criminal cases defended by the Public Defender's Office and the Indigent Defense Program, reports a 5 percent decrease in projected FY 2009-2010 cases, from 18,611 cases in FY 2008-2009 to 17,752 cases in FY 2009-2010, a decrease of 859 cases. The Public Defender's Office and Indigent Defense Program report a combined 6 percent increase in projected FY 2009-2010 cases, from 19,368 total cases in FY 2008-2009 to 20,573 total cases in FY 2009-2010, an increase of 1,205 cases

Recommendations

The Budget and Legislative Analyst recommends reducing the requested supplemental appropriation by \$931,814, from \$1,813,616 to \$881,802 to fund the projected FY 2009-2010 salary deficit. The Budget and Legislative Analyst concurs with this Controller's estimate of the Public Defender's year-end salary and fringe benefit deficit of \$881,802. The reduction of \$931,814 in the supplemental appropriation is based on (a) a reduction of \$402,191 to fill 10 vacant positions, which the Budget and Legislative Analyst recommends disapproval of; and (b) a reduction of \$529,623 to reflect the Controller's salary deficit projection of \$881,802.

Approve the proposed resolution, as amended above.

MANDATE STATEMENT

The United States and California constitutions mandate that all citizens are entitled to legal representation when arrested for a crime, regardless of ability to pay. The Sixth Amendment to the United States Constitution guarantees the right of all indigent defendants to legal counsel (attorney representation). California Penal Code Section 987.2 provides that in any case in which a person desires but is unable to employ counsel, assigned counsel shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court, to be paid out of the county general fund.

San Francisco Charter Section 9.113 (d) specifies that no ordinance or resolution for the expenditure of money shall be approved by the Board of Supervisors unless the Controller first certifies to the Board that there is a sufficient unencumbered balance in a fund that may legally be used for such proposed expenditure, and that, in the judgment of the Controller, revenues as anticipated in the appropriation ordinance for such fiscal year and properly applicable to meet such proposed expenditures will be available in the treasury in sufficient amount to meet the same as it becomes due.

San Francisco Charter Section 9.113 (c) specifies that 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, a vote of two-thirds of all members of the Board of Supervisors is then required to approve such supplemental appropriation ordinance.

DETAILS OF PROPOSED LEGISLATION

Background

The United States and California constitutions and case law mandate that all citizens are entitled to legal representation when arrested for a crime, regardless of ability to pay. To comply with these requirements, the City and County of San Francisco provides legal representation for indigent defendants who are unable to afford private counsel through two primary entities: (1) the Public Defender's Office and (2) Superior Court's Indigent Defense Program.

The Public Defender's Office is the department primarily responsible for providing first tier representation in all adult and juvenile indigent defense cases heard in Superior Court, including misdemeanor and felony preliminary hearing courts, mental health and juvenile courts, drug court, and domestic violence court, among others. The Public Defender's Office refers cases to the Superior Court's Indigent Defense Program when there is an ethical conflict of interest as defined by law. Examples of when a conflict of interest may occur are when there are multiple defendants in a case or when the Public Defender's Office has a previous relationship with the defendant or a witness.

The Public Defender's FY 2009-2010 budget of \$23,242,444 is \$17,267 less than the department's actual FY 2008-2009 expenditures of \$23,259,711. The Public Defender's Office is projecting the same number of cases in FY 2009-2010 as in FY 2008-2009. Table 1 below shows the Public Defender's Office's total expenditures and number of cases over the last five fiscal years.

	Total Expenditures	Total Felony Cases Handled	Total Misdemeanor Cases Handled	Total Juvenile Cases Handled	Total Other Cases Handled
FY 2009-2010	\$23,242,444 (budgeted)	13,507 (projected)	8,637 (projected)	2,231 (projected)	6,223 (projected)
FY 2008-2009 (Actual)	\$23,259,711	13,507	8,637	2,231	6,223
FY 2007-2008 (Actual)	\$23,757,762	12,870	10,737	1,834	6,218
FY 2006-2007 (Actual)	\$21,937,304	11,070	10,406	1,813	7,338
FY 2005-2006 (Actual)	\$19,140,589	11,262	10,019	1,649	7,888

Source: Controller's Memorandum (dated June 23, 2009) to Supervisor Sean Elbernd regarding an inquiry into the Public Defender's Office's budget and caseload; and budget and caseload information provided by the Public Defender's Office.

As indicated in Table 1, the Public Defender's Office's FY2009-2010 budget (\$23,242,444) and caseload projections (13,507 felonies and 8,637 misdemeanors) are approximately the same as the Department's FY 2008-2009 actual expenditures (\$23,259,711) and actual caseloads (13,507 felonies and 8,787 misdemeanors).

Supplemental Appropriation Request

The proposed ordinance would appropriate \$1,813,616 from the General Fund Reserve to fill vacant positions and to resolve a projected budget shortfall. According to Ms. Angela Auyong, Executive Assistant to the Public Defender, the supplemental appropriation amount was derived by adding the following amounts, as shown in Table 2 below.

Table 2. Calculation of the Public Defender's Office's Supplemental Appropriation Request	
(a) Estimated salary deficit (with current staffing) based on the difference between Department's salary budget and projected salary expenditures through June 30, 2010	\$1,046,041*
(b) Estimated Mandatory Fringe Benefits related to the adjustments, calculated at 34.93 percent of Attrition Savings and STEP M adjustments	365,384*
(c) Salary costs to fill 10 vacant positions from March 5, 2010 through June 30, 2010 (see Table 3 below)	298,074**
(d) Estimated Mandatory Fringe Benefits related to the hiring of 10 vacant positions, calculated at 34.93 percent of salary costs to fill 10 vacant positions	104,117**
TOTAL	\$1,813,616

* These two amounts total \$1,411,425.

** These two amounts total \$402,191.

According to Ms. Auyong, the Public Defender's Office's projected salary expenses cover permanent salary, temporary salary, premium and one time payments. The total salary deficit amount of \$1,046,041 (through June 30, 2010) is based on salary costs paid to exiting staff, and does not include the salary costs of filling 10 vacant positions.

According to Ms. Aimee Fribourg, Budget Analyst from the Controller's Office, the mandatory fringe benefits calculations were derived by multiplying the salary costs by the average mandatory fringe benefit percentage for the 10 positions, which was 34.93 percent.

Ms. Auyong advised that the anticipated hiring date for these positions will be March 5, 2010. Table 3 below shows how the salary cost of \$298,0745 to fill 10 vacant positions was derived. Attachment 1 of this report is a memorandum from the Public Defender's Office on information regarding these 10 vacant positions, including the position number, title, and summary of responsibilities.

Table 3. Costs of Backfilling 10 Vacant Positions in FY 2009-2010 ¹

Job Class	Position Title	No. of Vacancies	Salary Cost Based on Hiring Date 3/5/10 (multiplied by No. of Vacancies)	Mandatory Fringe Benefits at 34.93% (multiplied by No. of Vacancies)	Total Costs for FY 2009-10
8173	Legal Assistant	3	\$ 67,937	\$ 23,730	\$ 91,667
8177	Attorney	2	70,475	24,617	95,092
8446	Court Alternative Specialist	1	17,754	6,201	23,955
8108	Senior Legal Processing Clerk	1	16,787	5,864	22,650
8177	Attorney	2	70,475	24,617	95,092
8182	Head Attorney	1	54,647	19,088	73,735
	TOTAL	10	\$ 298,074	\$ 104,117	\$ 402,192

¹ Amounts may differ by \$1 due to rounding.

Two-thirds Affirmative Vote Requirement

The FY 2009-2010 Annual Appropriation Ordinance includes the rejection of \$1,813,616 in the Public Defender's Office budget by the Mayor. That \$1,813,616 is now the subject of this supplemental appropriation legislation. San Francisco Charter Section 9.113 (c) specifies that 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, a vote of two-thirds of all members of the Board of Supervisors is then required to approve such a supplemental appropriation ordinance. Since this \$1,813,616 was previously rejected by the Mayor, a two-thirds affirmative vote of all members of the Board of Supervisors is required.

FISCAL IMPACTS & CONSIDERATIONS

The Public Defender plans to fill 10 vacant positions, with an annualized cost of \$1.2 million.

According to Ms. Auyong, the annualized cost for the 10 positions will be \$1,163,761. The requisitions for six out of the 10 positions (i.e., three 8173 Legal Assistants, two 8177 Attorneys, and one 8446 Court Alternative Specialist) have been rejected by the Mayor's Office, and the requisitions for the remaining four positions are pending approval by the Mayor's Office. Ms. Rebekah Krell, Senior Fiscal and Policy Analyst for the Mayor's Office, advised that the Mayor's Office denied the Public Defender's requisitions because the Public Defender's Office lacked the necessary funding to hire the positions. Table 4 below shows the annualized salary and mandatory fringe benefits costs for these 10 positions, including their requisition status.

Table 4. Annualized Salary Costs of Filling 10 Vacant Positions

Job Class	Position Title	No. of Vacancies	Annual Salary 2010-11 (multiplied by No. of Vacancies)	Mandatory Fringe Benefits at 34.93% (multiplied by No. of Vacancies)	Total Annualized Costs	Requisition Status
8173	Legal Assistant	3	\$196,578	\$68,665	\$265,242	Rejected
8177	Attorney	2	203,924	71,231	275,155	Rejected
8446	Court Alternative Specialist	1	51,371	17,944	69,315	Rejected
8108	Sr Legal Processing Clerk	1	48,573	16,966	65,539	Pending
8177	Attorney	2	203,924	71,231	275,155	Pending
8182	Head Attorney	1	158,123	55,232	213,356	Pending
TOTAL		10	\$862,492	\$301,269	\$1,163,761	

Mr. Adachi reported that the Public Defender’s Office is requesting to fill these 10 positions to handle its caseload and that the department has not been allowed to fill these positions due to lack of funding. Table 5 below, which was provided by the Public Defender’s Office, shows a comparison between the budgeted and actual number of positions for attorney, paralegal, and support staff positions over the last five fiscal years.

Table 5. Budgeted vs. Actual Number of Positions Over the Last 5 Fiscal Years

Fiscal Year	BUDGETED			ACTUALS (FILLED)			DIFFERENCE BETWEEN BUDGETED & ACTUALS		
	Attorney	Paralegal	Support Staff	Attorney	Paralegal	Support Staff	Attorney	Paralegal	Support Staff
FY 09-10	78.00	16.00	65.17	73.00	13.00	63.00	5.00	3.00	2.17
FY 08-09	77.45	16.00	69.17	77.00	13.00	65.00	0.45	3.00	4.17
FY 07-08	79.75	15.75	65.42	80.00	16.00	65.00	-0.25	-0.25	0.42
FY 06-07	78.50	13.50	61.92	79.00	14.00	62.00	-0.50	-0.50	-0.08
FY 05-06	77.00	12.00	55.17	77.00	12.00	55.00	0.00	0.00	0.17

The Controller has certified this supplemental appropriation, which will be funded by General Fund Reserves.

The San Francisco Charter Section 9.113 (d) specifies that no ordinance or resolution for the expenditure of money shall be approved by the Board of Supervisors unless the Controller first certifies to the Board that there is a sufficient unencumbered balance in a fund that may legally be used for such proposed expenditure, and that, in the judgment of the Controller, revenues as anticipated in the appropriation ordinance for such fiscal year and properly applicable to meet such proposed expenditures will be available in the treasury in sufficient amount to meet the same as it becomes due.

According to Ms. Monique Zmuda of the Controller’s Office, with the implementation of the Mayor’s mid-year reduction plan, the General Fund Reserve will have a projected year-end balance of \$29.6 million. As such, on February 9, 2010, the Controller certified that General

Fund Reserve monies are available to fund the Public Defender's Office's supplemental appropriation request of \$1,813,616.

The Public Defender projects to end the fiscal year with a \$1.8 million deficit, but the Department has not provided the Mayor's Office with its mid-year reductions.

The Controller's FY 2009-10 Six-Month Budget Status Report, which was released on February 9, 2010, reported that the Public Defender projects a deficit of \$1.8 million; of which, \$1.4 million is due to projections above budgeted levels to maintain current staffing and \$0.4 million is due to the Public Defender's plan to hire currently vacant unfunded positions.

According to Ms. Krell, the Mayor's Office continues to have discussions with the Public Defender's Office about the Department's projected FY 2009-2010 deficit. Ms. Krell reported that the Public Defender's Office was given a mid-year target budget reduction of \$904,368 (3.9 percent of the Public Defender's Office's FY 2009-2010 General Fund budget of \$23,188,923) but that the Public Defender's Office did not offer any budget reductions to the Mayor's Office.

POLICY CONSIDERATIONS

The Controller projects a deficit of \$881,802 in the Public Defender's salary costs for FY 2009-2010.

The proposed \$1,813,616 supplemental appropriation would provide (1) \$1,411,425 to pay for a projected FY 2009-2010 salary and fringe benefit deficit,¹ and (2) \$402,191 to pay for salaries and fringe benefits to fill 10 vacant positions.²

The Controller's Monthly Salary and Fringe Benefit Projection Report for the Public Defender's Office for pay period ending on January 22, 2010 estimated that the Public Defender's Office will have a year-end (as of June 30, 2010) deficit of \$881,802 in salary and fringe benefit costs based on the most recent pay period. The Budget and Legislative Analyst concurs with this Controller's estimate of the Public Defender's year-end salary and fringe benefit deficit and, therefore, recommends approval of \$881,802 out of the Public Defender's requested \$1,411,425 to pay for a projected salary and fringe benefit deficit in FY 2009-2010. This recommendation results in a total reduction of \$529,623 out of the Public Defender's requested \$1,411,425 to pay for a projected FY 2009-2010 salary and fringe benefit deficit.

The Public Defender Has Not Provided Sufficient Justification for Increased Funding to Fill 10 Vacant Positions

The Public Defender has not provided sufficient workload justification to fill 10 vacant positions. As noted below and in File 10-0059, neither the Public Defender nor the Superior Court's Indigent Defense Program can provide an explanation for the increased number of

¹ \$1,046,041 to pay for salaries and \$365,384 to pay for fringe benefits, as shown in Table 2.

² \$298,074 to pay for salaries and \$104,117 to pay for fringe benefits, as shown in Table 2.

cases referred by the Public Defender to the Indigent Defense Program nor if these cases are due to a conflict of interest or unavailability of Public Defender's staff.

In addition, according to Ms. Lani Kent of the Controller's City Services Auditor Division, the City Service Auditor is preparing a report that includes an analysis of Public Defender's historical caseload and staffing requirements. As of the writing of this report, Ms. Kent advised that the release date for this City Services Auditor report is pending. According to Mr. Jeff Adachi, the Controller's report will provide specific staffing recommendations and a historical analysis of the Public Defender's Office's caseloads/workloads. Ms. Krell from the Mayor's Office reported that this Controller's report will provide an assessment of the Public Defender's caseload and staffing, which will be helpful in determining the Public Defender's Office's caseload and staffing benchmark.

Because the Public Defender's Office has not provided sufficient explanation for the increased number of cases referred by the Public Defender to the Indigent Defense Program, and because the Controller's comprehensive analysis of the Public Defender's Office has not yet been completed as of the writing of this report, the Budget and Legislative Analyst recommends disapproval of the Public Defender's request for \$402,191 in supplemental appropriation funding to fill 10 vacant positions.

As indicated above, the Budget and Legislative Analyst recommends approval of \$881,802 out of the Public Defender's requested \$1,813,616 supplemental appropriation to reflect the Budget and Legislative Analyst's concurrence with the Controller's salary and fringe benefits deficit projection. In total, the Budget and Legislative Analyst is recommending the disapproval of \$931,814 in supplemental appropriation, which is comprised of (a) \$402,191 requested to fill 10 vacant positions, which the Budget and Legislative Analyst recommends disapproval of; and (b) \$529,623 in concurrence with the Controller's deficit projections of \$881,802.

The Public Defender's Office and the Superior Court's Indigent Defense Program Have Not Provided an Explanation for the Indigent Defense Program's Increased Caseload in FY 2009-2010.

The Budget and Finance Committee is considering a separate ordinance related to a supplemental appropriation request from the Superior Court Indigent Defense Program (File No. 10-0059). As discussed in File No. 10-0059, both the Public Defender's Office and the Superior Court's Indigent Defense Program provide legal representation for indigent defendants who are unable to afford private attorneys. While the Public Defender should only refer cases to the Superior Court's Indigent Defense Program if the Public Defender has a conflict of interest, neither the Indigent Defense Program nor the Public Defender can confirm if all Indigent Defense Program appointments are due to conflict of interest or if some Indigent Defense Program appointments are in fact due to staff unavailability in the Public Defender's Office.

Neither the Superior Court nor the Public Defender's Office has provided an explanation for the increased Indigent Defense Program caseload in FY 2009-2010. The District Attorney's Office, which files the criminal cases defended by the Public Defender's Office and the Indigent Defense Program, reports a 5 percent decrease in projected FY 2009-2010 cases, from 18,611 cases in FY 2008-2009 to 17,752 cases in FY 2009-2010, a decrease of 859 cases. The Public Defender's Office and Indigent Defense Program report a combined 6 percent increase in

projected FY 2009-2010 cases, from 19,368 total cases in FY 2008-2009 to 20,573 total cases in FY 2009-2010, an increase of 1,205 cases.

Also, as discussed in File 10-0059, neither the Superior Court's Indigent Defense Program nor the Public Defender's Office have a consistent approach for tracking caseload and case information to ensure the data's accuracy and completeness. Further, according to Mr. Michael Yuen, Chief Financial Officer for the Superior Court, despite requests from the Superior Court to the Public Defender to differentiate between cases assigned due to unavailability from those assigned because of the Public Defender's ethical obligation to avoid a conflict of interest, the format for Public Defender's Office's monthly reports provided to the Superior Court has not changed, making it difficult for the Superior Court to accurately track the number of cases assigned due to the Public Defender's real conflict of interest versus the number of cases assigned due to unavailability of Public Defender staff and resources.

RECOMMENDATIONS

The Budget and Legislative Analyst recommends reducing the requested supplemental appropriation by \$931,814, from \$1,813,616 to \$881,802 to fund the projected FY 2009-2010 salary deficit. The Budget and Legislative Analyst concurs with this Controller's estimate of the Public Defender's year-end salary and fringe benefit deficit of \$881,802, or \$529,623 less than the \$1,411,425 (see Table 2 above) to pay for a projected salary and fringe benefit deficit. The reduction of \$931,814 in the supplemental appropriation is based on (a) a reduction of \$402,191 (see Table 2 above) to fill 10 vacant positions, which the Budget and Legislative Analyst recommends disapproval of; and (b) the above-noted reduction of \$529,623 to reflect the Controller's salary deficit projection of \$881,802.

Approve the proposed ordinance, as amended above.



Office of the Public Defender
City and County of San Francisco

Jeff Adachi
Public Defender
Teresa Caffese
Chief Attorney

TO: Mark de la Rosa, Board of Supervisor's Budget Analyst
FROM: Jeff Adachi, Public Defender
DATE: February 16, 2010
RE: File 100099 Public Defender Supplemental Appropriation Request

Per your request, below please find the detailed information of the position number, title, and summary of responsibilities for all ten requisitions.

- a. 8173 (3 FTEs), Legal Assistant. Duties include: investigating, collecting and compiling case materials and documentary evidence; drafting Motions and other pleadings connected with trial preparation and discovery; interviewing witnesses and assisting the attorney at trial; performing legal research and assisting in the preparation of briefs and legal opinions; may performing statistical research required for litigation.
- b. 8177 (4 FTEs), Attorney. Duties include: serving as a counsel to persons charged with the commission of crimes who are financially unable to employ counsel; representing such defendants in criminal court and jury trials; trying jury and non-jury criminal cases in the Superior Court; interviewing witnesses; conducting and or supervising investigations and writing legal briefs in conjunction with assigned cases and trials; preparing daily court calendar and maintaining various records of warrants and citations issued.
- c. 8446 (1FTE), Court Alternative Specialist. This position is responsible for all of the office's correspondence/communication with the public, media, government agencies and responds to public records requests. The essential functions of this position, include, but are not limited to: drafting press releases, press alerts, opinion articles; coordinating press conferences, personal appearances for the Public Defender and other staff; responding to requests from the public for information about the Public Defender's office; conducting daily media monitoring and maintaining media clippings; developing and maintaining 311 materials; attending meetings and representing the Public Defender in matters concerning communications and policy; assisting Public Defender in developing a comprehensive policy platform that outlines the Public Defender's positions on selected criminal justice issues; developing a communications strategy that promotes the offices identified policy goals; compiling data and media coverage related to policy; maintaining current media and legislative contact lists; and identifying, building and maintaining relationships with media, legislative contacts, community based organizations and committees with parallel policy concerns.
- d. 8108 (1FTE), Sr. Legal Process Clerk. Duties include: reviewing, processing, routing, filing recording and retrieving legal documents using alphabetical, chronological and numerical filing systems; examining warrants or legal documents to determine acceptability for recording or filing; typing forms, memoranda and records; operating computer terminals to perform data entry and retrieve research information; responding

to inquiries from the public, attorneys, witnesses, police and other law enforcement agencies in person, over the telephone, or in writing; researching files and computer records to locate requested information; distributing mail and delivering legal papers to courtroom or designated offices; may supervise and/or train subordinates or co-workers.

e. 8182 (1FTE), Head Attorney. Duties include: preparing and prosecuting the most involved and important criminal cases in the Superior Court; advising, supervising and reviewing the work of subordinate attorneys and investigators in connection with the prosecution of criminal cases; supervising and participating in the gathering and presentation of evidence to the Grand Jury relative to possible issuing of indictments by the Grand Jury.


Please contact me if you have any further questions. Thank you.

Gabriela
Loeza/BudgetAnalyst/SFGOV

02/22/2010 04:14 PM

To Michela Alioto-Pier/BOS/SFGOV@SFGOV, John
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Campos/BOS/SFGOV@SFGOV, David
cc Mark delaRosa/BudgetAnalyst/SFGOV@SFGOV
bcc

Subject Budget Analyst's Response to Public Defender's Comments
(Supplemental Appropriation Request)

History:  This message has been forwarded.

The attached document is an electronic version of the Budget and Legislative Analyst's response to the Public Defender's comments regarding the Budget and Legislative Analyst's February 24, 2010 report to the Budget and Finance Committee (Item 6, File, No. 10-0099) on the Public Defender's request for a supplemental appropriation ordinance.



FINAL Budget Analyst Response to PDR Comments 022210.pdf

**BOARD OF SUPERVISORS****BUDGET AND LEGISLATIVE ANALYST**

1390 Market Street, Suite 1025, San Francisco, CA 94102 (415) 554-7642
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February 22, 2010

Honorable Jeff Adachi
Public Defender
City and County of San Francisco

Dear Mr. Adachi:

This letter is in response to your comments (see Attachment) regarding the Budget and Legislative Analyst's February 24, 2010 report to the Budget and Finance Committee (Item 6, File, No. 10-0099) on the Public Defender's request for a supplemental appropriation ordinance, wherein the Public Defender states that the Budget Analyst's report contains "a number of material errors".

Public Defender's Comment #1: (1) "It is not accurate" for the Budget Analyst to use the last pay period to project our salary needs instead of the detailed spending plan we provided.

Budget and Legislative Analyst's Response:

The Budget and Legislative Analyst disagrees with the Public Defender's FY 2009-2010 salary spending plan. The Public Defender has developed a FY 2009-2010 spending plan that exceeds the Department's budget authority, as previously authorized by the Board of Supervisors. The Public Defender's FY 2009-2010 salary spending plan of \$17,241,837 exceeds the Public Defender's FY 2009-2010 previously authorized budget for salaries of \$16,195,792 by \$1,046,045, or 6.5 percent.

Further, the Public Defender assumes that new salary spending, including spending for temporary salaries, through June 30, 2010 will be higher than salary spending prior to February 5, 2010. Although actual salary expenditures vary by pay period, salary expenditures do not consistently *increase* per pay period, but rather can increase or decrease based on several factors, including salary step adjustments, paid or unpaid leave, vacant positions, and other salary

BOARD OF SUPERVISORS
BUDGET AND LEGISLATIVE ANALYST

adjustments.¹ The Public Defender has not provided sufficient justification for the assumed salary increases from February 5, 2010 through June 30, 2010.

It should be noted that the Budget Analyst's recommended appropriation independently concurs with the Controller's projection of \$881,802 for the Public Defender's FY 2009-2010 salary and fringe benefit deficit, based on the Public Defender's actual salary and fringe benefit expenditures through January 22, 2010.²

Public Defender's Comments #2, #3, and #4, related to a request to fill 10 vacant positions: (2) The Budget Analyst "incorrectly" stated that the Public Defender failed to provide case counts as to cases declined by the Public Defender based on insufficient staffing; (3) The Budget Analyst "incorrectly" stated that the Public Defender failed to provide an explanation for the increased number of cases referred by the Public Defender; and (4) The Budget Analyst "incorrectly" stated that the Public Defender had failed to provide workload justification to filling vacant positions.

Budget and Legislative Analyst's Response:

On page 6- 8 of our February 24, 2010 report to the Budget and Finance Committee, the Budget and Legislative Analyst noted that the City Services Auditor is preparing a report that includes an analysis of Public Defender's historical caseload and staffing requirements. As of the writing of the Budget and Legislative Analyst report, the release date for this City Services Auditor report is still pending. According to Mr. Adachi's response, the Controller's report will provide specific staffing recommendations and a historical analysis of the Public Defender's Office's caseloads/workloads. The Mayor's Budget Office reported that the Controller's report will provide an assessment of the Public Defender's caseload and staffing, which will be helpful in determining the Public Defender's Office's caseload and staffing benchmark. Given the importance of the City Services Auditor's pending report, and until the City Services Auditor completes this pending report, which will include a comprehensive analysis of the Public Defender's historical caseload and staffing needs, adequate workload justification involving the Public Defender's case counts and staffing requirements has not been provided to the Budget and Legislative Analyst.

In the professional judgment of the Budget and Legislative Analyst, the related caseload and staffing data provided by the Public Defender to the Budget and Legislative Analyst is inadequate to justify approval for filling the 10 vacant positions as requested by the Public Defender.

¹ From July 1, 2010 through February 5, 2010, the Public Defender's salary spending per pay period has varied from a high of \$683,101 for the pay period ending September 4, 2009, to a low of \$629,770 for the pay period ending February 5, 2010.

² The Controller has projected a salary deficit of \$885,425 and a fringe benefit surplus of \$3,623, resulting in an estimated net deficit total of \$881,802.

Mr. Jeff Adachi
February 22, 2010
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Summary

In summary, based on the Public Defender's response to our report of February 24, 2010 to the Budget and Finance Committee (Item 6, File 10-0099), the Budget Analyst's recommendations stand.

Respectfully submitted,



Harvey M. Rose, Budget Analyst

cc: Supervisor Avalos
Supervisor Mirkarimi
Supervisor Elsbernd
President Chiu
Supervisor Alioto-Pier
Supervisor Campos
Supervisor Chu
Supervisor Daly
Supervisor Dufty
Supervisor Mar
Supervisor Maxwell
Clerk of the Board
Cheryl Adams
Controller
Greg Wagner
Ms. Angela Auyong, Public Defender's Office

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BUDGET AND LEGISLATIVE ANALYST

Response to Budget Analyst Executive Summary

(Item #6 file no. 10-0099)

KEY POINTS 2

Budget analyst wrote: although the Public Defender is requesting \$1,411,425 to pay for a projected salary and fringe benefit deficit in FY 2009-2010, the Controller projects that the FY 2009-2010 salary fringe benefit deficit is \$ 881,802.

Public Defender's response: The amount of \$ 881,802 projected by the Controller was based solely on pay period ending January 22, 2010 (see attached Controller report). All future step increases, one-time payments and unpaid staff returning to work were not factored in that projection. If you look at the Controller's monthly salary and fringe benefit projection report, the department's deficit will be \$1,091,601, if using an average pay period. It is not accurate to use one particular pay period to project the year-end balance. Please note that the department provided the budget analyst with the spending plan including YTD salary expenses with projected future expenses (see attached file name: FY 09 PDR Salary Spending 2.5.10 without Backfills). The amount of the projected deficit will be \$1,411,425 including salary and fringe benefits. This is based and projected on salary paid and will be paid to existing staff pay period by period. The department requests the budget analyst revise the recommendation and approve additional \$529,623 to appropriately fund the shortage in its salary and fringe benefit.

KEY POINTS 3

Budget analyst wrote: the Public Defender is requesting \$402,191 to pay for salaries and fringe benefits to fill 10 vacant positions. The Public Defender has not provided sufficient workload justification to fill these 10 vacant positions. As noted in File 10-0099, neither the Public Defender nor the Superior Court's Indigent Defense Program can provide an explanation for the increased number of cases referred by the Public Defender to the Indigent Defense Program nor if these cases are due to a conflict of interest or unavailability of Public Defender's staff. The District Attorney's Office, which files the criminal cases defended by the Public Defender's Office and the Indigent Defense Program, reports a 5 percent decrease in projected FY 2009-2010 cases, from 18,611 cases in FY 2008-2009 to 17,752 cases in FY 2009-2010, a decrease of 859 cases. The Public Defender's Office and Indigent Defense Program report a combined 6 percent increase in projected FY 2009-2010 cases, from 19,368 total cases in FY 2008-2009 to 20,573 total cases in FY 2009-2010, an increase of 1,205 cases.

Public Defender's response: The Public Defender has provided workload justification to fill the 10 vacant positions. As indicated previous correspondence, the attorney staffing assumptions were based on the caseloads/workloads that attorneys are able to handle. The number of

attorneys is based on an assumption that each felony attorney will handle 245 cases per attorney annually and each misdemeanor attorney will handle 516 cases annually. Based on these caseload standards, the office would need a total of 8 additional felony attorneys and 5 misdemeanor attorneys. This is based on a workload of 13,507 felony cases and 8,637 misdemeanor cases projected in 2009-2010. The desired paralegal support staff ratio is 1 paralegal to 5 attorneys; currently, the office has 1 paralegal to 7 attorneys. In order to have a ratio of 1 to 5, we would need 5 additional paralegals.

The support staff is also based on a ratio of support staff needed to assist the attorneys. The senior legal processing clerk staffs several courtrooms and performs other necessary office duties, such as answering phones, typing and other administrative tasks. Currently, the department only has nine clerks to support the work of 89 attorneys and managers. The court alternative specialist is the office's communication and policy assistant, and is the only such position in the department. The department receives many requests to respond to public inquiries and to communicate with other agencies and departments, as well as policy bodies. Current staff levels fall short of the number of staff needed to handle all of the assigned cases.

PARAGRAPH 3 UNDER TABLE 2

Budget analyst wrote: Ms. Auyong advised that the anticipated hiring date for these positions will be March 5, 2010. Table 3 below shows how the salary cost of \$298,0745 to fill 10 vacant positions was derived. Attachment 1 of this report is a memorandum from the Public Defender's Office on information regarding these 10 vacant positions, including the position number, title, and summary of responsibilities.

Public Defender's response: At the time of the supplemental appropriation request was submitted, the department anticipated the hiring date for these positions to be February 22, 2010 (not March 5, 2010). The salary cost will be \$ 298,074 (not \$ 298,0745). Please also change the hiring date to 2/22/10 in table 3 to reflect the 9.3 pay periods total from February 22, 2010 to June 30, 2010.

PARAGRAPH 2 ON PAGE 6

Budget analyst wrote: the Controller projects a deficit of \$885,452 in the Public Defender's salary costs for FY 2009-2010. The Controller's Monthly Salary and Fringe Benefit Projection Report for the Public Defender's Office for pay period ending on January 22, 2010 estimates that the Public Defender's Office will have a year-end deficit of \$881,802 in salary and fringe benefit costs based on the most recent pay period.

Public Defender's response: The Controller's projection was based on pay period ending January 22, 2010 and did not include any future step increases, one-time payments and salary will be paid for those who return to work after non-paid leave. Referring to the same Controller's report, the projected deficit will be \$1,168,175 using an average pay period. This

amount is higher than the deficit that the department projected. Again, it is more accurate to use the department's projection since it factored in all future increases.

POLICY CONSIDERATIONS

Budget analyst wrote: the proposed \$1,813,616 supplemental appropriation would provide (1) \$1,411,425 to pay for a projected FY 2009-2010 salary and fringe benefit deficit, and (2) \$402,191 to pay for salaries and fringe benefits to fill 10 vacant positions. The Public Defender has not provided sufficient workload justification to fill 10 vacant positions. As noted below and in File 10-0099, neither the Public Defender nor the Superior Court's Indigent Defense Program can provide an explanation for the increased number of cases referred by the Public Defender to the Indigent Defense Program nor if these cases are due to a conflict of interest or unavailability of Public Defender's staff. Therefore, the Budget and Legislative Analyst recommends disapproval of \$402,191 to fill 10 vacant positions.

Public Defender's response: The Public Defender has provided the actual number of cases where representation was declined due to unavailability. A detailed list of each case where the Public Defender has declared unavailability due to insufficient staff is attached to this memorandum.

When a conflict of interest exists, the deputy public defender fills out a form indicating the reason for the conflict of interest and other information concerning the case. The form is then submitted to the attorney's manager, who approves the declaration of conflict, and then is reviewed by the Chief Attorney. The form is then maintained by the office and a summary excel document prepared listing all of the cases in which conflicts are declared. The completed approved forms are kept by the office's bookkeeper and are available for inspection. The department sends the summary document to Bar Association of San Francisco. The Bar Association of San Francisco then reconciles the form with the information they receive from their attorneys who receive cases for assignment. The Bar Association also adds cases where conflicts were declared by the court or for other reasons not involving the Public Defender's office. As you requested, we have attached monthly summary reports and detailed case information from July 2007 to present. Among these cases, a total of 858 cases were declined due to insufficient staffing.

PDR has been working with the Controller and Mayor to reduce the overall cost of indigent defense by providing the office with adequate staffing to reduce the cases referred to the private bar conflicts panel. The Superior Court is seeking \$3.2 million over and above last year's budget appropriation. By adequately staffing the Public Defender's office, the cost of hiring outside attorneys to handle cases that the Public Defender's office cannot handle due to lack of staffing will be reduced. The Controller's forthcoming recommendations will provide specific staffing recommendations and a historical analysis of the office's caseloads/workloads.

Budget analyst wrote: further, the Public Defender has not provided sufficient justification for \$1,411,425 to pay for a projected salary and fringe benefit deficit in FY 2009-2010. Therefore, the Budget and Legislative Analyst recommends approval of \$881,802 to pay for FY 2009-2010 salary and fringe benefit deficit projected by the Controller, and disapproval of \$529,623.

Public Defender's response: The department provided the budget analyst with a detailed spending plan which justified the amount of deficit that the department will have (attached to this memorandum). It factored all future step increases, one-time payments and salary that will be paid to staff who will return to work from non-paid leave. The Controller's projection did not include these expenses; therefore, the deficit was under estimated. The department requests the budget analyst revise the recommendation and approve additional \$529,623 to appropriate fund the shortage in its salary and fringe benefit.

Additional attorneys required (based on historical caseload)	
Caseload type:	Caseload
Felony	243
Misdemeanor.	666
Attorneys required:	5

Office of the Public Defender Caseload Summary

Fiscal Year	Total cases	% change from previous FY	Felony cases	FTE	Actual Caseload	Misdemeanor cases	FTE	Actual Caseload	Attorney to Paralegal Ratio
2000-01	25,459	-	11,210	41.9	268	15,019	14.4	1008	56
2001-02	24,639	-3%	10,898	41.6	261	14,547	14.2	985	56
2002-03	26,935	9%	12,347	40.5	305	15,394	13.9	1070	54
2003-04	25,913	-4%	12,100	45.9	264	14,584	15.7	894	9
2004-05	25,233	-3%	13,029	48.4	269	12,932	16.6	751	7
2005-06	21,431	-15%	11,262	51.7	218	10,169	17.7	575	8
2006-07	21,626	1%	11,070	53.7	206	10,556	16.7	632	6
2007-08	23,757	10%	12,870	55.2	233	10,887	17.2	633	6
2008-09	22,294	-6%	13,507	56.9	237	8,787	15.7	560	5
2009-10	22,294	0%	13,507	49.6	272	8,787	14.2	619	5
Total change:	-3,165	-12%	20%	18%	2%	-41%	-1%	-39%	-

Source: For FY 2000-01 through FY 2004-05 and FY 2009-10 (as of 7/08/2010), we applied PDR reported FY 2005-06 staffing proportions to Total FTE Actuals for each given FY. For FY 2005-06 through FY 2008-09, the PDR provided attorney/FTE counts based on first pay period of given FY. OMS data as generated for the PDR at the end of each FY for FYs 2005-06 through 2008-09, counting all cases based on the most recent attorney of record. All FY 2000-01 through FY 2004-05 caseload data is estimated using case trends from FY 2005-06 through 2008-09. FY 2009-10 case counts assume that total case counts from FY 2009-10 will be similar to 2008-09.

	FY 09-10	FY10-11
Salary Deficit with current staffing	\$914,578	
Salary Cost -- 5 FTE Attorneys	261,090	848,543
Salary Cost -- 2 FTE Paralegals	57,996	188,487
Sub-total	\$319,086	\$1,037,030
Total	\$1,233,664	

Notes

1. Salary deficit with current staffing amount is based on the Public Defender's spending plan projection (corrected).
2. FY09-10 Salary cost for new attorneys and paralegals is based on a March 15, 2010 start date.
3. FY10-11 Salary cost for new attorneys and paralegals is annualized.