

File No. 130185

Committee Item No. 7

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: 05/8/2013

Board of Supervisors Meeting

Date: \_\_\_\_\_

#### Cmte Board

- |                                     |                          |  |
|-------------------------------------|--------------------------|--|
| <input type="checkbox"/>            | <input type="checkbox"/> | Motion                                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Resolution                                   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Analyst Report                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form (for hearings)             |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Public Correspondence                        |

#### OTHER (Use back side if additional space is needed)

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Completed by: Victor Young Date May 3, 2013

Completed by: Victor Young Date \_\_\_\_\_

AMENDED IN COMMITTEE

3/27/13

FILE NO. 130185

ORDINANCE NO. \_\_\_\_\_

RO# 13009

SA# 09

[Appropriating ~~\$751,312~~ \$656,958 of General Fund Reserve to the Public Defender for Salary Expenditures - FY2012-2013]

Ordinance appropriating ~~\$751,312~~ \$656,958 from the General Fund Reserve to the Public Defender for salary expenditures in FY2012-2013, pursuant to Charter Section 9.113, this appropriation is subject to a two-thirds affirmative vote of all members of the Board of Supervisors.

Note: Additions are *single-underline italics Times New Roman*;  
 deletions are ~~*strikethrough italics Times New Roman*~~.  
 Board amendment additions are double underlined.  
 Board amendment deletions are ~~strikethrough normal~~.

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

Section 1. The sources of funding outlined below are herein appropriated to reflect the funding available for Fiscal Year 2012-2013.

**SOURCES Appropriation**

Fund	Index Code	Subobject	Description	Amount
1G AGF AAA - GF-	*CON1GAGFAAA	098GR	General Fund	<del>\$751,312</del>
Non-Project-			Reserve	<u>\$656,958</u>
Controlled				
<b>Total SOURCES Appropriation</b>				<u><del>\$751,312</del></u>
				<u><u>\$656,958</u></u>

Section 2. The uses of funding outlined below are herein appropriated in subobject 00100 Salaries and reflect the projected uses of funding to support Public Defender salary expenditures in Fiscal Year 2012-2013.

1 **USES Appropriation**

Fund	Index Code	Subobject	Amount
1G AGF AAA – GF-Non-Project-	055002	00100 Salaries	<u>\$751,312</u>
Controlled			<u>\$656,958</u>
<b>Total USES Appropriation</b>			<u><b>\$751,312</b></u>
			<u><u>\$656,958</u></u>

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9 Section 3. The Fiscal Year 2012-2013 Annual Appropriation Ordinance includes the rejection  
10 of ~~\$751,312~~ \$656,958 in Salaries and Fringe Benefits by the Mayor, which is subject to  
11 appropriation in this legislation. Pursuant to Charter Section 9.113, the funding of any item  
12 previously rejected by the Mayor or the Board of Supervisors in consideration of the annual  
13 budget shall require a two-thirds vote of all members of the Board of Supervisors for approval.  
14 Therefore, the appropriation of ~~\$751,312~~ \$656,958 within this appropriation is subject to a two-  
15 thirds affirmative vote of all members of the Board of Supervisors.

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18  
19 APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney

20  
21 By: BCH  
22 Deputy City Attorney

FUNDS AVAILABLE  
Ben Rosenfield, Controller

23 By: [Signature]  
24 February 22, 2013  
25 Amended March 27, 2013

**Item 7**  
**File 13-0185**

**Department:**  
Public Defender

### EXECUTIVE SUMMARY

**Note:** This ordinance was re-referred to the Budget and Finance Committee by the Board of Supervisors at the April 2, 2013 meeting of the Board.

#### Legislative Objectives

The proposed ordinance would appropriate \$751,312 from the General Fund Reserve to the Public Defender's FY 2012-13 budget to resolve the budgetary shortfall in permanent salaries, temporary salaries, premium pay, and one-time payments due to terminating employees. Approval of the requested \$751,312 requires two-thirds vote of the Board of Supervisors because the Board of Supervisors rejected appropriation of these expenditures in the Public Defender's FY 2012-13 budget.

#### Key Points

- The requested \$751,312 would pay for (1) \$466,851 in permanent salaries due largely to salary step increases exceeding the budget in FY 2012-13; (2) \$255,981 in temporary salaries due to the Public Defender's Office hiring more temporary employees and expending more temporary salaries than authorized in the FY 2012-13 budget; (3) \$4,192 in premium pay; and (4) \$24,288 in one-time payments pay for accrued vacation time owed to an employee terminating from the City.

#### Fiscal Impact

- The General Fund Reserve balance is \$28,845,655 and the State Revenue Loss Reserve balance is \$8,410,605, totaling \$37,256,260.
- In addition to the Public Defender's requested supplemental appropriation of \$751,312, two supplemental appropriations will be submitted to the Board of Supervisors for the Sheriff's Department and Department of Public Health, which will significantly draw down on the available reserve balances. According to Ms. Monique Zmuda, Deputy Controller, the Controller's Office and Mayor's Office are working with the Sheriff's Department and the Department of Public Health to identify additional revenues or expenditure savings, and therefore, as of the writing of this report, the Controller's Office cannot provide details on the funding sources for the pending supplemental appropriations for the Sheriff's Department and Department of Public Health.
- The Public Defender's Office has hired temporary employees whose projected salary costs of \$375,056 in FY 2012-13 are \$255,981 more than the FY 2012-13 budget of \$119,075 for temporary salaries. Because the Public Defender's Office has spent more temporary salaries than authorized by the Board of Supervisors in the FY 2012-13 budget, the requested supplemental appropriation should be reduced by \$94,354 for temporary salaries not yet incurred for the pay periods beginning March 30, 2013 through June 30, 2013.
- Therefore, the requested supplemental appropriation should be reduced by \$94,354 from \$751,312 to \$656,958.

#### Recommendations

- Amend the proposed ordinance to reduce the requested supplemental appropriation by \$94,354 from \$751,312 to \$656,958 to account for the temporary salary expenditures, not yet incurred, in excess of the temporary salaries authorized by the Board of Supervisors in the Public Defender's FY 2012-13 budget.
- Approve the supplemental appropriation, as amended.

## MANDATE STATEMENT AND BACKGROUND

### Mandate Statement

According to Charter Section 9.105, the Board of Supervisors may adopt amendments to the Annual Appropriation Ordinance in the same manner as other ordinances.

According to Charter Section 9.113, if the Mayor or Board of Supervisors has previously rejected an appropriation in the Annual Appropriation Ordinance, then approval of a supplemental appropriation requires a two-thirds vote of the Board of Supervisors.

## DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would appropriate \$751,312 from the General Fund Reserve to the Public Defender's FY 2012-13 budget to resolve a projected budgetary shortfall to pay for salary step increases, premium pay, one time payments to terminating employees for vacation pay-outs, and temporary salaries. Approval of the requested \$751,312 requires two-thirds vote of the Board of Supervisors, because the Board of Supervisors rejected appropriation of these expenditures in the Public Defender's FY 2012-13 budget.

## FISCAL IMPACT

The proposed ordinance would appropriate \$751,312 in the Public Defender's FY 2012-13 budget as shown in Table 1 below:

**Table 1: Proposed \$751,312 Appropriation**

	FY 2012-13 Budget Previously Authorized by the Board of Supervisors	Estimated Actual Expenditures	Estimated Actual Expenditures Exceeding Authorized Budget
Permanent Salaries <sup>1</sup>	\$17,673,624	\$18,140,475	\$466,851
Temporary Salaries	119,075	375,056	255,981
Premium Pay	62,571	66,763	4,192
One Time Payments	0	24,288	24,288
<b>Total</b>	<b>\$17,855,270</b>	<b>\$18,606,582</b>	<b>\$751,312</b>

<sup>1</sup> Includes reductions for salary step adjustments and attrition savings.

### Salary Step Adjustments (\$466,851)

The Public Defender's FY 2012-13 budget included \$17,855,270 for salaries funded by the General Fund, an increase of \$717,016 or 4.2% from the Public Defender's FY 2011-12 budget of \$17,138,254 for salaries funded by the General Fund. The Public Defender's FY 2012-13 budget did not correctly account for the difference between positions budgeted at the top salary step and the actual salary step paid to employees, resulting in an estimated deficit in permanent salaries of \$466,851.

Temporary Salaries (\$255,981)

The Public Defender's FY 2012-13 budget included \$119,075 for temporary salaries, a reduction of \$295,464 from the Public Defender's FY 2011-12 budget of \$414,539 for temporary salaries. The Public Defender has hired 5.4 Full Time Equivalent (FTE) positions paid by temporary salaries, or 4.0 FTE more than the 1.4 FTE positions authorized by the Board of Supervisors in the FY 2012-13 budget, as follows:

- 2.4 FTE 8173 Legal Assistants. Of these 2.4 FTEs, 1.4 FTEs were included in the FY 2012-13 budget and provide support to attorneys in the Training and Specialty Courts Units. In addition, the Public Defender has hired 1.0 FTE in the Investigation Unit to serve subpoenas, collect court and expert records, and conduct various database searches on case information.
- 2.0 FTE 1406 Senior Clerk in the MAGIC Program<sup>1</sup> to coordinate the Public Defender's Community, Youth and Family Programs. These positions assist in maintaining program documents, communicating with members of the public, and conducting community outreach. These two positions do not support the Public Defender's core responsibility for providing legal defense to individuals who cannot pay for a private attorney.
- 1.0 FTE 8446 Court Alternative Specialist, who serves as the Department's Communication and Policy Assistant to administer a public information program for the Public Defender's Office. This position does not support the Public Defender's core responsibility for providing legal defense to individuals who cannot pay for a private attorney.

According to Mr. Matt Gonzalez, Public Defender's Office Chief Attorney, the Public Defender's Office will propose that these temporary positions become permanent in the FY 2013-14 budget.

Other Pay

As shown in Table 1 above, the Public Defender estimates deficits in premium pay of \$4,192 and one-time payments of \$24,288 to pay for accrued vacation time owed to an employee terminating from the City.

**General Fund and State Revenue Loss Reserves**

As of March 21, 2013, the General Fund Reserve balance was \$28,845,655 and the State Revenue Loss Reserve balance was \$8,410,605, for total reserve balances of \$37,256,260. Two supplemental appropriations will be submitted to the Board of Supervisors for the Sheriff's Department and Department of Public Health, which will significantly draw down on the available reserve balances. According to Ms. Monique Zmuda, Deputy Controller, the

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<sup>1</sup> The MAGIC Program (Mobilization for Adolescent Growth in Our Communities) is a Public Defender's Office program in the Bayview and Western Addition neighborhoods in which community based organizations coordinate programs and services for youth.

Controller's Office and Mayor's Office are working with the Sheriff's Department and Public Health Department to identify revenues or expenditure savings and therefore, as of the writing of this report, the Controller's Office cannot provide details on funding sources for the pending supplemental appropriations for the Sheriff's Department and Department of Public Health.

### **Temporary Salary Savings**

The Public Defender's Office has hired temporary employees whose projected salary costs of \$375,056 in FY 2012-13 are \$255,981 more than the FY 2012-13 budget of \$119,075 for temporary salaries. Because the Public Defender's Office has spent more temporary salaries than authorized by the Board of Supervisors in the FY 2012-13 budget, the requested supplemental appropriation should be reduced by \$94,354<sup>2</sup> for temporary salaries not yet incurred for the pay periods beginning March 30, 2013 through June 30, 2013.

The Budget and Legislative Analyst recommends approval to pay for the projected FY 2012-13 budgetary shortfall of (1) \$466,851 in permanent salaries due to higher than budgeted salary step increases, (2) \$4,192 in premium pay, (3) \$24,288 in one-time payments for accrued vacation time owed to an employee terminating from the City; and (4) \$161,627 for temporary salary expenditures which have been previously incurred, for a total recommended approval of \$656,958.

However, the Budget and Legislative Analyst recommends that the balance of temporary salaries, \$94,354 (the requested \$255,981 less recommended approval of \$161,627), not yet incurred for the period from March 30, 2013 through June 30, 2013, be disapproved because such funding was never authorized by the Board of Supervisors in the Public Defender's FY 2012-13 budget. Permitting a department to hire positions previously not authorized by the Board of Supervisors diminishes the Board of Supervisors budgetary process.

Therefore, the requested supplemental appropriation should be reduced by \$94,354 from \$751,312 to \$656,958.

## **RECOMMENDATIONS**

1. Amend the proposed ordinance to reduce the requested supplemental appropriation by \$94,354 from \$751,312 to \$656,958 to account for the temporary salary expenditures, not yet incurred, in excess of the temporary salaries authorized by the Board of Supervisors in the Public Defender's FY 2012-13 budget.
2. Approve the supplemental appropriation, as amended.

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<sup>2</sup> Based on temporary salary expenditures of \$14,516 per pay period for 6.5 pay periods from March 30, 2013 through June 30, 2013.

### Public Defender & District Attorney Actual Spending & Staffing History - ALL FUNDS

#### ACTUAL SPENDING

	FY 2012-2013	FY 2011-2012	FY 2010-2011	FY 2009-2010	FY 2008-2009	FY 2007-2008	FY 2006-2007	FY 2005-2006	FY 2004-2005	FY 2003-2004	FY 2002-2003	FY 2001-2002	FY 2000-2001
PUBLIC DEFENDER	partial year 26,467,524	24,967,965	24,381,099	23,718,307	23,749,024	21,822,333	19,046,748	17,474,409	15,736,415	13,811,880	13,399,043	13,032,044	
DISTRICT ATTORNEY	partial year 40,333,027	38,006,816	38,990,394	37,548,584	38,271,465	35,735,238	31,732,324	28,229,155	29,402,868	30,035,369	26,658,021	25,494,340	

#### CHANGE

% growth from FY06 to	% growth from FY01 to
38.96%	103.10%
27.10%	58.20%

#### STAFFING

	FY 2012-2013 YTD	FY 2011-2012	FY 2010-2011	FY 2009-2010	FY 2008-2009	FY 2007-2008	FY 2006-2007	FY 2005-2006	FY 2004-2005	FY 2003-2004	FY 2002-2003	FY 2001-2002	FY 2000-2001
PUBLIC DEFENDER	161.81	157.07	152.27	147.62	156.44	161.36	147.52	138.97	136.13	127.10	111.16	110.79	113.44
DISTRICT ATTORNEY	237.54	233.29	231.26	232.78	241.12	259.50	250.54	243.02	233.12	235.31	249.43	263.81	266.87

#### CHANGE

% growth from FY06 to	% growth from FY01 to
16.43%	42.63%
-2.26%	-10.99%

### Public Defender & District Attorney Actual Spending & Staffing History - GENERAL FUND ONLY

#### ACTUAL SPENDING

	FY 2012-2013 YTD	FY 2011-2012	FY 2010-2011	FY 2009-2010	FY 2008-2009	FY 2007-2008	FY 2006-2007	FY 2005-2006	FY 2004-2005	FY 2003-2004	FY 2002-2003	FY 2001-2002	FY 2000-2001
PUBLIC DEFENDER	partial year 26,128,092	24,669,716	24,260,069	23,585,454	23,558,654	21,637,229	18,812,762	17,100,655	15,262,455	13,210,942	12,805,982	12,564,933	
DISTRICT ATTORNEY	partial year 34,682,182	31,896,862	32,596,929	32,142,281	32,435,880	30,352,427	26,521,425	23,444,552	24,072,507	24,306,208	21,701,637	20,559,506	

#### CHANGE

% growth from FY06 to	% growth from FY01 to
38.87%	107.93%
30.77%	68.69%

#### STAFFING

	FY 2012-2013 YTD	FY 2011-2012	FY 2010-2011	FY 2009-2010	FY 2008-2009	FY 2007-2008	FY 2006-2007	FY 2005-2006	FY 2004-2005	FY 2003-2004	FY 2002-2003	FY 2001-2002	FY 2000-2001
PUBLIC DEFENDER	158.53	154.41	149.00	146.65	155.71	159.40	145.21	134.60	130.74	121.20	105.22	104.50	107.95
DISTRICT ATTORNEY	216.15	197.26	191.65	196.67	203.99	220.35	210.47	201.63	189.99	190.60	201.82	219.13	219.89

#### CHANGE

% growth from FY06 to	% growth from FY01 to
17.78%	46.86%
7.20%	-1.70%