

**CDIAC**

**CALIFORNIA  
DEBT AND  
INVESTMENT  
ADVISORY  
COMMISSION**

**SESSION ONE:  
UNDERSTANDING ROLES AND  
RESPONSIBILITIES OF PUBLIC  
INVESTMENT OFFICERS, STAFF AND  
ELECTED OFFICIALS**

**CDIAC/CMTA  
JANUARY 18, 2017**

**Shari L. Freidenrich, CPA, Treasurer-Tax Collector, County of Orange  
Michelle Durgy, Chief Investment Officer, City and County of San Francisco  
Philip Marr, Investment Officer, City of Los Angeles**

# Overview

- Definitions
- Roles and Responsibilities
- Agency Organizational Structures
- Legal & Fiduciary Responsibilities by Role
  - ▣ Personal Liability
  - ▣ General Law vs. Charter Counties / Cities

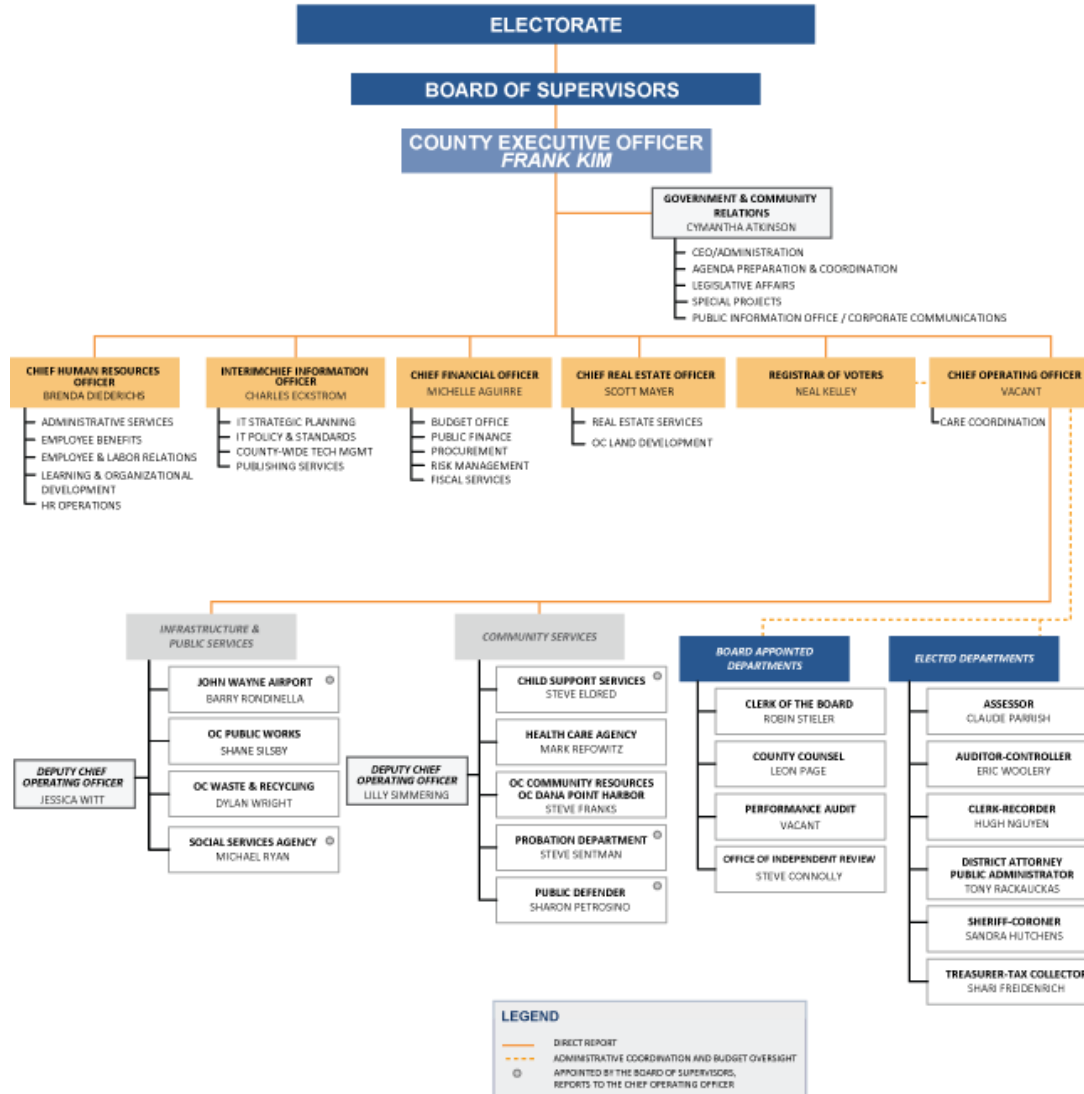
# Definitions

- Legal & Fiduciary Responsibility
- Personal Liability
- General Law v. Charter Counties / Cities

# Roles and Responsibilities

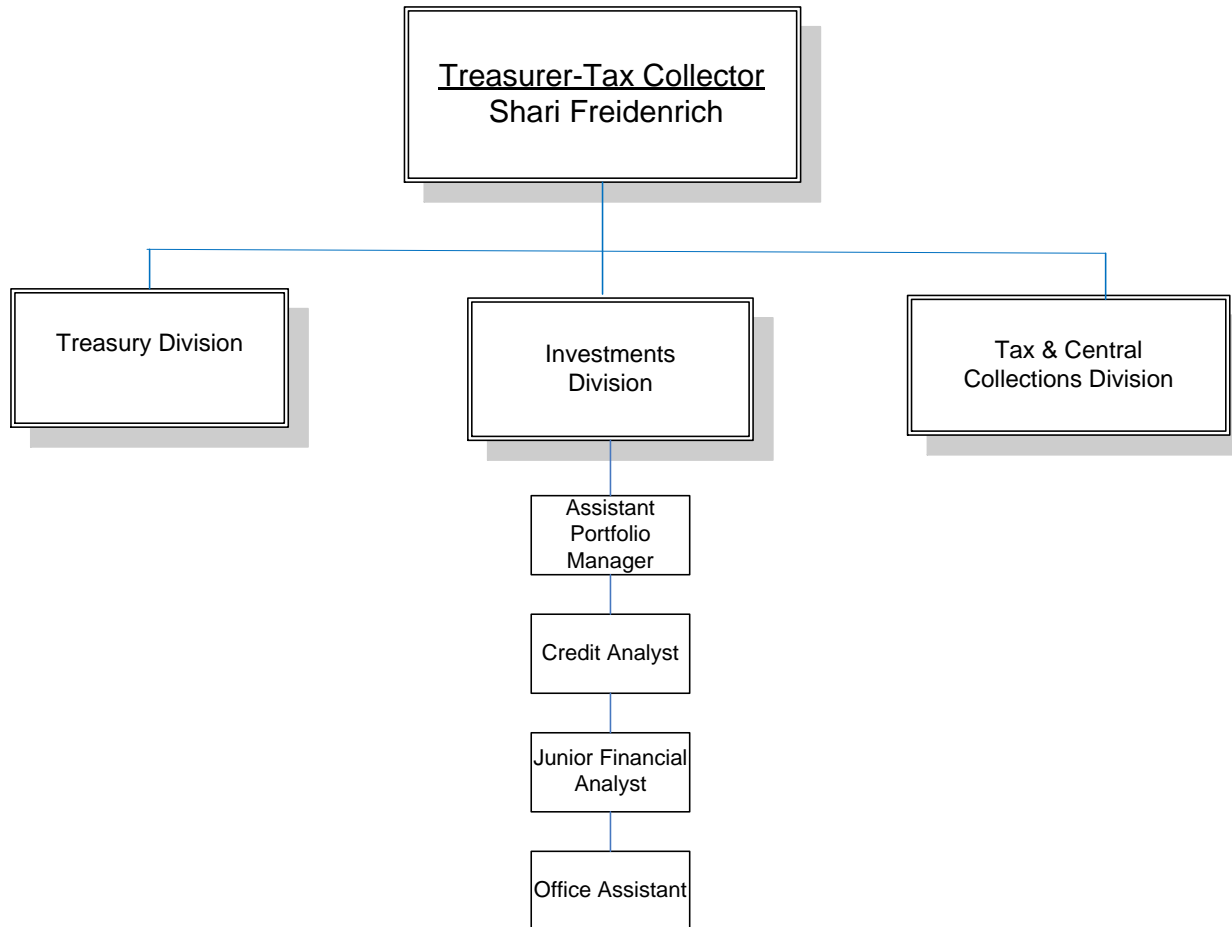
Treasury and Investment Positions	Fiduciary Responsibility	Personal Liability
County Treasurer	X	X
City Treasurer/Finance Director	X	X
Chief Investment Officer	X	X
Investment Officer	X	X
Investment Analyst	X	X
Treasury Oversight Committee	X	
Finance/Investment Committee	X	
Board of Supervisors/City Council	X	
City Manager	X	X
Staff Accountants		
Auditors – External/Internal		
Investment/Financial Advisors	X	

# County of Orange Structure



# County of Orange

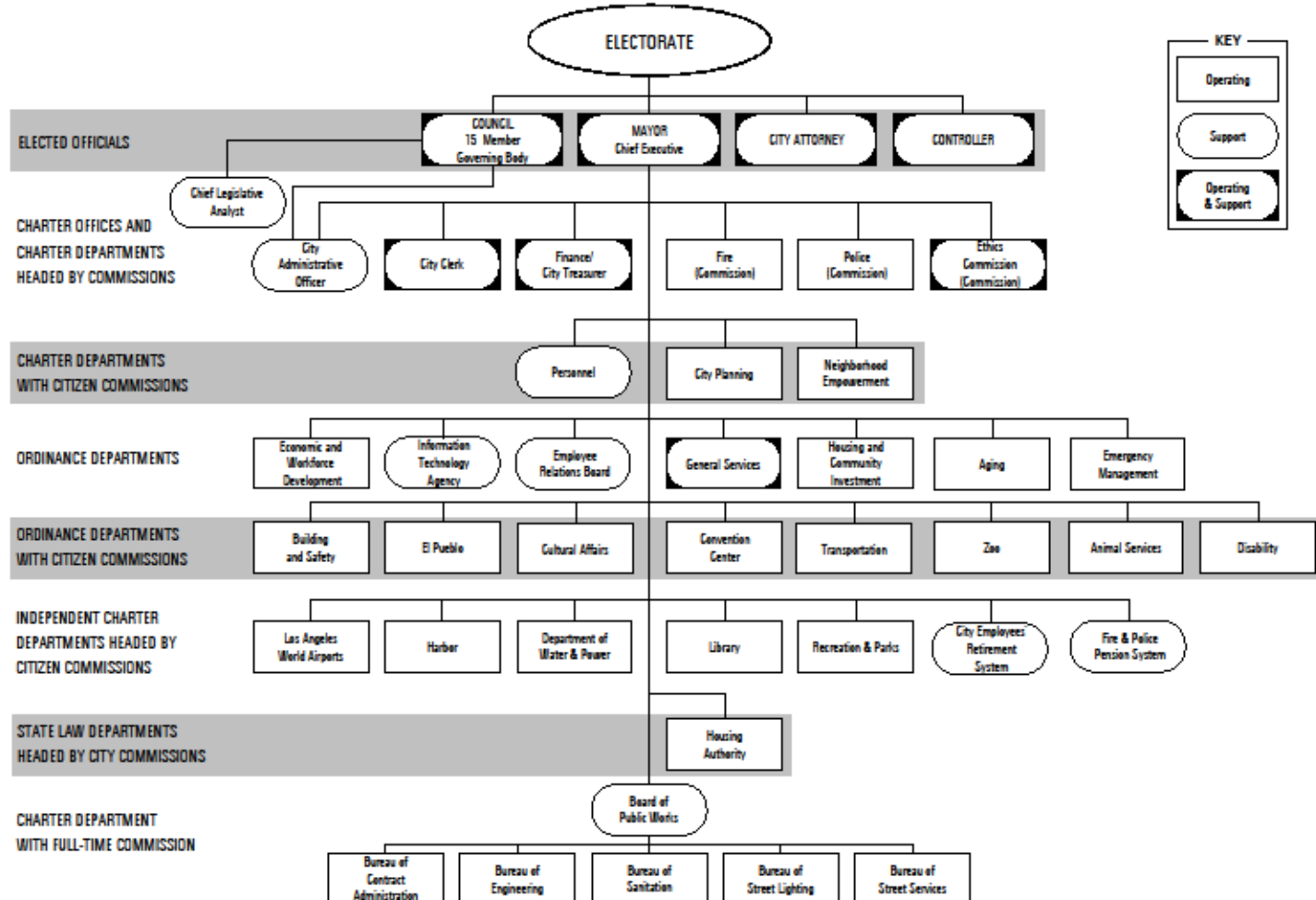
## Office of the Treasurer-Tax Collector



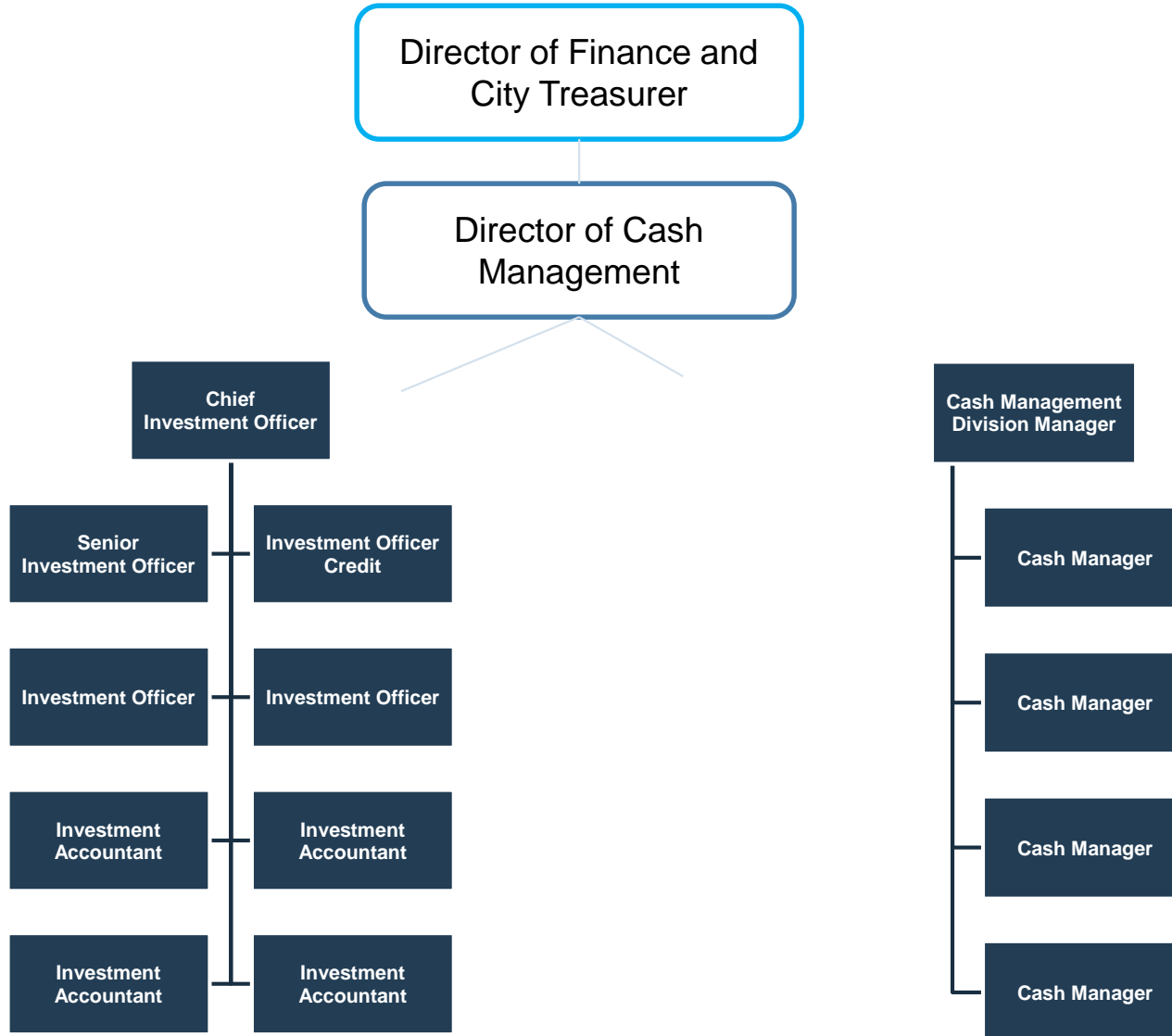
# City of Los Angeles Structure

## ORGANIZATION OF THE CITY OF LOS ANGELES

As of July 1, 2015



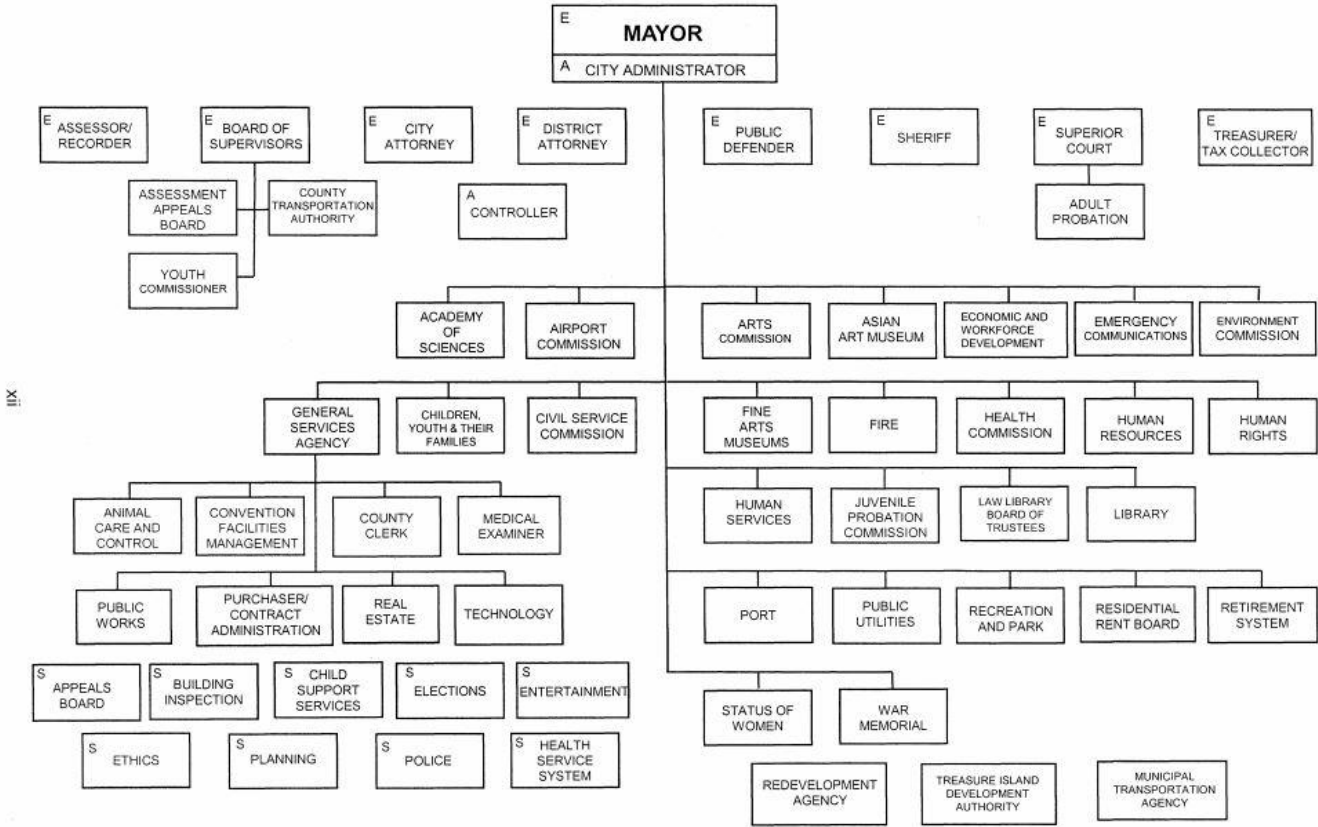
# LA City Office of Finance





# City and County of SF Structure

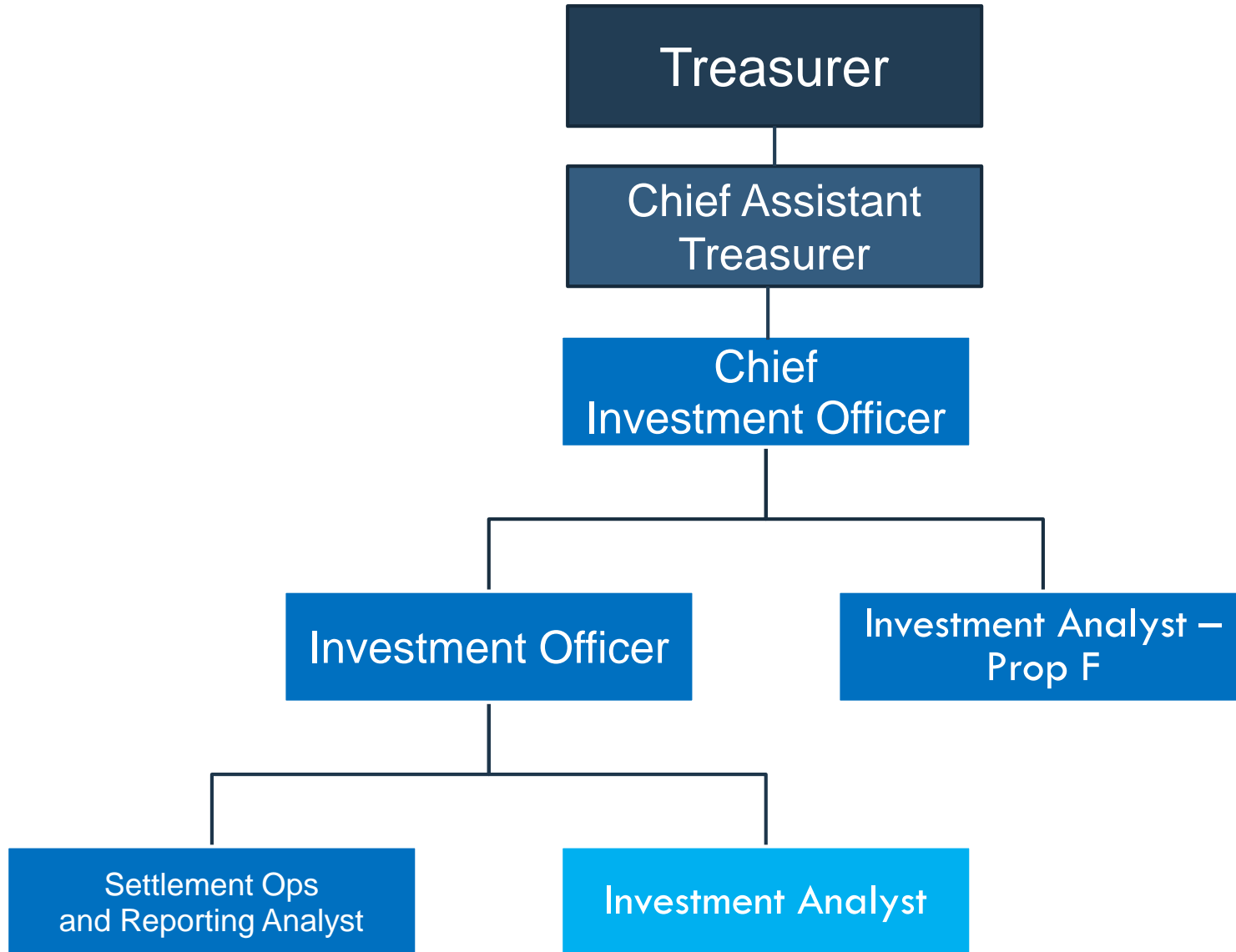
**City and County of San Francisco Organization Chart**  
(As of June 30, 2010)



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A = Appointed by Mayor and confirmed by Board of Supervisors / E = Elected / S = Shared - appointed by various elected officials.

# CCSF Treasurer's Office



# Legal & Fiduciary Responsibilities County Treasurer

## **California Government Code, Section 27000, 53607**

- Receive and keep safely all money belonging to the county and all other money directed by law to be paid to him/her and apply and pay it out, rendering the account as required by law
- May be delegated the authority to invest or reinvest the funds of the county and the funds of other depositors in the county treasury and assume full responsibility for those transactions until revoked or if the annual delegation is not renewed & make a monthly report of those transactions to the legislative body
  - Becomes the fiduciary if investment is delegated and subject to the prudent investor standard for both county funds and funds deposited by other agencies to safeguard the principal and maintain the liquidity needs of the county and other depositors
- May accept excess funds deposits from local agencies into county treasury
- Shall apportion at least quarterly interest derived from investment of funds

# Legal & Fiduciary Responsibilities

## County Treasurer cont.

### **California Government Code, Section 27000**

- Must maintain an account, in books or electronic form of the receipt and expenditures of all money received or paid out by him
- Must maintain separate and distinct account for separate funds or specific appropriations and have the entire receipts and expenditures shown in one general or cash account
- Shall disburse the county money and all other money placed in his/her custody only on county warrants, checks, or electronic fund transfers issued by the county auditor, except for the making of legal investments
- Shall give a receipt to each person who deposits money into the county treasury
- May deduct from such interest income earned, before distribution thereof, the actual administrative costs of such investing, depositing, handling of funds and of distribution of such interest or income and the cost reimbursement shall be paid into the county general fund.

# Legal & Fiduciary Responsibilities

## County Treasurer cont.

### **California Government Code, Section 27000**

- Criteria for filing declarations of candidacy (if adopted by ordinance by the county), must meet one of the following:
  - Served in a senior financial management capacity in a public agency for at least three years
  - Possesses a valid bachelors, masters or doctoral degree from an accredited institution in business administration, public administration, economics, finance or accounting with 16 semester units in accounting, auditing or finance.
  - Possesses a valid California Certified Public Accountant certificate
  - Has a valid Chartered Financial Analyst charter from the Institute of Chartered Financial Analysts and meets the 16 hour requirement above
  - Has a valid Certified Cash Manager certificate issued by the Treasury Management Association and meets the 16 hour requirement above
- Must complete 24 hours of a continuing education program relating to specific treasury management, tax collection, public finance, public administration, governmental accounting provided by a recognized state or national association, university or CDIAC every 2 years.

# Legal & Fiduciary Responsibilities

## City Treasurer

### **California Government Code, Section 41001- 41007, 53607, 53646**

- Shall receive and safely keep all money coming into his hands as treasurer
- Shall comply with all laws governing the deposit and securing of public funds and the handling of trust funds in his possession.
- Shall pay out money only on warrants signed by legally designated persons.
- Shall submit to the City Clerk, at least once each month, a written report and accounting of all receipts, disbursement, and fund balances and file a copy with the legislative body.
- Shall perform such duties relative to the collection of city taxes and license fees as are prescribed by ordinance
- May be delegated the authority by the legislative body for a one year period, to be renewed annually, make a monthly report of those to the legislative body and has the authority to invest funds in certain eligible securities
- May appoint deputies for whose acts he and his bondsmen are responsible
  - Deputies hold office at the pleasure of the city treasurer and receive such compensation as is provided by the legislative body unless the city has a civil service system or merit system that would apply to the Treasurer's deputy position

# Legal & Fiduciary Responsibilities

## County/City Treasurer

### **California Government Code, Section 53600.3 (Prudent Investor Standard)**

Except as provided in subdivision (a) of Section 27000.3, all governing bodies of local agencies or persons authorized to make investment decisions on behalf of those local agencies investing public funds pursuant to this chapter are trustees and therefore fiduciaries subject to the prudent investor standard. When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency. Within the limitations of this section and considering individual investments as part of an overall strategy, investments may be acquired as authorized by law.

*(Amended by Stats. 1996, Ch. 749, Sec. 4. Effective January 1, 1997.)*

# Legal & Fiduciary Responsibilities County/City Treasurer

## **California Government Code, Section 53630 et seq.**

- Vests the authority to select the depository bank to the treasurer of the local agency
- Authorizes the treasurer to enter into agreements with depositories concerning the terms and conditions of any part of the money deposited
- Allows bank overdrafts to not be considered borrowing (otherwise they would be required to be approved by the governing body)
- Allows the treasurer to waive the security (collateralization) for the portion of any deposit insured pursuant to federal law
- May render to the governing body and any oversight body an annual statement of investment policy and quarterly reports with specific requirements submitted within 30 days following the end of the quarter (no longer mandated since 1-1-2010)
- Investment objectives
  - Safety
  - Liquidity
  - Yield



# Legal & Fiduciary Responsibilities County/City Treasurer cont.

## California Government Code, Section 6930-6934

- Defines a governmental investor that includes a county treasurer and a city treasurer as one who exercises investment discretion over public funds in excess of \$10,000 million
- Each securities transaction done for a governmental investor by an investment manager under a soft dollar and directed brokerage arrangement as defined in Section 28(e) of the SEC Act of 1934 shall be executed at the lowest responsible transaction cost available.
- Any written contract entered into between a governmental investor and an investment manager that includes a soft dollar and directed brokerage arrangement shall contain the following:
  - The investment manager shall maintain complete and detailed records of all billed services
  - The services shall be clearly defined
  - The investment manager shall disclose a list of all billed services, the justification for providing each of those services, an annual statement of all billed services and a determination of whether each service is proprietary or is being shared by other clients of the investment manager
- A soft dollar and directed brokerage arrangement is not subject to any statutory competitive bidding requirements

# Legal & Fiduciary Responsibilities County/City Treasurer cont.

## **California Government Code, Section 87200-87210 (Form 700 Disclosure)**

- Every candidate for an elected office of county treasurer and city treasurer shall file no later than the filing date of a declaration of candidacy, a statement disclosing his or her investments, his or her interests in real property and any income received during the immediately preceding 12 months
- Every person who is elected to these offices shall within 30 days file a statement disclosing the above items
- Every person who leaves these elected offices shall within 30 days file a statement disclosing the above items

# Legal & Fiduciary Responsibilities

## County/City Treasurer cont.

### **Selected Other Duties**

- Escheated funds (Gov't Code 50050 – 50053)
  - Procedures for these are administered by the Treasurer and consist of a newspaper publication and transfer of unclaimed funds to the local agency general fund
- Bond Financing Documents
  - May require treasurer's signature (Gov't Code Sections 43623-43624)
  - May require certain recordkeeping for bonds (Gov't Code Sections 43743-43747)

# Legal & Fiduciary Responsibilities Investment Officer

## **California Government Code, Section 53600.5**

- When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, the primary objective of a trustee shall be:
  - Safeguard the principal of the funds under its control.
  - The secondary objective shall be to meet the liquidity needs of the depositor.
  - The third objective shall be to achieve a return on the funds under its control.

# Legal & Fiduciary Responsibilities Investment Officer (cont.)

## **California Government Code, Section 53601:**

- Applies to a local agency that is a city, a district, or other local agency that does not pool money in deposits or investments with other local agencies.
- The legislative body of a local agency having moneys in a sinking fund or monies in its treasury not required for the immediate needs of the local agency may invest any portion of the moneys that it deems wise or expedient in approved investments.

# Legal & Fiduciary Responsibilities Investment Officer (cont).

## **California Government Code, Section 53603 – 53605:**

- The legislative body may make the investment by direct purchase of any issue of eligible securities at their original sale or after they have been issued.
- The legislative body may sell, or exchange for other eligible securities, and reinvest the proceeds of, the securities purchased.
- From time to time, the legislative body shall sell the securities so that the proceeds may be applied to the purposes for which the original purchase money was placed in the sinking fund or the treasury of the local agency.

# Legal & Fiduciary Responsibilities Investment Analyst

## **California Government Code, Section 53601: Term Limitations**

- No investment shall be made in any security that at the time of the investment has a term remaining to maturity in excess of five years, unless the legislative body has granted express authority to make that investment either specifically or as a part of an investment program approved by the legislative body no less than three months prior to the investment.

# Legal & Fiduciary Responsibilities Investment Analyst (cont.)

## California Government Code

### Examples of Appropriate Investments

- U.S. Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.
- Federal agency or United States government-sponsored enterprise obligations, participations.
- Registered treasury notes or bonds of any of the other 49 states in addition to California.
- Medium-term notes issued by corporations organized and operating within the United States.



# Legal & Fiduciary Responsibilities Investment Analyst (cont.)

## California Government Code

### Examples of Appropriate Investments

- Commercial paper of “prime” quality of the highest ranking or of the highest letter and number rating as provided for by a nationally recognized statistical rating organization (NRSRO) – rated A-1 or higher.
- Investments in repurchase agreements or reverse repurchase agreements or securities lending agreements of any securities authorized by this section.
- A mortgage pass through security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-backed certificate, consumer receivable pass through certificate, or consumer receivable-backed bond of a maximum of five years’ maturity.

# Legal & Fiduciary Responsibilities Investment Analyst (cont.)

## California Government Code, Section 53601.6

### Examples of Prohibited Investments

- Pursuant to Article 2 (commencing with Section 53630) in inverse floaters, range notes, or mortgage-derived, interest-only strips.
- A local agency shall not invest any funds in any security that could result in zero interest accrual if held to maturity.
  - The limitation in this subdivision shall not apply to local agency investments in shares of beneficial interest issued by diversified management companies registered under the Investment Company Act of 1940 that are authorized for investment pursuant to subdivision (l) of Section 53601.

# Legal & Fiduciary Responsibilities

## Treasury/Finance Oversight

### **California Government Code,**

### **Sections 27130 - 27137**

- Section 27131(a) states that the board of supervisors in any county that invests surplus money may establish a treasury oversight committee. If established, the committee must consist of three to eleven members.
- Sections 27134 and 27137 limit the oversight committee's functions to monitoring and reviewing the county treasury's compliance with the investment policy and reporting provisions of the Gov. Code through an annual audit.
- No legal requirements for local agencies to have oversight committees.

# Legal & Fiduciary Responsibilities Treasury/Finance Oversight (cont.)

## **California Government Code,**

### **Sections 27130 - 27137**

- Review and monitor the Treasurer's Investment Policy statement, highlighting elements such as:
  - ▣ **List of securities or other instruments.**
  - ▣ **Maximum term of securities.**
  - ▣ **Criteria for selecting dealers and brokers.**
  - ▣ **The manner of calculating and apportioning the costs of handling or managing the funds.**

# Legal & Fiduciary Responsibilities Treasury/Finance Oversight (cont.)

## **California Government Code,**

### **Sections 27130 - 27137**

- The Oversight Committee shall cause an annual audit to be conducted to determine the treasury's compliance with this article. The audit may include issues relating to the structure of the investment portfolio and risk.
- Any entity that withdraws funds for the purpose of investing or depositing those funds outside the pool, shall first submit the request for withdrawal to the county treasurer before withdrawing funds.
- Nothing in this article shall be construed to allow the Oversight Committee to direct individual investment decisions, select individual investment advisors, brokers, or dealers, or impinge on day-to-day operations.

# Responsibilities

## County Supervisor / City Council

- **California Constitution provides them police power**
  - Make and enforce within their limits (unincorporated / incorporated) all local, police, sanitary and other ordinances and regulations not in conflict with general laws
  - Used to protect public health, safety and welfare
  - Act in primary policy setting role

# Responsibilities - County Supervisor

- **Exercises its power and authority by taking the following roles:**
  - **Executive**
    - Oversees most county departments and programs
    - Approves County budgets
    - Supervises official conduct of county officers and employees
    - Controls all county property
    - Appropriates and spends money on programs that meet county residents' needs
    - Have the same power as cities in unincorporated areas, such as law enforcement, land use and building code enforcement
    - Provide countywide welfare and social services
  - **Legislative**
    - The Board may act by Resolution, by Board order or by Ordinance (local law adopted with all the legal formality of a statute)
  - **Quasi-judicial**
    - May settle claims made against the County and examine and audit the accounts of all County officers as they relate to the management and disbursement of funds and may also sit as on an appeals board for land use decisions and tax issues

# Responsibilities - City Council

- **Exercises its power and authority by taking the following roles:**
  - **Executive**
    - Oversees most city departments and programs
    - Approves City budget
    - Supervises official conduct of city officers and employees
    - Controls all city property
    - Appropriates and spends money on programs that meet city residents' needs
  - **Legislative**
    - The Council may pass Resolution, Board order or Ordinances (local law adopted with all the legal formality of a statute)
  - **Quasi-judicial**
    - May settle claims made against the City and examine and audit the accounts of all City officers as they relate to the management and disbursement of funds and may also sit on an appeals board for land use decisions and tax issues



# Personal Liability - Public Officials

## Gov't Code 1090 et seq

- ▣ May be criminal (payment of a fine to the state and imprisonment)
- ▣ May be civil (money damages to compensate the injured person)
- ▣ May be a criminal liability due to willful misconduct in office per Gov't code 3060 et seq (removal from public office after a plea or a finding of guilty)

# Personal Liability - Public Officials

## ▣ **Criminal – Gov’t Code: 1000-2003, 53681; Penal Code 424, 503, 504**

- Prohibits public officers from having an interest in a contract, becoming a vendor or purchaser at sales or dealing in evidences of indebtedness is a felony
- Knowingly disclosing for gain confidential information acquired in the course of official duties or uses such information for purposes of gain is a misdemeanor
- Destroying, removing or withholding official records after the expiration of a term of office is a felony
- Depositing public funds in any manner other than that set forth in the Deposit Law (Gov’t Code 53679) is subject to forfeiture of office or employment
- Embezzlement, falsification of account, misappropriation of funds, and use of public funds for private profit are felonies punishable by imprisonment and disqualification from holding public office

# Personal Liability - Public Officials

## ▣ **Civil – Civil Code sections: 1708 and 1714**

- Narrower exposures for treasurers because the nature of the duties are such that negligence does not usually result in injury or damage to the person or property of individual citizens
- Responsible for acts of appointed deputies (Gov't Code 41006)

## ▣ **Statutory immunity (Gov't code section 820 et seq)**

- May be not liable for money stolen from his/her official custody, but nothing exonerates a public employee from liability if the loss was sustained as a result of his/her own negligent or wrongful act or omission.
- Local agency may have a duty to defend and indemnify official

# Personal Liability -Public Officials

- **Selected Convictions and selected current Alleged Crimes**
  - **Orange County Treasurer - Robert L. Citron**
    - Convicted of 6 felony counts of financial fraud, served one year in prison (1995)
  - **City of Dixon, IL Comptroller**
    - Convicted of diverting \$53 million of public funds, sentenced to 19 ½ years in prison (2013)
  - **City of Placentia Financial Services Manager**
    - Accused of 36 felony accounts of misappropriation of public funds, 66 felony accounts of money laundering, two felony accounts of falsifying records (if convicted of all the charges, would face 97 years in prison and a fine of \$10 million) – (2016)
  - **City of Compton Deputy Treasurer**
    - Accused of embezzling public funds (December 2016)

# Responsibilities and Liability

- **Accountants and internal/external auditors**
  - Responsible for the presentation of the financial statements of the Treasury Investment Pool (Pool) in accordance with Article 6, Sections 27130 through 27137 of the CA Government Code and the City's Investment Policy.
  - Treasury Oversight Committee members:
    - No violation of campaign contribution to Treasurer in the previous three years
    - Did/Do not directly or indirectly raise money for the Treasurer or a member of the Board of Supervisors
    - Acknowledgement of the requirements in Article 6 Section 27132.3 no employment with bond underwriters, bond counsel, security brokerages, or dealers, or with financial services firms, with whom the Treasurer is doing business while Committee member or for one year after leaving the Committee.
  - The Investment Policy review and effective through June 30, 2016.
  - CA Government Code Section 27013, the costs of complying with Article 6 are City charges and are charged to investment earnings.
  - Committee did not direct individual investment decisions, select individual investment advisors, brokers, or dealers or impinge on the day-to-day operations of the Treasury. (CA Government Code, Section 27137)
  - CA Government Code, Section 53600.5, funds in the Pool are prudently invested to meet the specific objectives of (1) safety of principal, (2) liquidity, and (3) return on investments.

# Responsibilities and Liability

- **Accountants and internal/external auditors (cont.)**
- Internal controls have been established to provide reasonable assurance that investment objectives are met and assets are protected from loss, theft or misuse.
- Investments maintained in the Fund are limited to those authorized per Government Code Section 53600 et seq. and the City's Investment Policy dated May 2016.
- Investments maintained in the Fund do not exceed the percentage of Fund per issuer and maturity limitation requirements of the Investment Policy dated May 2016.
- All investments comply with the credit and collateralization requirements of the Investment Policy.
- There were no requests to withdraw funds for purposes other than cash flow, such as for external investing, during the fiscal year.
- We have responded fully to all inquiries made to us by you during the engagement.
- Your report is intended solely for the information and use of the Treasury's management, the Committee, the Board of Supervisors, and others within the City, and is not intended to be and should not be used by anyone other than those specified parties.

# Charter vs. General Law – City Treasurer

## **California Government Code, Section 36501 et seq.**

- Residents can vote to have their city become a charter city and that the city's organization and manner of operation is determined by a charter, versus certain state laws
- General Law cities
  - Defined as a government officer
  - Is an elective office with a four year term unless either in the general incorporation or as a result of a proposition, the office has been made appointive.
  - Shall receive and safely keep all money coming into his hands as treasurer
  - If elected, no term limits
  - Must take an constitutional oath of office, like other officers of the city
  - Must execute a bond to the city
  - Position, if appointed, may be appointed by the City Council or the City manager and terminated without cause unless the position is made a part of the classified service under a merit or civil service system
  - Elected offices do not need to perform any duties other than statutory even if required by ordinance unless such ordinance duties relate to the collection of city taxes and license fees
- Charter cities
  - May define specific duties of the city treasurer

# Charter vs. General Law – County Treasurer

## California Government Code, Section 36501 et seq.

- General Law counties
  - Is an elective office, but may become appointed by a majority of votes in the county
  - If elected, no term limits
  - Must take an oath of office, like other officers in the county
  - Must execute a bond to the county
- Charter counties
  - May have authority relating to the election or appointment, compensation, terms and removal of all county officers, for the powers and duties of all officers and for consolidation and segregation of county offices
    - In the County of Orange, a charter county, the voters approved that changes to retirement benefits of any employee, legislative officer or elected official must first be approved by majority of votes in 2009



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