

**CHARTER REVIEW COMMITTEE MEETING  
MUNICIPAL LIBRARY, COMMUNITY ROOM, 2<sup>ND</sup> FLOOR  
41 WEST THURMAN AVENUE  
OCTOBER 2, 2013, 5:30 P.M.**

Call to Order  
Roll Call

**ORAL COMMUNICATIONS**

This is the opportunity to address the Charter Review Committee. Unless additional time is authorized by the Committee, all commentary shall be limited to three minutes.

**SCHEDULED MATTERS**

- 1. Minutes of September 25, 2013**  
Re: Approving draft Minutes of the Charter Review Committee Meeting of September 25, 2013.
- 2. Consideration of Modifications to Charter Section 68, Pertaining to Leases**  
Re: Review and consideration of existing Charter provisions related to City leases.
- 3. Consideration of Modifications to Charter Section 39, Pertaining to Fiscal Year**  
Re: Review and consideration of existing Charter provisions related to the City's fiscal year.
- 4. Consideration of Modifications to Charter Section 9, Pertaining to Council Reorganization**  
Re: Review and consideration of existing Charter provisions related to reorganization of the City Council.
- 5. Consideration of Modifications to Charter Section 67, Pertaining to Council Manic Interference**  
Re: Review and consideration of existing Charter provisions related to Council Manic Interference.
- 6. Consideration of Modifications to Charter Section 12, Pertaining to Publication Requirements**  
Re: Review and consideration of existing Charter provisions related to publication of ordinances.
- 7. Consideration of Committee Member Items of Interest**  
a) Correspondence from Committee Member Hardin; and b) Other
- 8. Scheduling of Future Meetings**

**OTHER MATTERS**

**ADJOURNMENT**

In compliance with the Americans with Disabilities Act and the California Ralph M. Brown Act, if you need special assistance to participate in this meeting, or to be able to access this agenda and documents in the agenda packet, please contact the Office of City Clerk at (559) 782-7464. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting and/or provision of an appropriate alternative format of the agenda and documents in the agenda packet.

Materials related to an item on this Agenda submitted to the Committee after distribution of the Agenda packets are available for public inspection during normal business hours at the Office of City Clerk, 291 North Main Street, Porterville, CA 93257, and on the City's website at [www.ci.porterville.ca.us](http://www.ci.porterville.ca.us).

**CHARTER REVIEW COMMITTEE MINUTES  
MUNICIPAL LIBRARY, COMMUNITY ROOM, 2<sup>ND</sup> FLOOR  
41 WEST THURMAN AVENUE  
SEPTEMBER 25, 2013, 5:30 P.M.**

Call to Order at 5:34 p.m.

Roll Call: Member Bush, Member Cortez, Member Green, Member Hardin, Member Irish, Member Salazar, Member Stowe, Vice Chair Giraudi, Chair Bailey

**ORAL COMMUNICATIONS**

- Brock Neeley, Porterville, spoke in support of the City's participation in CalPERS; and read an e-mail dated September 25, 2013, from Rob Feckner, President of CalPERS Board of Administration, regarding the current status of CalPERS and addressing comments made by the City Attorney.
- Ellen Nichols, Porterville, inquired as to whether City employees paid into Social Security.
- Barry Caplan, Porterville, spoke about provisions relative to severance pay and current contracts; potential conflicts of interest; and expressed concerns regarding the committee using one e-mail address.

**SCHEDULED MATTERS**

**1. Minutes of September 11, 2013**

Chair Bailey introduced the item and asked if any amendments to the minutes were needed.

**COMMITTEE ACTION:** MOVED by Member Irish, SECONDED by Member Stowe that the Charter Review Committee approve the Minutes of September 11, 2013, as presented. The motion carried unanimously.

Documentation: M.O. 01-092513

Disposition: Approved.

**2. Review of Recommended Legal and Other Minor Modifications to Charter**

Chair Bailey introduced the item, and solicited questions and comments from the committee. At the committee's request, modifications were considered one Charter section at a time. With regard to Section 9, Paragraph 2, Chair Bailey inquired about the proposed amendment regarding terms of council members, and as a result the proposed language was amended to read, "...in accordance with this section and/or until their successors are elected and installed in office." Staff also responded to questions regarding consolidation of elections with the County.

The Committee expressed an interest in reviewing Section 9, Paragraph 5 regarding the organization of the City Council, and agreed to re-visit at a later time. A motion was

made, and seconded to approve the modifications to Section 9, as amended, but was withdrawn to allow the committee the opportunity to review all the proposed modifications.

City Attorney Lew then addressed questions from the committee regarding Section 18, Paragraph 3, and Section 21, Paragraph 1. The committee agreed to re-visit Section 18, Paragraph 3 pertaining to severance pay after all other proposed amendments were reviewed.

With regard to Section 21, Paragraph 1, Ms. Lew advised that the Charter's requirement that the city manager be a resident of the city may not be unenforceable. The committee discussed the pros and cons, and how the residency requirement could potentially affect future recruitments. The committee concurred that the modifications proposed by the City Attorney were acceptable.

In response to questions posed by Member Irish, the City Attorney and City Manager provided clarification regarding the City audit process and use of a certified public accountant, as it pertained to Section 59, Paragraph 1.

City Attorney Lew noted the handout regarding the proposed amendment to Section 14 Official Bonds; Where Filed, which consisted of replacing "City Treasurer" with "City Manager or his/her designee."

**COMMITTEE ACTION:** MOVED by Member Stowe, SECONDED by Member Hardin that the Charter Review Committee approve the proposed modifications, as amended, not to include Section 9, Paragraph 5, and Section 18. The motion carried unanimously.

Documentation: M.O. 02-092513

At Vice Chair Giraudi's request, City Attorney Lew elaborated on a strong mayor form of local government, and a separately elected mayor. Concerns were communicated regarding the recent reorganization of the City Council, the process, public perception, and the media attention it had received. A discussion ensued during which the following suggestions were explored:

1. Requiring three (3) votes to put in a mayor, and four (4) votes to remove a mayor;
2. Yearly rotation of Mayor; and
3. Reorganization on a yearly basis (1-year term), while allowing back to back terms.

Chair Bailey suggested that the committee seek input from the community, and staff offered to research what other cities have in place. The committee directed that the item be brought back for consideration at the next meeting.

With regard to Section 18, Paragraph 3, Member Hardin spoke in favor of decreasing the amount of severance pay, and various members of the committee voiced their agreement. City Attorney Lew advised of the justification behind the severance pay, which pertained to City Manager turnover. Chair Bailey and Member Stowe advocated leaving the amendments as is for flexibility.

**COMMITTEE ACTION:** MOVED by Member Hardin, SECONDED by Member Green that the Charter Review Committee amend Section 18, Paragraph 3 to allow up to 12 months of severance pay.

AYES: Green, Hardin, Salazar, Irish, Cortez, Giruadi, Bailey  
NOES: Bush, Stowe  
ABSENT: None  
ABSTAIN: None

Documentation: M.O. 02-092513

City Attorney Lew noted that in addition, staff had identified an additional amendment which would remove the following language from Paragraph 3, "...and he/she shall only be entitled to compensation for that expired proportion of the month or term of service during which he/she shall have performed his/her duties."

**COMMITTEE ACTION:** MOVED by Member Irish, SECONDED by Member Bush that the Charter Review Committee amend Section 18, Paragraph 3, as proposed by staff above. The motion carried unanimously.

Documentation: M.O. 02-092513  
Disposition: Approved, as amended.

The committee took a five minute break at 7:09 p.m.

### **3. Review of Porterville Charter Pension Provisions**

Chair Bailey introduced the item, and City Attorney Lew spoke about the broad authority granted to the committee by the Council. She explained that there various legal issues associated with changes to pension provisions, and provided additional information regarding CalPERS which she obtained from the League of California Cities website. Member Salazar questioned why the Council had tasked the committee with reviewing such a contentious issue, and City Manager Lollis indicated that Council's interest was to receive an opinion.

At Member Bush's request, Administrative Services Director Patrice Hildreth reported on the City's efforts to address increased costs relative to employee pensions

that included, negotiating a lesser formula for new employees and increased employee contributions with all bargaining units.

Member Salazar suggested tabling the item until all other areas of the Charter in need of revision have been addressed. The committee discussed the complexity of the information provided, and staff advised of additional resources to assist in that regard. City Attorney Lew noted that there were a number of factors that attributed to the current condition of the CalPERS system, and spoke of some of them. Member Green inquired about the potential implications to vested employees and the City, such as litigation, which prompted a discussion regarding the cities of San Diego, San Jose, and Delano.

#### **4. Scheduling of Future Meetings**

Without objection, Chair Bailey scheduled the next meeting on October 2<sup>nd</sup>, at 5:30 p.m. City Attorney Lew stated that she would compile a list of items identified by Staff for future consideration. The committee directed that the following be included on the next agenda: Fiscal Year; Leases; Council Reorganization; and Committee Items of Interest.

#### **OTHER MATTERS**

- Staff was directed to arrange a presentation from a CalPERS representative.

#### **3. Review of Porterville Charter Pension Provisions**

Various members of the committee communicated a desire to leave the issue of pension reform to the City Council. Member Green made a motion to do so, which was seconded by Member Irish. Member Salazar offered an amendment to recommend that the Council establish a separate advisory committee made up of City staff and citizens to review the matter. Member Stowe offered an amendment to the amendment to remove the recommendation regarding a separate advisory committee, which was not accepted by Member Salazar. Member Salazar's amendment was accepted by Members Green and Irish.

Chair Bailey spoke in opposition to voting so hastily on the matter.

**COMMITTEE ACTION:** MOVED by Member Green, SECONDED by Member Irish that the Charter Review Committee approve giving the review of Porterville Charter Pension Provisions back to the Council, and recommending that the Council establish a separate advisory committee made up of City staff and citizens to review the matter.

AYES: Green, Bush, Salazar, Irish, Giraudi, Cortez  
NOES: Stowe, Hardin, Bailey  
ABSTAIN: None  
ABSENT: None

Documentation: M.O. 03-092513  
Disposition: Approved.

**ADJOURNMENT**

The Charter Review Committee adjourned at 8:00 p.m. to the meeting of October 2, 2013.

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Luisa M. Zavala, Deputy City Clerk

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Allan Bailey, Committee Chair

PUBLIC HEARING

TITLE: PROPOSAL FOR AN AMENDMENT TO THE FREEHOLDERS CHARTER OF THE CITY OF PORTERVILLE, CONCERNING LEASES OF CITY PROPERTY

SOURCE: CITY ATTORNEY

COMMENT: As directed at the November 17, 2009, City Council Meeting, a public hearing has been set to consider an amendment to Section 68 of the Porterville City Charter related to leases of City property.

At the November 17 meeting, the Council directed that the proposed amendment to Section 68 contain similar provisions to those applicable to "general law" cities. Attached is a draft of the proposed amended section. The draft contains similar substantive requirements to the general law requirements including 1) An initial, unrestricted term limit of 55 years, 2) an allowance for leases for up to 99 years on condition that the lease provides for periodic review in light of market conditions, and the lease is established by ordinance after holding a public hearing with notice.

This draft eliminates the requirement that all leases contain a clause that allows the city council to terminate the lease at its pleasure and repossess the premises with three month's notice, and upon payment of market value of the improvements made by the lessee (as determined by a board of appraisers – one picked by the council, one picked by the lessee). The new draft also extends the allowed term limits; the current overall limit for long-term leases (notwithstanding the three month termination clause) is 50 years.

The draft section also eliminates the explicit requirements for payment of fair market value for the lease/tenant-owned improvements. However, as we discussed, in the event the City were to terminate a long term lease by condemning the leasehold interest, compensation of the fair market value of the improvements is required by operation of State law.

The City's Municipal Election is June 8, 2010. At least 120 days prior to the Election (approximately February 8, 2010), the City should submit a Resolution Ordering the Election and provide specifications concerning the ballot measure to the County Elections Official. The City Attorney will also prepare an Impartial Analysis of the ballot measure for filing. Arguments for and against the measure must be filed by approximately March 2, 2010. Rebuttal arguments are due by approximately March 12, 2010.

RECOMMENDATION: That the City Council:

- 1) Hold the public hearing concerning the proposed Charter Amendment and consider public testimony; and
- 2) Consider approval of the Resolution Ordering Submission of a Proposition of an Amendment to the Freeholders Charter of Porterville Concerning Leases of City Property to the Qualified Voters of the City at a Special Election to be Held for that Purpose, Requesting Consolidation with a General Municipal Election Scheduled on June 8, 2010, and Authorizing the Filing of an Impartial Analysis and Written Arguments.

ATTACHMENT: Porterville Municipal Charter, Section 68  
Proposed Amended Charter Section 68  
Resolution No. \_\_\_\_\_-2009

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## Porterville City Charter

### Sec. 68. Leases Of City Property.

In every lease of city property the basic amount of rental shall be fixed by the council.

All indentures of lease shall provide that the council may terminate the same at its pleasure and repossess the premises therein described upon three months' notice thereof and upon paying to the lessee the market value of any improvements made or put upon said premises by the lessee. The market value of such improvements shall be determined by a board of appraisers consisting of one appraiser appointed by the council, and a lessee appraiser appointed by the lessee.

In the event of their failure to agree upon the market value of the improvements within thirty days from and after their appointment, said two appraisers may appoint a third appraiser as a member of said board, and the determination of the majority of said board of appraisers, as to the market value of the improvements, shall be final and conclusive and binding on all concerned. Should the two appraisers appointed by the council and the lessee respectively, fail for forty days from and after their appointment to agree upon the market value of the improvements or to appoint a third appraiser, then upon the petition in writing of either party to any such lease, a judge of the superior court of Tulare County is hereby empowered to appoint the third appraiser upon such board; provided, however, that the council shall not terminate any such lease or repossess any such premises except for a public use and purpose; provided, further, that no lease of city property shall be made for a maximum term of more than fifty years. (4-2-1963; 4-6-1971)

Amendment note \_ The second paragraph of § 68 was amended April 6, 1971, by substituting "maximum term" in lieu of "term" in the last proviso clause.

## **Proposed Charter Language – Section 68**

### **Section 68. Leases of City Property**

The City may lease property owned or held or controlled by it, or any of its departments, for a term not to exceed 55 years. Furthermore, the City may lease property owned or held or controlled by it, or any of its departments for a term exceeding 55 years but not exceeding a terms of 99 years, if all of the following conditions are met: a) The lease is subject to periodic review, established in the lease provisions, taking into consideration current market conditions; b) the lease shall be authorized by ordinance adopted by the City Council, and shall be therefore subject to referendum in the manner prescribed by law or local regulation; and c) the City Council shall hold a public hearing prior to adoption of said ordinance, in accordance with Government Code Section 6066, said notice shall be published in one or more newspapers of general circulation within the City, and notice shall be mailed to any person requesting special notice, to any present tenant of the property, and to all owners of land adjoining the property.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE ORDERING SUBMISSION OF A PROPOSITION OF AN AMENDMENT TO THE FREEHOLDERS CHARTER OF SAID CITY OF PORTERVILLE RELATED TO LEASES OF CITY PROPERTY, TO THE QUALIFIED VOTERS OF THE CITY AT A SPECIAL ELECTION TO BE HELD FOR THAT PURPOSE, REQUESTING CONSOLIDATION WITH A GENERAL MUNICIPAL ELECTION SCHEDULED ON JUNE 8, 2010 AND AUTHORIZING THE FILING OF AN IMPARTIAL ANALYSIS AND WRITTEN ARGUMENTS**

**WHEREAS**, pursuant to Elections Code Sections 9255 et seq., the City of Porterville may make amendments to its City Charter; and

**WHEREAS**, the City Council of the City of Porterville on its own motion, desires to propose to the electors of the City of Porterville an amendment to the Charter of the City of Porterville, which shall amend Section 68, concerning leases of City property;

**NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS:**

A. Section 68 of the Charter of the City of Porterville is hereby proposed to be amended to read as follows:

**Sec. 68 Leases of City Property.**

The City may lease property owned or held or controlled by it, or any of its departments, for a term not to exceed 55 years. Furthermore, the City may lease property owned or held or controlled by it, or any of its departments for a term exceeding 55 years but not exceeding a terms of 99 years, if all of the following conditions are met: a) The lease is subject to periodic review, established in the lease provisions, taking into consideration current market conditions; b) the lease shall be authorized by ordinance adopted by the City Council, and shall be therefore subject

to referendum in the manner prescribed by law or local regulation; and c) the City Council shall hold a public hearing prior to adoption of said ordinance, in accordance with Government Code Section 6066, said notice shall be published in one or more newspapers of general circulation within the City, and notice shall be mailed to any person requesting special notice, to any present tenant of the property, and to all owners of land adjoining the property.

B. A special municipal election is hereby authorized, whereby the citizens of Porterville may approve or disapprove the proposed charter amendment, to be held on June 8, 2010, to be consolidated with the general municipal election scheduled to be held that same day.

C. On the ballot to be used at the special municipal election, insofar as the same pertains to the proposed amendments to the Freeholders Charter of the City of Porterville, in addition to any matters required by law, there shall be printed substantially the following:

1. Measure \_\_\_ to amend Section 68 of the Freeholders Charter of the City of Porterville, eliminating the requirement that all leases contain a clause allowing the City Council to terminate the lease with 3 months notice, extending the allowed term of lease from 50 to 55 years, and allowing leases for up to 99 years if the lease provides for periodic review in light of market conditions, and the lease is established by ordinance after a noticed public hearing, and is therefore subject to referendum.

D. The City Clerk of the City of Porterville is hereby authorized and instructed to publish said proposed amendment, to the Charter of the City of Porterville, in the Porterville Recorder, a newspaper of general circulation, as required by the provisions

of California Elections Code Section 12114 and California Government Code Section 6066, and as required pursuant to the City's regulations.

E. The polls for an election shall be open on the day of said election in accordance with the California Elections Code.

F. The special municipal election hereby called for June 8, 2010, shall be and is hereby ordered consolidated with the general municipal election to be held within the City on said date, and within the territory affected by the consolidation. The election shall be held and conducted, election officers appointed, voting precincts designated, ballots printed, polls opened and closed, ballots counted, and returned, returns canvassed, results declared, and all other proceedings incidental to and connected with the election shall be regulated and done in accordance with the provisions of law regulating the election as specified herein. The Board of Supervisors of Tulare County, and the Tulare County Registrar of Voters, are hereby requested to order the consolidation of the special municipal election hereby called with the general election to be held within the City on said date, and within the territory affected by the consolidation, and the Board and the Registrar of Voters are hereby authorized to canvass the returns of said special municipal election, and said municipal election shall be held in all respects as if there were only one election and the form of ballot shall be as provided for the general election. The County shall certify results of the canvass of the returns of said special municipal election to the City Council which shall thereafter declare the results thereof. The measure submitted by the Resolution shall be designated on each ballot by a letter printed on the left margin of the square containing the description of the measure as provided by the California Elections Code.

G. All persons qualified to vote at special municipal elections in the City upon the date of the election herein provided shall be qualified to vote upon the proposition submitted at said special election.

H. Ballots for the election shall be provided in the form and in the number provided by law. On said ballots, in addition to any other printed matter which may be required by law, two voting squares shall be set off to the right of the proposition submitted at the election, one having the word "YES" printed before it, and the other having the word "NO" printed before it.

I. Each voter to vote for the proposition and for the Charter Amendment shall stamp or write a cross, or indicate by hole punch, or other means, in the blank space opposite the word "YES" on the ballot to the right of the proposition, and each voter to vote against the proposition and against the Charter Amendment shall stamp or write a cross, or indicate by hole punch, or other means, in the blank space opposite the word "NO" on the ballot to the right of the proposition.

J. The Clerk is hereby authorized and directed to publish the resolution or any required notice as required by law and to transmit, for receipt no later than the applicable deadline, a certified copy of this resolution to the Tulare County Clerk, Elections Division, and to any other appropriate office of Tulare County.

K. The City Attorney is hereby authorized and directed to prepare an impartial analysis of the proposition specified in this resolution showing the effect and operation of the measure. The analysis is to be submitted by the City Attorney to the Tulare Registrar of Voters, or other appropriate official for printing as required by law. The analysis shall not exceed 500 words in length.

L. The City Council hereby authorizes the filing of a ballot argument in favor of the proposition to be submitted to the voters at the special election. Said written argument for the proposition shall not exceed 300 words in length. If any person submits an argument against said proposition, the City Council authorizes the submittal of a rebuttal argument not exceeding 250 words. The argument and rebuttal shall otherwise conform to and comply with all applicable provisions of the California Elections Code. The deadline for submittal of the arguments, in favor or in opposition, shall be as required by the Tulare County Registrar of Voters, or other appropriate County official.

**PASSED, ADOPTED AND APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2009.**

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**Pete McCracken, Mayor**

**ATTEST:**

**John Lollis, City Clerk**

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**By: Patrice Hildreth, Chief Deputy City Clerk**

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**MCCORMICK KABOT JENNER & LEW  
MEMORANDUM**

TO: Porterville Charter Review Committee  
Cc: John Lollis, City Manager

FROM: Julia M. Lew, City Attorney

DATE: October 1, 2013

SUBJ: Background Information concerning "Councilmanic Interference" Charter provisions

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The attached are samples of charter provisions from other California cities that address councilmanic interference, and an interesting article from Santa Clara University/Markkula Center for Applied Ethics that addresses the issues that arise in relationships between elected officials and city staff.

Included in the samples is the City of Oakland's charter language, along with a memorandum the City Attorney prepared this past March. The memorandum was prepared in response to a report issued by Oakland's City Auditor concerning various alleged instances of such interference.

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**SECTION 701. NON-INTERFERENCE BY CITY COUNCIL.**

Neither the City Council, nor any Council Member shall:

(a) Order or direct the City Manager to appoint or remove any person to or from any position of employment with the City;

(b) Except as otherwise permitted by this Charter or by ordinance, order or direct the City Manager to enter into a municipal contract or make a purchase of supplies from any particular person or entity;

(c) Interfere in any way with the performance of the duties of any City employee; or

(d) Interfere in any way with the duties of the City's elections official in the conduct of elections.

Nothing in this section shall prevent the City Council, or any of its members, from advising the City Manager of any information which might assist the City Manager in the discharge of the City Manager's duties; or contacting City employees for the purpose of inquiry, obtaining information or advising employees of citizen complaints.

**ARTICLE VIII. ANNUAL BUDGET**

**SECTION 800. BUDGET PREPARATION.**

All Department Heads shall, upon request, provide the City Manager with estimates of revenues and expenditures for their departments, detailed in the manner prescribed by the City Manager. The City Manager shall review the estimates, hold conferences with department personnel, and prepare a proposed budget.

**SECTION 801. SUBMISSION TO CITY COUNCIL.**

At least 45 days prior to the beginning of each fiscal year, the City Manager shall submit a proposed budget to the City Council. After reviewing the proposed budget, the City Council shall set the date and time for a public hearing on the proposed budget and, at least 10 days prior to its scheduled date, shall cause notice of such public hearing to be published in a newspaper circulated in the City and designated by the City Council.

## **SECTION 2011. ELIMINATION OF TRANSITION PROVISIONS.**

If, in the judgment of the City Attorney, any of the sections included in this Article become obsolete by virtue of the completion of all acts required under those sections, the City Attorney shall so advise the City Council. Upon the adoption by the City Council of a resolution to such effect, the obsolete sections shall be deemed to have expired, and the City Clerk shall then remove those sections from the next printing of this Charter.

## **ARTICLE XXI. MISCELLANEOUS**

### **SECTION 2100. VIOLATIONS.**

A violation of any provision of this Charter shall be a misdemeanor, except that such violation may be prosecuted as an infraction at the discretion of the prosecuting authority. The City Council shall, by ordinance, establish the penalties for a violation of this Charter, but in no event shall such penalties exceed the maximum penalties permitted under State law.

Any violation of this Charter may be prosecuted in the name of the People of the State of California or may be redressed by the City through any legal or equitable remedies.

### **SECTION 2101. VALIDITY.**

If any provision of this Charter, or the application of any Charter provision to any person or circumstance, is held invalid, the remainder of this Charter, and the application of such provision to other persons or circumstances, shall not be affected.

*Culver  
City*

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**Section 405 Powers Vested in the City Council.**

All powers of the City shall be vested in the City Council except as otherwise provided in this Charter.

**Section 406 Interference in Administrative Service.**

Neither the City Council nor any of its members shall interfere with the execution by the City Manager of his or her powers and duties, or order, directly or indirectly, the appointment by the City Manager or by any of the department heads in the administrative service of the City, of any person to an office or employment or his or her removal therefrom. Except for the purpose of inquiry, the City Council and its members shall deal with the administrative service under the City Manager solely through the City Manager and neither the City Council nor any member thereof shall give orders to any subordinates of the City Manager, either publicly or privately. (As amended by amendments effective on December 20, 2010)

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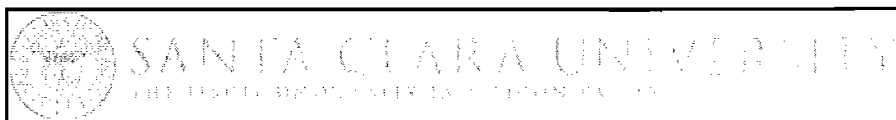
**1404 Violations.**

(a) The violation of any provision of this Charter shall be deemed a misdemeanor, which may be prosecuted in the name of the People of the State of California, and be punishable by a fine not exceeding One Thousand Dollars (\$1000.00) or by imprisonment in the City Jail for a term not exceeding six (6) months or by both such fine and imprisonment.

Additionally, such violations of this Charter may also be redressed by civil action and/or administrative citation.

(b) The City Council may make the violation of any ordinance of the City a misdemeanor or an infraction which may be prosecuted in the name of the People of the State of California. Unless specifically designated as an infraction, a violation of any ordinance of the City shall constitute a misdemeanor. The maximum fine and/or penalty for any violation of a City ordinance, whether a misdemeanor or an infraction, shall be established by ordinance. Additionally, the violation of any City ordinance may be addressed by civil action and/or administrative citation. (As amended effective June 6, 1974, and December 20, 2010)

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## Relationships Between Elected Officials and Staff

*These materials were prepared for the Markkula Center for Applied Ethics program in Government Ethics by Senior Fellow Judy Nadler and Communications Director Miriam Schulman. The Center provides training in local government ethics for public officials. For more information, contact [Judy Nadler](#).*

- [What is the relationship between elected officials and staff?](#)
- [What do these relationships have to do with ethics?](#)
- [What ethical dilemmas arise between elected officials and staff?](#)
- [Resources on relationships between elected officials and staff](#)

**What is the relationship between elected officials and staff?**

City councilmembers, county supervisors, and other elected officials represent the citizens. Staff—such as traffic engineers, waste management specialists, budget directors, IT professionals and others—are the experts who make government run. Elected officials are responsible for setting the priorities for the municipality or other district; staff have the know-how to make those priorities into realities.

The fact that the professional staff, unlike many elected officials, are not subject to term limits means that they have an institutional history, which is very beneficial in developing the concrete plans to put policy decisions into practice. They also often have advanced degrees in management, engineering, finance, and other technical areas, a knowledge base they can bring to bear in devising solutions to local problems.

In many municipalities, city councilmembers are elected by wards or districts. Once invested in office, they are supposed to serve the entire city, but often they feel a special responsibility to the constituents who elected them. By contrast, staff are mandated to serve the needs of the municipality as a whole.

In a council-manager form of government, staff report to the city manager. In a strong mayor system, staff answers to the mayor. In either case, when council makes policy decisions, it is the role of the manager or mayor to see that they are carried out by the staff. City council has no role in staff personnel issues; they hire and fire only the city attorney and city manager. As the Institute for Local Self Government explains in *Everyday Ethics for Local Officials*, "The manager [holds] staff accountable on the council's behalf for implementing the council's policies and directives. The entire council, in turn, holds the manager accountable for staff's overall performance."

**What do these relationships have to do with ethics?**

Many of the ethical issues that come up between elected officials and staff are best seen through the lens of virtue ethics, especially the virtue of respect. Elected officials need to show respect for the expertise of staff and avoid undercutting their efforts by ignoring the evidence-based solutions they propose. Conversely, staff need to respect the political give and take inherent in democratic government and the negotiation that is bound to be part of any council decision.

These relationships also raise ethical issues when elected officials try to circumvent established procedures and priorities to gain an advantage for their friends, family, or constituents. Going over the head of the city manager to pressure a staff member for special consideration is actually illegal. As an example, here is a section from the code of the city of Sunnyvale, California, about what is called "councilmanic interference":

Neither the City Council nor any member shall give orders to any subordinates of the City Manager, either publicly or privately.

Typically, elected officials may make inquiries or exchange information, but they cannot issue directives.

**What ethical dilemmas arise between elected officials and staff?**

Many newly elected officials have an imperfect understanding of the division of labor between council and staff; they may act as though staff work for them as individuals and should be responsive

to their individual priorities and the needs of their specific constituents. If a councilmember ran on a platform of clean streets, for example, he or she may believe that the proper course of action once elected is to meet directly with the sanitation director and encourage prompt action. But the councilmember must work through the democratic process with other councilmembers to make clean streets a priority across the city. That priority would then be conveyed to the city manager, to whom the sanitation director reports.

Another set of ethical dilemmas arises when council sets priorities but then ignores them. In a public meeting the council may agree on the top five goals for the year-like renovate central park, draw up plans for a teen center, etc.-but during course of the year, individual councilmembers come up with separate projects and introduce them without regard to what the majority of the council decided. This puts a lot of pressure on city staff, when they have been given their marching orders on the top priorities, and they are now being diverted from accomplishing them.

Sometimes elected officials have their own staffs, and may ask their own transportation or sanitation expert to study a problem and make proposals. When the elected officials either on their own or through council or mayoral staff conduct their own research, they are not only duplicating the work of the technical staff and therefore wasting time and money, but they are also undercutting the authority and marginalizing the recommendations of the professional staff, who work for the entire city and not for any individual elected official.

It is also demoralizing to staff when they come up with a clear, technical report with an evidence-based proposal, which is then thrown out the window because there are 100 people in the audience or 100 names on a petition asking for something else. Traffic calming is a common area of contention, where, for example residents of a senior citizens housing complex may be agitating for a stoplight so that they can cross the street safely. But city staff may have evidence that a stoplight at that intersection will create more problems than it solves.

John Nalbandian, who has studied public administration as a professor at University of Kansas and also served as a city commissioner, points out, however, that such problems do not necessarily have a right answer. "From the engineer's perspective," he writes, "I suspect that there is a right answer to the problem, and the engineer might ask, 'Will the council have the political courage to accept it?' But, as an elected official, I do not see the right answer. I see a very complicated set of forces and a problem infused with choices about values symbolized by a decision about a traffic light."

#### **Resources on Relationships Between Elected Officials and Staff**

#### Cases on Relationships Between Elected Officials and Staff

[The Mayor and the Manager](#)

[The Councilmember and the Manager](#)

[All Cases on Government Ethics](#)


[Articles About Government Ethics on This Web Site](#)

[Articles About Ethical Decision Making on This Web Site](#)

[Links to Other Sites About Relationships Between Elected Officials and Staff](#)

[Introduction to Government Ethics Homepage](#)

July 2006

 [Printer-Friendly Page](#)

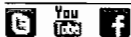
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### New Materials

- [Five Ethical Choices You Will Have to Make in College](#)  
Top issues for undergraduates
- [Mandatory Flu Shots](#)  
Is it ethical to require health care workers to be immunized?
- [Religion and the 2012 Elections](#)  
Thomas Reese, SJ, analyzes the theme of religious liberty

### Center News

- [Tech Forum](#)  
Federal Trade Commissioner on campus Sept. 20
- [FPPC Chair to Speak](#)  
Ann Ravel discusses transparency Oct. 5
- [Foreign Corrupt Practices Act](#)  
Seminar on global compliance Oct. 10
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in any case cause to be paid him/her forthwith any unpaid balance of his/her salary and his/her salary for the next calendar month following adoption of the preliminary resolution. (Amended by electors at an election held March 7, 2000, Charter Chapter 11 of the State Statutes of 2000)

**Sec. 807 Prohibition against Councilmanic interference.**

Neither the City Council nor any of its members shall order or request the appointment of any person to an office or employment or his/her removal therefrom, by the City Manager, or by any of the department heads in the administrative service of the City. Except for the purpose of inquiry, the City Council and its members shall deal with the administrative service under the City Manager solely through the City Manager and neither the City Council nor any member shall give orders to any subordinates of the City Manager, either publicly or privately.

Any City Council member violating the provisions of this section, or voting for a resolution or ordinance in violation of this section shall be guilty of a misdemeanor and, upon conviction, shall cease to be a Council Member. (Amended by electors at an election held March 7, 2000, Charter Chapter 11 of the State Statutes of 2000)

**Sec. 808 Ordinances.**

The enacting clause of every ordinance shall be "Be it ordained by the City of Santa Clara as follows:" No ordinance shall be finally adopted by the Council on the day of its introduction, nor within five days thereafter, nor at any time other than a regular meeting, nor until its publication as required in Section 812. However, ordinances calling elections and ordinances carrying out the provisions of elections need not be published prior to adoption. In case an ordinance is amended before its final adoption and after its publication, it shall in like manner be republished as required in Section 812, at least one day before its adoption as amended; provided, however, that where such amendment is made for the correction of clerical errors or omissions of form only, then such ordinances need not be given a first reading or a republication as corrected. (Amended by electors at an election held March 7, 2000, Charter Chapter 11 of the State Statutes of 2000)

**Sec. 809 Repeal or amendment of ordinances.**

No ordinance or portion thereof shall be repealed except by ordinance. No ordinance shall be revised, re-enacted or amended by reference to its title only; but the ordinance to be revised or re-enacted, or the section or sections thereof to be amended, or the new section or sections to be added thereto, shall be set forth and adopted according to the method provided in this article for the enactment of ordinances, and such revision, re-enactment, amendment or addition, shall be done by ordinance only.

**Sec. 810 Effective date of ordinances.**

No ordinance shall become effective until thirty (30) days from and after the date of its adoption, except the following, which shall take effect upon adoption: (a) An ordinance calling or otherwise relating to an election; (b) An improvement proceeding ordinance adopted under some law, or procedural ordinance; (c) An ordinance declaring the amount of money necessary to be raised by taxation, or fixing the rate of taxation; or (d) An emergency ordinance adopted in the manner herein provided.

**Sec. 1701 State Elections Code.**

(Repealed by electors at an election held March 7, 2000, Charter Chapter 11 of the State Statutes of 2000)

**Sec. 1702 Amendments to State Elections Code.**

(Repealed by electors at an election held March 7, 2000, Charter Chapter 11 of the State Statutes of 2000)

**Article XVIII. Miscellaneous****Sec. 1800 Definitions.**

Unless the provision or the context otherwise requires, as used in the Charter:

(a) "Shall" is mandatory, and "may" is permissive.

(b) "City" is the City of Santa Clara and "department," "board," "commission," "agency," or "employee," is a department, board, commission, agency, officer or employee as the case may be, of the City of Santa Clara.

(c) The masculine and feminine gender include the neuter. (Amended by electors at an election held March 7, 2000, Charter Chapter 11 of the State Statutes of 2000)

**Sec. 1801 Violations.**

The violation of any provision of this Charter shall be deemed a misdemeanor and be punishable upon conviction by a fine of not exceeding one thousand dollars (\$1,000.00) or by imprisonment for a term of not exceeding one year or by both such fine and imprisonment.

**Sec. 1802 Validity.**

If any provisions of this Charter, or the application thereof to any person or circumstance is held invalid, the remainder of the Charter and the application of such provision to other persons or circumstances, shall not be affected thereby.

**Sec. 1803 Effective date.**

For the purpose of nominating and electing members of the City Council, this Charter shall take effect from the time of its approval by the legislature. For all other purposes it shall take effect on the Tuesday next succeeding the date of election of the first City Council at 8:00 P.M.

reason or reasons for his action, which notice the City Clerk shall forthwith deliver to the members of the Council. Such notification shall automatically cause the reconsideration of the ordinance by the Council at its regular meeting next following the sixth day after the aforesaid final adoption of the ordinance. If, upon reconsideration, the ordinance is approved by the affirmative vote of at least five members of the Council, it shall take effect immediately; and if not so approved, it shall be ineffective.

**(Amended by: Stats. November 1998 and March 2004.)**

**Section 217. Penalty for Violation of Ordinances.** The Council may make the violation of its ordinances a misdemeanor, which may be prosecuted in the name of the People of the State of California or may be redressed by civil action, and may prescribe punishment for such violations by a fine not to exceed \$1,000 or by imprisonment not to exceed one year, or by both such fine and imprisonment.

**Section 218. Non-Interference in Administrative Affairs.** Except for the purpose of inquiry, the Council and its members shall deal with the administrative service for which the City Administrator, Mayor and other appointed or elected officers are responsible, solely through the City Administrator, Mayor or such other officers. Neither the Council nor any Council member shall give orders to any subordinate of the City under the jurisdiction of the City Administrator or such other officers, either publicly or privately; nor shall they attempt to coerce or influence the City Administrator, or such other officers, in respect to any contract, purchase of any supplies or any other administrative action; nor in any manner direct or request the appointment of any person to or his removal from office by the City Administrator or any of his subordinates or such other officers, nor in any manner take part in the appointment or removal of officers or employees in the administrative service of the City. Violation of the provisions of this section by a member of the Council shall be a misdemeanor, conviction of which shall immediately forfeit the office of the convicted member.

**(Amended by: Stats. November 1988, November 2000 and March 2004.)**

**Section 219. Ordinance: When Required.** In addition to other actions required by law or by specific provision of this Charter to be done by ordinance, those actions of the Council shall be by ordinance which:

- (1) Adopt or amend an administrative code or establish, alter or abolish any City department, office or agency as authorized in Article VI of this Charter.
- (2) Provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed.
- (3) Levy taxes except as otherwise provided in this Charter with respect to the property tax levied by adoption of the budget.
- (4) Regulate the rates charged for its services by a public utility.
- (5) Authorize the borrowing of money except as otherwise provided in Section 812 of this Charter.
- (6) Convey or lease, or authorize the conveyance or lease for longer than one year, of any real property of the City, or any interest therein, or the acquisition of real property, the purchase price of which is more than Five Thousand Dollars (\$5,000.00).
- (7) Amend or repeal any ordinance previously adopted.

Provided, acts other than those referred to hereinabove under this section, or other than may be specifically otherwise provided for in other sections of this Charter, may be done either by ordinance or by resolution.

[City Council Rules and Procedures > \(/Government/o/CityCouncil/a/City Charter/OAK025836\)](#)

# CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND,  
CALIFORNIA 94612

Office of the City Attorney  
Barbara Parker  
City Attorney

March 22, 2012

(510) 238-3601  
FAX: (510) 238-6500  
TTY/TDD: (510) 238-3254

**TO:** All City staff, City Councilmembers, Mayor Quan, City Administrator Santana and City Auditor Ruby

**FROM:** City Attorney Barbara Parker

## **Re: City Council Non-Interference in Administrative Affairs**

City of Oakland staff and City Councilmembers should be aware of the following prohibitions of the City Charter Section 218 (Non-Interference in Administrative Affairs). *Violation of these provisions of this section by a member of the Council is a criminal misdemeanor. A conviction would trigger immediate forfeiture of office.*

- A City Councilmember may only contact City administrative staff only to make inquiries. All other communications about the administration of the City must only be through the City Administrator or Mayor.
- A City Councilmember shall not give orders to any administrative employee, either publicly or privately. A City administrative staff person shall not carry out the orders of a City Councilmember. Instead, the staff person should consult and follow the direction of the City Administrator or department head.
- A City Councilmember shall not attempt to coerce or influence the City Administrator or any administrative employee in respect to any contract, purchase of supplies or any other administrative action. A City staff person should not be influenced in respect to any contract, purchase of supplies or any other administrative action by a Councilmember.
- A City Councilmember may not in any manner direct or request the appointment to or removal from office of any person by the City Administrator, City Administrator subordinates or any other such officers.
- A City Councilmember may not in any manner take part in the appointment or removal of any administrative employee.

If you have any questions about the above or believe a violation has occurred you should contact the City Administrator's Office. Until the position of the Executive Director to the Public

March 22, 2012  
Page Two

Ethics Commission is filled, please contact Deputy City Administrator Arturo Sanchez at 238-7542 or at [asanchez@oaklandnet.com](mailto:asanchez@oaklandnet.com).

Or, you can anonymously call the City Auditor's Fraud, Waste, and Abuse Hotline: (888) 329-6390.

For more information about the charter power of City Councilmembers re: contracting, use of public funds and other issues, please see the series of legal opinions issued to the City Council in 2006 and posted on the City Attorney's Web site since that time at: <http://www.oaklandcityattorney.org/Ops-Reps/Opinions.html>

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Barbara J. Parker". The signature is written in a cursive style with a large initial "B".

Barbara Parker  
Oakland City Attorney

By:

Mark T. Morodomi  
Supervising Deputy City Attorney

**Debbie Salter**

---

**From:** John S Hardin [jshardin@ocsnet.net]  
**Sent:** Thursday, September 26, 2013 9:43 AM  
**To:** abailey@kraselaw.com; Mgr Office; jmllew@mkjw.com  
**Subject:** Charter Review Committee

**Chairman Bailey**

I have to say that I was disappointed last night that the group choose to punt the issue of pensions back to City Council given that Pension Reform was one of the 4 main areas that the committee was asked to review. I understand that this area can be difficult to understand but that is why we were chosen to address these issues. I also feel that any committee member who is a participant in CalPERS has a conflict of interest with regards to this discussion. It makes no difference if that person is pre-retirement or in retirement. CalPERS members in retirement have a vested interest in increases in membership since future benefits are highly dependent on future participation with some studies placing a future ratio of retirees to working members at 2-1. I will respectfully ask that we revisit this issue at the next meeting since a 20 minute discussion really did not do justice to the weight of the decision.

Thanks  
John Hardin