

CITY OF OAKLAND
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION

**TO: CHAIRPERSON SCHAAF AND MEMBERS OF THE FINANCE AND
MANAGEMENT COMMITTEE**

**FROM: BARBARA J. PARKER
CITY ATTORNEY**

DATE: OCTOBER 25, 2013

**RE: Whether the Council has the Power to Direct Staff under the City
Administrator's Jurisdiction to Address Agenda Items and Answer
Questions at City Council and Committee Meetings**

I. INTRODUCTION

At the September 24th Finance and Management Committee, a Councilmember requested that a particular employee under the City Administrator's jurisdiction answer questions regarding an agenda report. The Committee chair and the Assistant City Administrator assigned to the Committee objected to the request, stating that the City Administrator had designated a different employee to present the report and address questions regarding the item. The Councilmember who made the request stated that she had the right to make the inquiry and receive a response from the employee.

The Deputy City Attorney assigned to the Committee provided an oral preliminary opinion that the City Council and its members do not have authority to direct staff under the City Administrator's jurisdiction to answer questions and advised that our Office would provide a written legal opinion.

II. QUESTION

Does a Councilmember or the Council have the power to determine/direct which City employee under the City Administrator's jurisdiction addresses agenda items and responds to Councilmembers' questions/inquiries at City Council and Council Committee meetings?

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III. SUMMARY CONCLUSION

No. The Council and its members may make an inquiry to employees under the City Administrator's jurisdiction or the jurisdiction of the Mayor or other appointed or elected officers who are responsible for the administrative service. However, neither the Council nor any Council member has authority to determine/direct which City employee under the City Administrator's jurisdiction or such other officers responds to such inquiries.

The City Charter grants the City Administrator and other appointed or elected officers who are responsible for the administrative service the sole discretion to direct and determine which employee addresses agenda items and answers Councilmembers' questions. Therefore, any direction by the Council or a Councilmember to an employee under the City Administrator's jurisdiction would violate the separation of powers the City Charter establishes between the legislative and administrative functions.

The City Council has no administrative powers and the City Charter expressly prohibits the Council and its members from giving orders/direction to employees under the jurisdiction of the City Administrator and other officers who are responsible for the administrative service. (City Charter sections 207 and 218.) The preparation and presentation of agenda reports and responding to Council's and Councilmembers' questions/inquiries about agenda reports are administrative functions. The City Charter explicitly grants the City Administrator the power and makes it his/her responsibility to perform the administrative function of preparing and presenting agenda reports and responding to Council's or Councilmembers' questions/inquiries about reports. (City Charter section 504.) This power encompasses the discretion to decide to whom the City Administrator will delegate her responsibility of preparing reports and responding to Councilmembers' questions/inquiries.¹

V. BACKGROUND

For a number of years, Councilmembers have asked that particular employees under the City Administrator's jurisdiction come to the podium and address agenda items or answer questions at Council and Council Committee meetings. Rarely have objections been raised to this practice although on occasion the City Administrator or his/her designee has advised Council that "X" is the most knowledgeable employee and that he/she will respond. Often the Councilmembers have accepted the City Administration's decision; however, the practice of calling particular employees to the

¹ All employees under the City Administrator's jurisdiction are hired, fired, disciplined by and take direction from the City Administrator or employees to whom s/he has delegated his/her authority. (City Charter section 503.)

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podium to provide information/insight has been so common that the Council may believe that it has the power to direct that a specific employee address its questions.

VI. ANALYSIS

A. The City Council has no Administrative Powers and the Charter Prohibits Council Interference in the City's Administrative Affairs

The Oakland City Charter ("City Charter") is the supreme law of the City of Oakland ("City"). It grants the City the power to make and enforce all laws and regulations with respect to *municipal affairs*, subject only to the restrictions and limitations provided in the Charter. The Charter authorizes the City to exercise Home Rule powers as to municipal affairs that the California Constitution grants to charter cities. (Section 6 of Article XI of the Constitution of the State of California; City Charter § 106.)

As the City Attorney opined in the February 6, 2003 public legal opinion regarding City Manager's powers², municipal corporations, such as the City of Oakland, are not bound by the separation of powers principles in the federal or state constitution. *McQuillin Mun. Corp* § 10.06, p. 313 (3rd Edition). Strict separation of powers is not constitutionally required for local governments. 13 Cal Jur 3d (Rev) Part §101, p. 224. Therefore, the City Charter determines the roles of the City Council, Mayor and City Manager.

Oakland's City Charter clearly separates the legislative (Council) and administrative (City Administrator and other officers) powers. Among other things, City Charter section 207 provides that the Council has no administrative powers.³ City Charter section 218 further prohibits the Council and its members from interfering with the administrative affairs/service of the City for which the City Administrator, Mayor, and other appointed or elected officers are responsible.⁴

² This opinion is available on the City Attorney's website under the opinion archive list for 2003.

³**Section 207. Powers of the Council.** The Council shall be the governing body of the City. It shall exercise the corporate powers of the City and, subject to the expressed limitations of this Charter, it shall be vested with all powers of legislation in municipal affairs adequate to provide a complete system of local government consistent with the Constitution of the State of California. It shall have no administrative powers. The Council shall fix the compensation of all City employees, officers and officials except as otherwise provided by this Charter.

⁴**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

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B. The City Administrator has Sole Discretion to Designate Which Staff Member Provides Reports and Responds To Councilmembers' Questions at City Council and Committee Meetings

The City Administrator is the chief administrative officer of the City of Oakland. City Charter section 503 grants the City Administrator the power and provides that it is his/her duty to be responsible "for the proper and efficient administration of all affairs of the City under his jurisdiction", and empowers him/her to "appoint, assign, reassign, discipline and remove all directors or heads of departments and all employees under [his/her] jurisdiction."⁵ City Charter section 504 empowers the City Administrator to "administer the affairs of the City," and requires that the City Administrator "attend all meetings of the Council and its committees [unless excused] . . . and participate in discussions at such meetings." In addition, the City Administrator has the duty to "investigate affairs of the City under his [or her] supervision," "prepare and submit to the Council such reports as it may require" and "keep the Council at all times fully advised as to the financial condition and needs of the City."⁶

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. (Emphasis added.)

⁵**Section 503. Powers of Appointment and Removal.** The City Administrator shall be responsible to the Council for the proper and efficient administration of all affairs of the City under his jurisdiction, and shall, subject to the provisions of Article IX of this Charter and except as otherwise provided in this Charter, have the power to appoint, assign, reassign, discipline and remove all directors or heads of departments and all employees under his jurisdiction. He may delegate to directors or other department heads responsible to him/her the authority to appoint, discipline and remove subordinate employees, subject to the provisions of Article IX of this Charter

⁶**Section 504. Duties.** The City Administrator shall have the power and it shall be his duty: (a) To execute and enforce all laws and ordinances and policies of the Council and to administer the affairs of the City. (b) To attend all meetings of the Council, and its committees, unless excused, and such meetings of boards and commissions as he chooses or which he is directed to attend by the Council, and to participate in discussions at such meetings. (c) To recommend to the Council such measures and ordinances as he may deem necessary or expedient and to make such other recommendations to the Council concerning the affairs of the City as he finds desirable. (d) To investigate affairs of the City under his supervision, or any franchise or contract for the proper performance of any obligation running to the City within his jurisdiction. (e) To control and administer the financial affairs of the City. He may appoint a Director of Finance to act under his direction. (f) To prepare an annual budget under the direction of the Mayor and Council for the Mayor's submission to the Council. (g) To prepare or cause to be prepared the plans, specifications, and contracts for work which the Council may order. (h) To supervise the

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The City Charter enumerates the City Administrator's administrative powers and duties which enable him/her to enforce, implement and administer the Council's policies, laws and ordinances. However, the Council cannot give the City Administrator direction regarding how s/he performs these administrative duties. The City Charter explicitly states that the Council "shall have no administrative powers."⁷ The City Administrator has sole discretion and control over the manner and methods to perform the administrative functions under the City Administrator's jurisdiction.

Thus, the City Administrator has the duty to prepare agenda reports, participate in discussions at Council and Committee meetings and keep the Council fully advised, and has sole authority to designate the City staff under his/her jurisdiction to address items and answer Councilmembers' questions at City Council and Council Committee meetings.

C. The Oakland City Council and Its Councilmembers Have No Authority to Direct City Staff to Speak and Answer Questions at Committee and Council Meetings

City Charter section 218 mandates that the Council and its members shall deal with the administrative service through the City Administrator, Mayor or other appointed or elected officers "[except] for the purpose of inquiry. . .", and further prohibits the Council and Council members from "giv[ing] orders to any subordinate of the City under the jurisdiction of the City Administrator. . . , either publicly or privately", or "[attempting] 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."

purchasing of materials and supplies and to make recommendations to the Council in connection with the awarding of public contracts and to see that all City contracts under his direction or that of the Council are faithfully performed. (i) To prepare and submit to the Council such reports as it may require. (j) To keep the Council at all times fully advised as to the financial condition and needs of the City. (k) To prescribe such general rules and regulations as he may deem necessary or expedient to the general conduct of the administrative departments under his jurisdiction. (l) When directed by the Council, to represent the City in its intergovernmental relations and to negotiate contracts for joint governmental actions, subject to Council approval. (m) To devote his entire time to the duties and interest of the City. (n) To perform such other duties as may be prescribed by this Charter or by ordinance or resolution.

⁷**Section 207. Powers of the Council.** The Council shall be the governing body of the City. It shall exercise the corporate powers of the City and, subject to the expressed limitations of this Charter, it shall be vested with all powers of legislation in municipal affairs adequate to provide a complete system of local government consistent with the Constitution of the State of California. It shall have no administrative powers. The Council shall fix the compensation of all City employees, officers and officials except as otherwise provided by this Charter.

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Directing a City staff member under the City Administrator's jurisdiction to appear before the Council or a Council Committee and answer questions violates City Charter section 218 and goes beyond making an inquiry of a subordinate of the City Administrator, which is permissible under that section. The City Attorney outlined the definition of "inquiry" for purposes of Section 218 in the February 6, 2003 public legal opinion regarding the division between the Council and City Manager's powers. The City Attorney cited Webster's Dictionary in defining "inquiry" as "examination into facts or principles: research." The opinion further stated that "inquiry" also can mean "a request for information" or "systematic investigation."

When a Councilmember makes an inquiry, the City Administrator has discretion to decide who will respond to the inquiry. A Councilmember's insistence that a particular staff member respond to questions/inquiries constitutes direction or an order that contravenes City Charter section 218 and the City Administrator's authority to direct staff under City Charter Article V. To be clear, the Council may make inquiries of City staff under the jurisdiction of the City Administrator or other appointed or elected officers who are responsible for the administrative service. But the City Administrator (and other such officers) determines who will respond to such inquiries/questions. If Councilmembers are not satisfied with the responses to their questions they may direct follow up questions to the City Administrator or the employee(s) the City Administrator designates to handle the matter or request that the City Administrator provide additional written responses or reports.

The practice of directing particular City staff to speak at Council and Committee meetings may appear to be harmless or inconsequential. But compliance with the Charter's non-interference clause is not optional; the voters in enacting the Charter mandated the separation of powers of the Council (legislative branch) and the City Administration. This separation of powers is underscored by section 207 of the City Charter which provides that the Council "shall have no administrative powers". And this separation of powers is fundamental to maintain city staffers' ability to provide their independent professional analysis/judgment and their responsibility to take direction from the City Administration as opposed to a particular Councilmember or the Council.

As we have explained giving direction to employees under the City Administrator's jurisdiction or employees under the jurisdiction of the other elected or appointed officers who are responsible for the administrative service violates the non-interference clause of the City Charter and arrogates to the Council administrative powers which are the province of the City's administrative service. Such direction usurps the City Administrator's authority to carry out administrative functions under City Charter sections 503 and 504 and her power to hire, direct, discipline employees under her jurisdiction. Violation of the separation of powers also could undermine the City Administrator's ability to uphold his/her duties and could have a potentially coercive effect on members of City staff who are directed to speak without authorization or

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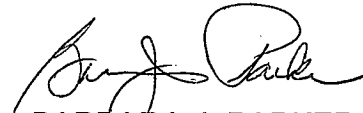
instruction on matters of City business. This is of particular note given City staff's expressed concern over the years that Councilmembers have the power to hire or fire them and giving direction to employees exacerbates the perception that employees report to Councilmembers and perform work for them.

VII. CONCLUSION

The City Administrator has sole power and discretion to determine/direct the City staff persons under his/her jurisdiction who will address items at Council and Committee meetings and answer questions. The City Charter prohibits Councilmembers from giving direction to City staff under the City Administrator's jurisdiction either publicly or privately. Council may request information/make an inquiry, and a Councilmember may ask the City Administrator if s/he will direct a particular staff member to respond to a question or inquiry. But the decision regarding which employee(s) will be designated to speak is within the City Administrator's sole discretion.

This opinion also applies to Councilmembers' private inquiries (i.e., outside of public meetings) to City employees under the jurisdiction of the City Administrator and other appointed or elected officers who are responsible for the administrative service.

Very truly yours,



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