CITY OF OAKLAND

OFFICE OF THE CITY ATTORNEY

LEGAL OPINION

TO: PRESIDENT LARRY REID AND MEMBERS OF THE CITY COUNCIL

FROM: CITY ATTORNEY BARBARA J. PARKER

CC: MAYOR LIBBY SCHAAF AND CITY ADMINISTRATOR SABRINA LANDRETH

DATE: NOVEMBER 9, 2017

RE: SCOPE OF SPECIAL COUNCIL MEETINGS CALLED PURSUANT TO CITY CHARTER SECTION 208

I. INTRODUCTION

A number of questions have arisen regarding the scope of special City Council meetings that three Councilmembers call pursuant to City Charter section 208. The primary question has been whether such a special meeting can include more than one "item."

This is a public opinion because these questions require interpretation of the City Charter and the relative powers of Councilmembers, the City Council, the City Administrator, the Mayor and the Council President to call special meetings.

Section 208 of the City Charter provides that "special meetings may be held at the regular place of meeting and shall be called, and notice thereof given, by the City Clerk upon the written request of the Mayor, the City Administrator or three members of the Council and such notice shall state the special subject to be considered at the special meeting; and no other subject shall be there considered."

This opinion addresses the following questions: (1) who has authority to call special meetings; (2) whether special meetings called pursuant to Charter section 208 are limited to discussion of a single subject; (3) whether the Council President or the City Council can add additional items to the agenda of a special meeting called pursuant to Charter section 208 to address the subject of that special meeting and/or additional items that address different subjects; and (4) whether the Council President or the City Council can call a special meeting for the same date and time or at a

different time on the same date as a special meeting called pursuant to City Charter section 208 to address different subjects.

II. QUESTIONS AND BRIEF ANSWERS

Question No. 1:

Who has authority to call a special City Council meeting?

Brief Answer:

The following have authority to call a special Council meeting:

1. the City Council pursuant to City Charter section 207, the Sunshine Ordinance (Oakland Municipal Code ("OMC") section 2.20.070(A), and the Brown Act (Cal. Gov't. Code section 54956);
2. the Council President pursuant to the Sunshine Ordinance (OMC section 2.20.070(A)) and the Brown Act (Cal. Gov't. Code section 54956);
3. three Councilmembers pursuant to City Charter section 208;
4. the Mayor pursuant to City Charter section 208; and
5. the City Administrator pursuant to City Charter section 208.

Question No. 2:

Are special City Council meetings called pursuant to City Charter section 208 limited to a single subject?

Brief Answer:

Yes. City Charter section 208 explicitly and unambiguously mandates that special meetings called pursuant to that section shall be limited to a single subject. City Charter section 208 specifically authorizes three Councilmembers, the City Administrator or the Mayor to call a special meeting to address a "special subject", using the word "subject" in the singular form, and then provides that the notice of such special meeting "shall state the special subject to be considered at the special meeting; and no other subject shall be there considered."

Question No. 3:

Does the Council President or the City Council have authority to add items to the agenda of a special meeting called pursuant to Charter section 208 to address the subject of that special meeting and/or additional items that address different subjects?

Brief Answer:

No. Neither the Council President nor the City Council may add items to special meetings called pursuant to Charter section 208, whether those items are on the same or different subjects. The Council President and the Council may not add items that address different subjects because City Charter section 208 explicitly mandates that special meetings called pursuant to section 208 are limited to the one subject specified in the writing calling the special meeting. Further, City Charter section 208 explicitly lists the individuals who may call a special meeting pursuant to that section – the Mayor, the City Administrator, or three members of the City Council; therefore neither the Council as a body nor the Council President alone may add items to the agenda of the special meeting, even if those items address the same subject matter.

Question No. 4:

Does the Council President or the City Council have authority to call a special meeting pursuant to Charter section 207 and the Sunshine Ordinance on the same date and time, or a different time on the same date as a special meeting called pursuant to City Charter section 208 to address different subjects?

Brief Answer:

The California Brown Act and the City's Sunshine Ordinance provide that the Council President or a majority of the members of the Council may call a special meeting "at any time". However, calling meetings for the same time as, or close to the commencement time of, a Charter section 208 special meeting could prevent the Council from having sufficient time for full discussion on the subject of the section 208 special meeting, undercutting or possibly eviscerating the Charter power granted by section 208. Accordingly, to avoid potential conflicts with Charter section 208, special meetings called pursuant to the Charter or the Brown Act/Sunshine Ordinance should be scheduled to allow sufficient time to discuss the item(s) on the agenda.

III. ANALYSIS

The City Charter is the City's constitution and it is the supreme law of the City, subject only to conflicting provisions in the state or federal constitutions and preemptive state law. See Cal. Const. Art. XI sections 3(a), 5(a), 6; *Harman v. City and County of San Francisco*, 7 Cal.3d 150, 161 (1972); *Domar Electric, Inc. v. City of Los Angeles*, 9 Cal. 4th 161, 170 (1994); *San Francisco Fire Fighters v. City and County of San Francisco*, 68 Cal.App.3d 896 (1977). A charter city may not act in conflict with its charter. *Domar Electric, Inc.,* 9 Cal.4th at 171.

A. The City Charter and the California Brown Act/Oakland Sunshine Ordinance provide authority for calling special City Council meetings, and the City Council can continue to enact legislation to call special meetings in a manner that does not conflict with the City Charter or preemptive state law.

Oakland's City Charter provides that the Council, as the governing body, has the power to make laws with respect to municipal affairs. Charter sections 106, 207. Charter cities may make and enforce ordinances relating to municipal affairs subject only to restrictions and limitations imposed in the charter. *San Francisco Fire Fighters*, 68 Cal.App.3d at 898 (1977). Ordinances must harmonize with the City Charter and cannot change the effect of the Charter. *Brown v. City of Berkeley,* 57 Cal.App.3d 223, 231 (1976). An ordinance is invalid if it conflicts with the Charter. *Id* at 230.

One of the controlling principles of statutory construction as applied to a municipal charter and municipal ordinances is that a city possesses "all powers over municipal affairs, otherwise lawfully exercised, subject only to the clear and explicit limitations and restrictions contained in the charter." *City of Grass Valley v. Walkinshaw*, 34 Cal. 2d 595, 598 (1949). A charter "operates as an instrument of limitation and restriction on the exercise of power over all municipal affairs" rather than as a grant of power. *Id* at 598-99. Therefore, an enumeration of powers within the charter does not exclude or limit a city from exercising powers beyond what its charter includes. *Domar Electric, Inc.*, 9 Cal. 4th at 170 (1994). Restrictions on a charter city's power may not be implied. *Id* at 171.

Pursuant to its powers under the City Charter the City Council passed the Oakland Sunshine Ordinance in 1997. Ordinance No. 11957 C.M.S. (1997). The Oakland Sunshine Ordinance provides that "special meetings of any local body may be called at any time by the presiding officer thereof or by a majority of the members thereof." OMC § 2.20.070.A.[1] The Ordinance states that "no business other than that set forth in the agenda shall be considered at a special meeting." OMC § 2.20.070.D. This is consistent with the Ralph M. Brown Act which applies to charter cities. Cal. Gov't. Code § 54951. The Brown Act states "A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body… The call and notice shall specify the time and place of the special meeting and the business to be transacted or discussed. No other business shall be considered at these meetings by the legislative body." Cal. Gov't. Code § 54956(a). Thus, the Brown Act and Sunshine Ordinance provide for a manner for either the Council President or the Council to call special meetings to consider multiple subjects by using the term "business".

[1] The City Council is a local body under the Ordinance. OMC § 2.20.030.E.

The City Council also has enacted rules of procedure for the conduct of its business, which includes a method for calling special meetings. Charter section 210; Resolution No. 86034 C.M.S. (2016). Rule 23 of the Council Rules of Procedure states that the Rules and Legislation Committee has jurisdiction "to recommend the setting of special meetings of the Council…" City Council Resolution No. 86034 C.M.S. (2016). The meeting recommendations then are approved by the City Council.[2]

Therefore, the City Council can call a special meeting to discuss any single subject or multiple subjects in accordance with its powers as the governing body of the municipal corporation. Charter section 207. The Sunshine Ordinance is consistent with section 207 of the Charter and the Brown Act in granting a majority of the members of the Council or the Council President the power to call a special meeting. The City Council regularly approves the Rules and Legislation Committee's recommendations that the Council call special meetings; and the Council as well sometimes calls special meetings during its duly noticed regular or special meetings. This City Council-enacted legislation allows the Council or Council President to call special meetings with multiple subject matters, and the Council is free to enact additional legislation regarding special meetings so long as it does not conflict with the City Charter or state law.

B. Special meetings called pursuant to section 208 of the Oakland City Charter are limited to one subject and may be called by the City Administrator or the Mayor or three Councilmembers

In addition to special meetings called under section 207, City Charter section 208 authorizes three Councilmembers, the City Administrator, or the Mayor to call a special meeting to discuss a single subject.[3]

1. Special Council meetings called pursuant to section 208 of the Charter are limited to one subject.

General rules of statutory construction apply to charters. *Casteneda v. Holcomb*, 114 Cal.App.3d 939, 942 (1981). But the application of these rules is necessary only when there is ambiguity, conflict, or when a literal interpretation of the language would result in absurd consequences. *Casteneda,* 114 Cal.App.3d at 942. If the language of the charter is clear and unambiguous the words should not be interpreted to "accomplish a purpose that does not appear on the face of the charter or from its legislative history." *Domar Electric, Inc.,* 9 Cal.4th at 172 (1994).

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[2] The Rules of Procedure also provide that "during the annual recess the City Council may be convened for special Council meetings as provided for by the City Charter." City Council Resolution No. 86034 C.M.S., Rule 20.

[3] This Charter provision predates the Charter amendments that removed the Mayor from the Council in 1998 (Measure X). Prior to Measure X, the Mayor was a member of the Council and presided at Council meetings. After the voters passed Measure X, the Council adopted amendments to its Rules of Procedure pursuant to City Charter section 210 establishing the position of Council President.

Section 208 of the Oakland City Charter provides in relevant part:

> "Special meetings may be held at the regular place of meeting and shall be called, and notice thereof given, by the City Clerk upon the written request of the Mayor, the City Administrator or three members of the Council and **such notice shall state the special subject to be considered at the special meeting; and no other subject shall be there considered**." (Emphasis added.)

Black's Law Dictionary defines "subject" as "the matter of concern over which something is created; something about which thought or the constructive faculty is employed… also termed subject matter." Subject matter is defined as "the issue presented for consideration." The term "subject" is used in this Charter section in the singular and not the plural form. The plain meaning of the words indicates that special meetings called pursuant to section 208 of the City Charter are limited to consideration of one issue. Drafters of this provision obviously intended to limit section 208 meetings to one subject because they explicitly used the plural term "subjects" in other sections of the Charter.[4]

The Oakland voters approved the Charter and therefore their intent in doing so is relevant to determine its legislative history and intent. See *Woo v. Superior Court of Los Angeles County*, 83 Cal.App.4th 967, 975. Generally voters' intent is determined by the text of the provision adopted. *Id.* If the words are unambiguous it is presumed that the voters intended the meaning on the face of the charter, unless a literal interpretation would result in "absurd consequences." *Id.* Here, the word "subject" in its singular form is not ambiguous. Absent evidence to the contrary, it cannot be assumed that the voters meant something other than the plain meaning of the word "subject" in the singular form.[5] Further, a requirement that special meetings called in this specific manner must be limited to one subject does not result in absurd consequences.[6] In fact, it is reasonable to conclude that the voters intended to establish the single subject limitation for special meetings called pursuant to Charter section 208 as a limitation on the power of a minority of Councilmembers to call Council meetings. Without the single-

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[4] Other sections of the City Charter use various terms that explicitly allow for multiple subject matters. Section 209 of the Charter references the "transaction of business" in specifying the City Council quorum to conduct business, which indicates single or multiple subject matters. Section 706(29) of the Charter uses plural "subject matters" to describe the matters for which the Port Board of Commissions have authority. Either of these terms could have been used in Section 208 to allow for multiple subjects at special meetings.

[5] The relevant text of section 208 has been included in the City Charter since at least 1931. The voter information literature that may have accompanied the proposed charter measure is not available in the City Clerk's Office.

[6] For example, in *Woo v. Superior Court of Los Angeles County*, the Court stated that a literal interpretation of a charter provision regarding term limits would result in "absurd consequences" where it would cause seven of 15 council districts to become immediately unrepresented and cause a city council to lose a quorum and therefore render it unable to conduct business.

subject limitation, three Councilmembers could call special meetings on multiple subjects willy-nilly, thus interfering with the ability of the Council as a whole to control the orderly conduct of the City's business. It is consistent with democratic principles, however, to allow three Councilmembers the option to call a meeting to address a single subject if the City Council declines to do so, or declines to provide sufficient time to address a particular subject.

2. Neither the Council President nor the City Council may add items of a same or different subject to a special meeting called pursuant to section 208 of the Charter.

As discussed above, Charter section 208 special meetings are limited to a single subject. Therefore neither the Council President nor the City Council may add items of different subject matters to the agenda of a section 208 special meeting.

Similarly, neither the Council President, nor the City Council may add items to a Charter section 208 special meeting *even if* that item is of the same subject matter. City Charter section 208 provides that special meetings "shall be called, and notice thereof given, by the City Clerk upon the written request of the Mayor, the City Administrator or three members of the Council." This section authorizes a specific procedure for calling special meetings requested by the Mayor, the City Administrator, or three members of the Council to discuss a single subject. The language explicitly identifies the individuals who have the power to call a special meeting pursuant to section 208, namely the Mayor, the City Administrator, or three Councilmembers.

The Brown Act, the Sunshine Ordinance, and the Council's Rules of Procedure Resolution provide additional means to call special meetings; and those special meetings are not limited to a single subject and can be called by the Council President and the majority of the Council at any time.

IV. CONCLUSION

Pursuant to its powers under the Charter, the City Council has enacted the Sunshine Ordinance and Council Rules of Procedure which authorize the Council President or a majority of the Councilmembers to call special meetings on single or multiple subjects. The City Council can continue to enact legislation to authorize calling of special City Council meetings with multiple subjects so long as it does not conflict with the City Charter or preemptive state law.

A special City Council meeting called pursuant to section 208 of the City Charter is limited to the single subject matter identified in the call for the meeting by the Mayor, the City Administrator, or three Councilmembers. Neither the Council President nor the Council as a body may add items to a Charter section 208 special meeting agenda, whether or not those items are on the same or different subjects.

Calling a special meeting shortly before or after the commencement time of a Charter section 208 meeting could undercut section 208 if doing so provides insufficient time for the discussion of the subject of the section 208 meeting.

The City Clerk, City Councilmembers and City Administrator should contact the City Attorney if you have questions about a particular special meeting or meetings.

Very truly yours,

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