

CITY OF OAKLAND



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May 19, 2020

Honorable City Council
City of Oakland
Oakland, California 94612

**Re: Public Legal Opinion Regarding City Administrator's Authority
to Delegate to Police Commission His/Her Authority to Hire
and Fire the Inspector General Oakland**

Dear President Kaplan and Members of the Council:

I. INTRODUCTION

At the May 12, 2020 Council meeting, the Council discussed a resolution that would place a Charter amendment on the November 2020 ballot regarding the Oakland Police Commission. One of the proposed amendments would grant the Police Commission the power to hire and fire the Inspector General. During the discussion a Councilmember requested a legal opinion regarding whether the City Administrator has authority under the current City Charter to delegate to the Police Commission his/her authority to hire and fire the Inspector General. The Council asked that this Office provide a legal opinion on this question by Thursday, May 21st.

This is a public legal opinion because it requires interpretation of the City Charter and the powers of the City Administrator. This opinion will be posted on our website located at oaklandcityattorney.org under the link – public legal opinions.

II. QUESTION AND BRIEF ANSWER

Question

Does the City Administrator have authority to delegate to the Police Commission his/her authority to hire and fire the Inspector General?

Answer

No. City Charter section 503 grants the City Administrator authority to delegate his/her hiring and firing authority only to directors or other department heads who are responsible, i.e. subordinate, to him/her. The City Administrator is the appointing authority for all employees under his/her jurisdiction, which employees include the Inspector General classification.¹

III. THE FRAMEWORK FOR UNDERSTANDING THE CHARTER PROVISIONS

A. General Principles of Statutory Construction

“Generally, the same principles of construction applicable to statutes apply to the interpretation of municipal charters.” *St. Croix v. Superior Court*, 228 Cal. App. 4th 434, 442 (2014) (citation omitted). The “sole objective is to ascertain and effectuate legislative intent.” *Domar Elec., Inc. v. City of L.A.*, 9 Cal. 4th 161, 171-72 (1994) (citations omitted). To so determine, courts employ a three-step sequential approach.

The inquiry begins with the language of the Charter. When the plain language of the Charter is clear and unequivocal, it controls and there is no need to resort to other interpretive aids. *Sacks v. City of Oakland*, 190 Cal. App. 4th 1070, 1082 (2010) (“If we conclude that the statutory meaning is free of doubt, uncertainty, or ambiguity, the language of the statute controls, and our task is completed.”) (citation omitted). In addition, “[w]here the words of the charter are clear, we may not add to or alter them to accomplish a purpose that does not appear on the face of the charter or from its legislative history.” *Domar*, 9 Cal. 4th at 171-72 (citations omitted).

If the language is unclear, courts will attempt to determine the voters’ intent as an aid to statutory construction. In attempting to ascertain that intent, “we must examine the legislative history and statutory context of the act under scrutiny.” *Sacks*, 190 Cal. App. 4th at 1082. When the provision requiring construction was enacted by the voters, “it is proper to consider the official statements made to the voters in connection with propositions of law they are requested to approve or reject.” *Diamond Int’l Corp. v. Boas*, 92 Cal. App. 3d 1015, 1031 (1979) (citations omitted). To determine the legislative intent behind a ballot measure, courts look at the ballot pamphlet materials. See *Westly v. Bd. of Admin.*, 105 Cal. App. 4th 1095, 1110-12 (2003); see

¹ The City Administrator is the appointing authority for most City employees. Exceptions include but are not limited to, employees who are appointed by the Mayor, Auditor, Councilmembers, or the City Attorney. The Charter establishes the Public Ethics Commission as the appointing authority for the PEC’s executive director.

also Protect Our Benefits v. City and County of San Francisco, 235 Cal. App. 4th 619, 633 (2015).

If the meaning of the statutory language is not evident based on the plain language and evidence of legislative intent, the courts will “apply reason, practicality, and common sense to the language at hand. If possible, the words should be interpreted to make them workable and reasonable [and] practical, in accord with common sense and justice, and to avoid an absurd result.” *Sacks*, 190 Cal. App. 4th at 1082 (citation omitted).

IV. The Charter Provision Addressing the City Administrator’s Appointing and Delegation Authority

The determination of the City Administrator’s scope of authority to delegate his/her authority to hire and fire the Inspector General begins, as it must, with the language of the Charter. The Charter represents the supreme law of the City, subject to conflicting provisions in the United States and California Constitutions, and to preemptive state law. *Harman v. City & Cnty. of S.F.*, 7 Cal. 3d 150, 161 (1972) (citations omitted). “Any act that is violative of or not in compliance with the charter is void.” *Id.* at 171. The Charter may be amended, revised, or repealed only with approval of the voters. Cal. Const. art. XI, §§ 3, 5. Importantly, “[t]he charter operates not as a grant of power, but as an instrument of limitation and restriction on the exercise of power over all municipal affairs which the city is assumed to possess; and *the enumeration of powers does not constitute an exclusion or limitation.*” *Domar Elec., Inc. v. City of L.A.*, 9 Cal. 4th 161, 170 (1994) (emphasis added, citations omitted). Thus, the Charter’s silence on a matter should not to be construed as necessarily prohibiting action by the City Administrator. Conversely, the duties and powers expressly enumerated in the Charter bind the City Administrator.

City Charter section 503 explicitly sets forth the City Administrator’s appointing authority and his/her authority to delegate his/her appointing authority:

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.
(Emphasis added.)

Under the clear and unequivocal language of Charter section 503, the City Administrator has authority to delegate his/her authority to hire and fire employees under his/her jurisdiction only to subordinate employees, namely “directors or other department heads responsible to him/her.” By using the word “may”, the Charter plainly defines the circumstances in which the City Administrator has permission to delegate his/her authority². As such, the Charter clearly limits the City Administrator’s authority to delegate his/her appointing authority to subordinate employees identified in Charter section 503.


City Charter section 604(a) establishes the Police Commission and provides that it “shall oversee the Oakland Police Department . . . in order to ensure that its policies, practices, and customs conform to national standards of constitutional policy. The Commission shall have the functions and duties enumerated in this Section, as well as those assigned to the Commission by Ordinance. Charter section 604(b) enumerates the Commissions powers and duties.”

Accordingly, the City Administrator does not have the power under the City Charter to delegate to the Police Commission his/her authority to hire and fire the Inspector General.

V. CONCLUSION

The City Administrator does not have authority to delegate to the Police Commission his/her authority to hire and fire the Inspector General. The City Administrator has the power to delegate his/her hiring and firing authority only to the subordinate employees listed in Charter section 503.

Very truly yours,


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City Attorney

² Merriam Webster’s online dictionary defines “may” to mean “grant permission to.”