

# CITY OF OAKLAND



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

Office of the City Attorney  
Barbara J. Parker  
City Attorney

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

## **PUBLIC LEGAL OPINION**

February 5, 2021

HONORABLE CITY COUNCIL  
Oakland, California 94612

### **Re: City Administrator's Ability to Freeze Vacant Positions Within the Department of Workplace and Enforcement Standards**

Dear President Fortunato Bas and Members of the Council:

#### **I. INTRODUCTION**

This opinion responds to a question Council President Fortunato Bas posed during the January 25<sup>th</sup> Special Finance Committee meeting.

#### **II. QUESTION AND BRIEF ANSWER**

##### **Question:**

Does Chapter 2.44 of the Oakland Municipal Code (“OMC”), entitled “Department of Workplace and Employment Standards” (hereinafter, DWES), prevent the City Administrator from freezing any of the positions that are currently frozen within DWES?

##### **Brief Answer:**

No. OMC Chapter 2.44 requires that the City create DWES and the appoint a “Chief Officer” to administer the department. The Director of DWES is the department’s Chief Officer within the meaning of the OMC, and that position is currently filled. While the City Administrator has frozen other positions in DWES, he has the same discretion to freeze these positions as he does for any other department under his jurisdiction.

#### **III. ANALYSIS**

In 2018, Oakland voters passed Measure Z, a voter initiative ballot measure that added Chapter 2.44 and related worker-protection provisions to the OMC. Among other things, Measure Z required that the City create DWES, and states that DWES “shall be administered by a Chief Officer, who shall be appointed by, and shall serve at the pleasure of, the City Administrator.” OMC section 2.44.020. DWES currently has a department head who was appointed by the City Administrator. Although the department head’s title in the Civil Service classification system is “Director of Workplace & Employment Standards,” this person is also the “Chief Officer” of DWES within the meaning of the OMC. This is because, under the plain

**PUBLIC LEGAL OPINION**

President Fortunato Bas and Members of the Council

February 5, 2021

**Re: City Administrator’s Ability to Freeze Vacant Positions within the Department of Workplace and Enforcement Standards**

Page 2

language of the ordinance, DWES’s affairs are “administered by” this person. Therefore, the only position specifically contemplated by the OMC is neither vacant nor frozen.

We do not reach any conclusion as to whether the City Administrator *could* freeze the position of the of Chief Officer, because the question currently is moot.

The City Administrator has frozen other positions within DWES; however, doing so does not violate Measure Z. The City Administrator’s recent Informational [Report On Budget Follow-Up Questions](#), contained a link to a [list of vacant positions](#). That list reveals that three other positions in DWES are currently frozen: an Office Assistant II, a Deputy Director, and a Contract Compliance Office Assistant. Charter section 503 empowers the City Administrator “to appoint, assign, reassign, discipline and remove all directors or heads of departments and all employees under his jurisdiction.”

While it is true that DWES was created by a ballot measure, as opposed to by the City Council, the measure did not purport to place the Department outside of the City Administrator’s jurisdiction. Nor could Measure Z, which is an ordinance, amend the City Administrator’s powers under the Charter. In accord with the Charter, and as noted above, the DWES’s Chief Officer is appointed by and serves at the pleasure of the City Administrator. OMC section 2.44.020. The currently frozen positions would presumably report, directly or indirectly, to the DWES Director, who, in turn, reports to the City Administrator. Thus, the frozen positions are under the City Administrator’s jurisdiction. Accordingly, the City Administrator has the same discretion to freeze these positions as he would for any other department under his jurisdiction.

**IV. CONCLUSION**

For the foregoing reasons, we conclude that nothing in Measure Z prohibits the City Administrator from freezing the positions that are currently frozen within DWES.

Very truly yours,



BARBARA J. PARKER  
City Attorney

Attorney Assigned:  
Ryan Richardson

cc: Mayor Libby Schaaf  
City Administrator Edward Reiskin  
Assistant City Administrator Jason Mitchell  
Assistant City Administrator LaTonda Simmons  
Deputy City Administrator Betsy Lake