

CITY OF OAKLAND



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PUBLIC LEGAL OPINION

March 22, 2023

HONORABLE CITY COUNCIL
One Frank Ogawa Plaza, Second Floor
Oakland, California 94612

**Re: Mayor's Authority to Terminate the Chief of Police
Pursuant to Charter Sections 503 and 604(b)(10)**

Dear President Fortunato Bas and Members of the City Council:

I. INTRODUCTION

On Wednesday, February 15, 2023, Mayor Sheng Thao announced the Mayor's decision to remove LeRonne Armstrong without cause from the position of Chief of the Oakland Police Department. Several Councilmembers have asked that our Office provide advice regarding the Mayor's authority to terminate the Police Chief.

Consistent with our Office's longstanding practice, this is a public legal opinion because it addresses the relative powers of the City Administrator, the Mayor, and the Police Commission under the City Charter. Like all public opinions, this opinion will be posted on the City Attorney's web site at www.oaklandcityattorney.org/Ops-Reps/Opinions.html.

II. QUESTION AND BRIEF ANSWER

Question

Does the Mayor have independent authority to terminate the Chief of Police?

Brief Answer

Yes. The Mayor has independent authority to terminate the Police Chief with or without cause pursuant to Charter sections 503 and 604(b)10).

III. ANALYSIS

A. The City Administrator Has Authority to Appoint and Remove Employees under the City Administrator's Jurisdiction, Except When the Charter Grants Those Powers to a Different Person or Entity

The City Administrator is the “appointing authority” for most of the City’s employees, including department heads, who are under the City Administrator’s jurisdiction.¹ Charter section 600 grants the Council the power by ordinance to “provide the form of organization through which the functions of the City under the jurisdiction of the City Administrator are to be administered.” Section 600 further authorizes the Council to determine the “duties, powers and functions which in the judgment of the Council will provide the most efficient and economical service possible, consistent with the public interest and in keeping with accepted principles of municipal administration” and provides that “[a]ll departments or other administrative agencies so created shall be administered by the City Administrator or by a department head or other officer appointed by and responsible to the City Administrator.”

Charter section 503 reserves to the City Administrator, “subject to the provisions of Article IX of this Charter [Civil Service Rules] and **except as otherwise provided in this Charter . . .** the power to appoint, assign, reassign, discipline and remove all directors or heads of departments and all employees under the City Administrator’s jurisdiction.” (Emphasis added in bold.)

To summarize, Charter section 503 is clear that the City Administrator is empowered to appoint and remove all directors, or heads of departments and all employees under the City Administrator’s jurisdiction except when the Charter provides for a different person or entity, such as a board or commission, to exercise those powers.

B. The Charter Provides Two Categories of Exceptions to the City Administrator's Authority to Appoint and Remove Employees under the City Administrator's Jurisdiction

The Charter provides two categories of exceptions to the City Administrator’s appointing authority, i.e., the City Administrator’s power to appoint and remove employees under the City Administrator’s jurisdiction, including department heads.

The first category is elected officials. The City Administrator clearly is not the appointing authority for elected officials such as the Mayor, City Auditor, Councilmembers and City Attorney. Likewise, the City Administrator is not the appointing authority for elected officials’ staff.

¹ “Appointing authority” refers to the authority an official, a group of officials, or entity has to appoint or remove a particular City employee. Under the Civil Service Rules and the Oakland City Charter, an employee who is appointed by an appointing authority also is evaluated and disciplined by the appointing authority and thus is under the appointing authority’s “jurisdiction.”

March 22, 2023

Re: Public Legal Opinion regarding Mayor's Authority to Terminate the Chief of Police
Page 3

The second category is those persons/entities other than the City Administrator to whom the Charter specifically grants authority to appoint and/or remove certain personnel. As provided in Charter section 503, the City Administrator is empowered to appoint and remove employees under the City Administrator's jurisdiction, "except as otherwise provided in this Charter." Accordingly, exceptions to the City Administrator's appointing authority must be explicitly provided in other Charter provisions. The Charter explicitly grants authority to persons/entities other than the City Administrator to appoint and remove certain personnel. Specific provisions in a municipal charter control over general ones "and the general and special provisions operate together, neither working the repeal of the other." *Diamond Int'l Corp. v. Boas*, 92 Cal. App. 3d 1015, 1031 (1979).

Oakland's Charter currently provides the following specific exceptions to the City Administrator's and the City Attorney's appointing authority, i.e., the authority to appoint and/or remove employees under their respective jurisdictions:

- Charter section 603(g)(3) provides that the Executive Director of the Public Ethics Commission ("PEC") serves "at the pleasure of the Commission" and provides that the "City Administrator shall not have the authority to remove the Executive Director";
- Charter section 603(g)(4) provides that the Deputy Director of the PEC serves "at the pleasure of the Executive Director," granting the Executive Director the authority to remove the Deputy Director;
- Charter Article VII establishes the Port Department and vests in the Port Board of Commissioners "exclusive control and management" of the department. Consistent with the Port Board's jurisdiction over the Port Department, Charter sections 706(20) and 706(21) grant the Port Board the power to "appoint a Port Attorney" and fix their compensation, as well as the power to "employ and appoint an Executive Director, and such other officers, employees and agents as may be necessary" to Port business;
- Charter section 604(b)(12) grants the Police Commission the power to hire and/or contract one or more attorneys to provide advice related to the Commission's powers and duties and Charter section 604 (e)(1) grants the Agency Director the authority to hire or contract "no fewer than two full-time legal advisors for the Agency subject to budget constraints²;

² Because Charter section 401(6) grants the City Attorney authority to appoint and remove all attorneys including in-house and outside counsel, the Charter was amended in 2020 to provide an explicit exception, granting the Police Commission and the Agency Director authority to hire or contract attorneys to advise the Commission and the Agency Director, respectively. (Charter sections 604(b)(12) and (e)(1).)

- Charter section 604(e)(6) grants the Police Commission the power to hire and terminate the Inspector General and the Director of the Community Police Review Agency (“CPRA”);
- Charter section 604(e)(6) grants the CPRA Director and Inspector General “the authority to hire and fire Agency staff and Office of Inspector General (“OIG”) staff, respectively”; and
- As we discuss more fully below, Charter section 604(b)(10) authorizes the Police Commission to terminate the Police Chief for just cause, authorizes the Mayor to terminate the Police Chief with or without cause, and authorizes the Mayor and Police Chief to coordinate to appoint new Police Chiefs.

To be clear, as provided in Charter section 503, the Charter’s grant of general appointing authority to the City Administrator over personnel under their jurisdiction governs unless the Charter explicitly provides an exception to the City Administrator’s appointing authority. Accordingly, in each of the above instances, the exception to or limitation on the City Administrator’s general authority is expressly provided in a Charter provision.³

C. The Charter Grants the Mayor the Power to Remove the Police Chief with or without Cause

With respect to the Mayor’s appointing authority over the police chief, Charter section 604(b)(10) provides in relevant part:

“Notwithstanding any other provision of this Charter or any provision of the Oakland Municipal Code, and acting **separately or jointly with the Mayor**, [the Police Commission may] remove the Chief of Police by a vote of no fewer than five (5) affirmative votes. If acting separately, the Commission may remove the Chief of Police only after adopting a finding or findings of cause, which shall be defined by City ordinance.... **Upon removal by the Commission, by the Mayor, or by the Mayor and the Commission acting jointly**, or upon the notice of vacancy of the position of Chief of Police, the Mayor, in consultation with the Chair of the Commission, shall immediately appoint an Interim Chief of Police.... **The Commission, with the assistance of the City Administrator, shall prepare and distribute a job announcement, and prepare a list of at least three (3) candidates** [for Chief of Police] and

³ Notably, the City Attorney’s appointing authority, as distinguished from other elected officials, is explicitly spelled out in the Charter. *See* City Charter §401(6). This language reflects the City Attorney’s appointed status until the Charter was amended to provide for an elected City Attorney; the first election of a City Attorney occurred in 2000. Thus, when the City Attorney was appointed, the Charter explicitly provided independent jurisdiction for the office, whereas independent jurisdiction was inherent for the longstanding, elected offices.

March 22, 2023

Re: Public Legal Opinion regarding Mayor's Authority to Terminate the Chief of Police

Page 5

transmit the names and relevant background materials to the Mayor. **The Mayor shall appoint one person from this list, or reject the list** in its entirety and request a new list from the Commission.”

(Emphasis added in bold.)

Section 604(b)(1) provides that the Chief of Police may be removed by the Police Commission and/or Mayor, and further requires that the Police Commission and Mayor work together to appoint new Chiefs of Police. Thus, Charter section 604(b)(10) grants the Mayor and Police Commission the power to hire and fire the Chief of Police (i.e. appointing authority over the Chief of Police), providing the exception to the City Administrator's appointing authority over department heads that is required by Charter section 503.

Furthermore, Charter section 604(b)(10) provides that the Chief of Police may be removed “by the Commission, **by the Mayor**, or by the Mayor and the Commission acting jointly.” (Emphasis added in bold.) In other words, the Mayor has independent authority to remove the police chief. While the Charter *allows* the Mayor and the Police Commission to act jointly to remove the Chief of Police, it also allows each of them to act independently to remove the Chief of Police. Neither the Mayor, nor the Police Commission is *required* to secure approval from or consult with the other when either exercises their independent authority to remove the police chief.

In contrast to the Police Commission, the Mayor may remove the Chief of Police without cause. Because the position of Chief of Police is an “at-will” position, the police chief can be removed with or without cause. The passage of Measure LL and Charter section 604(b)(10), did not change the at-will nature of the police chief position; however, it placed restrictions on the Police Commission's authority. Before the Police Commission can independently remove the Chief of Police, section 604(b)(10) requires that at least five Commissioners make a finding that there is just cause for termination. The Charter places no such restriction or limitation on the Mayor's power to independently remove the Chief of Police.

IV. CONCLUSION

In 2016 Oakland voters passed Measure LL which amended the Charter to provide several exceptions to the City Administrator's power to appoint and remove department heads. One of those exceptions vested the authority to appoint and remove the Chief of Police in the Mayor and the Police Commission. These explicit exceptions are required by Charter section 503 which grants the City Administrator authority to appoint and remove department heads “except as otherwise provided in this Charter.” Additionally, specific Charter provisions control over general ones.

The Mayor and the Police Commission may act jointly, to remove the Chief of Police. The Mayor and the Police Commission also may act independently to remove the Chief of Police. The Police Commission may independently remove the Chief of Police only with just cause. However, the Mayor may independently remove the Chief of Police with or without

President Fortunato Bas and Members of the City Council

March 22, 2023

Re: Public Legal Opinion regarding Mayor's Authority to Terminate the Chief of Police

Page 6

cause. The Mayor exercised the Mayor's power to remove the Chief of Police without cause and announced that action on February 15, 2023.

Very truly yours,

A handwritten signature in blue ink that reads "Barbara J. Parker". The signature is written in a cursive style with a large initial "B".

BARBARA J. PARKER
City Attorney

cc: Mayor Sheng Thao
City Administrator Steven Falk

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