

AGENDA ITEM NO.	1B
COUNCIL MEETING	02/02/12
APPROVED BY	
	
DEPARTMENT DIRECTOR	
CITY MANAGER	

February 2, 2012

FROM:  JAMES C. SANCHEZ
City Attorney

BY:  DAVID P. HALE
Chief Assistant City Attorney

SUBJECT: COUNCIL CONSIDERATION OF WAIVER OF ATTORNEY-CLIENT PRIVILEGE REGARDING LEGAL OPINION ON CITY MANAGER HOLDING JOINT POSITION OF BOARD MEMBER FOR RETIREMENT BOARD AND CITY MANAGER.

BACKGROUND

The City Manager was appointed by the Mayor to sit on the Retirement Board on July 21, 2011 and Council thereafter approved his appointment. Shortly after the City Manager's appointment, members of the Retirement Board raised issues of whether the City Manager could sit on the Board while holding the position of City Manager for the City of Fresno. The question was whether there was a conflict of interest since both offices were public offices and since the interest of representing the City might be in conflict with those fiduciary requirements of a Retirement Board member.

Our Office was requested to draft a legal opinion addressing whether there was a conflict and whether notwithstanding any potential conflicts that might exist, the City Manager had the authority to represent both positions. We forwarded an email on July 19, 2011 (hereafter referenced as "opinion"), to the Council wherein we concluded the current Charter provision section 910 allows two members from City Management to be appointed by the Mayor to the Retirement Board. The City Manager is the highest ranking city management employee and is authorized by the Charter to sit on the Board.

The request of the Retirement Board to release the above referenced legal opinion from our Office requires the City Council to approve a waiver of the attorney-client privilege connected to the subject opinion. If the Council desires to allow the Retirement Board to review the subject opinion, they would need to affirmatively approve a waiver and release of the opinion. The effect of that approval would be to make the opinion subject to public review.

