



James C. Sanchez
CITY ATTORNEY'S OFFICE

MAYOR - COUNCIL FORM OF GOVERNMENT

WORKSHOP

February 2010

INTRODUCTION

On April 27, 1993, the City voters approved Charter amendments which created the current Mayor-Council form of government. The Mayor-Council form of government has also been referenced as the Strong Mayor form of government. It became operative the first Tuesday after the first Monday in January 1997 (Fresno City Charter Section 1503).

The City has been operating under the Mayor-Council form for over twelve years and have adopted Fresno Municipal Code provisions (FMC §§ 2-101 et seq.) and resolutions to implement our current form of government. We are providing this report to overview the legislative history, and highlight areas involving critical issues associated with the Mayor-Council form of government. One fundamental tenant of this form of government is that each charter official is granted certain powers and duties. These differing powers reveal a city government with check and balances. At times, these checks and balances may be viewed as impediments and create an inevitable tension. The Mayor-Council form of government allocation of powers also necessitates each official to exercise their powers/duties in a manner that does not unreasonably interfere with power of the other charter officials

SUMMARY OF MAYOR - COUNCIL FORM OF GOVERNMENT

- A.** The Mayor is not a member of the legislative body (Council).
- B.** The Mayor is the executive head of the City overseeing the City Manager, recommending legislation and the annual budget, but no longer participating in Council deliberations or votes except by exercise of veto power. Council retains discretion to override veto with a five vote majority.
- C.** The Mayor has sole authority over the City Manager including appointment and removal.
- D.** The City Manager maintains the traditional role held as the direct professional manager of the administrative service.
- E.** The Council retains all powers not otherwise delegated or expressly modified by the Charter amendments.
- F.** The Council has sole authority over the appointment and removal of the City Attorney and City Clerk. Council also confirms the appointment of Controller.
- G.** The Charter provisions prohibiting the Mayor and Council from interfering with the administrative service were not amended and continue in force.

ANALYSIS

A. Mayor Powers and Duties.

Charter Section 400 identifies the Mayor as the Chief Executive Officer of the City and it lays out specific duties, including:

- The execution and enforcement of all laws and policies;
- The power to appoint, control and remove the City Manager;
- The preparation of the annual City budget for deliberation and approval;
- Veto power over all Council legislative and budgetary acts, except as otherwise provided in the Charter;
- The power to serve as the liaison between the Administrative Service and Council (although under Charter Section 706 the Mayor is still prohibited from directly or indirectly giving orders to any subordinates of the City Manager);

- The power to foster a sense of cohesion among Council and educate the public about the needs and prospects of the City; and
- The power to promote economic development, recommend legislation and policy and investigate the affairs of the City under the Mayor's supervision.

While the Mayor was given powers to recommend legislation and policy, prepare the budget, and veto certain Council actions, the Mayor was also removed from the direct Council legislative deliberation and is not a voting member of the Council. The Mayor becomes an executive officer more akin to the role of the President in the Federal model.

B. Council Powers and Duties.

Under Charter Section 500, the Council remains vested with a broad grant of all powers granted to the City except as otherwise expressly provided in the Charter. Section 500 reads as follows:

SECTION 500. POWERS VESTED IN THE COUNCIL. All powers herein granted to and vested in the City of Fresno shall, except as herein otherwise provided, be exercised by a council to be designated the Council of the City of Fresno. Said Council shall the (sic) be governing body of the City and,

subject to the express limitations of this Charter, shall be vested with all powers of legislation in municipal affairs adequate to a complete system of local government consistent with the Constitution of the State. Each Councilmember shall have the right to appoint and remove his or her own Council Assistant.

The Council, therefore, retains specific powers including the following:

- To make all laws involving municipal affairs subject to the Charter and the Constitution (Charter § 200).
- To override any veto with a five vote majority (Charter § 609).
- To exercise all other powers that a municipal corporation might or could exercise subject to the exceptions noted in the Charter (Charter § 200).
- To appoint and remove the City Attorney and City Clerk (Charter § 800).
To approve the Manager appointment of Controller (Charter § 804).
- To control all the City legal business and proceedings (Charter § 803(g)).

The Charter limitations continue the prohibition on Council interference in the administrative service of the City (Charter § 706) except by official action taken in policy matters. Otherwise, the Council is to deal with the administrative service through the City Manager.

While the Council is empowered to appoint the City Attorney and City Clerk (Charter § 800), the Mayor is provided the sole authority to appoint and remove the City Manager and to exercise control over the City Manager. Other specific limitations on Council power are addressed above under the Mayor's Powers and Duties.

C. Mayoral Veto Authority Over Legislative Matters.

Under Section 400(e) the Mayor is granted veto power over Council legislative matters, except as provided in the Charter. Charter Section 605(b) details the extent of the Mayoral veto power. It reads as follows:

For purposes of this Charter Section 605, legislative acts shall include amendments to the Fresno Municipal Code; adoption of general plans, community plans and specific plans; grants of franchise; establishment of fines, penalties, or regulations; tax levies; annexation of property; exemption of property from taxation; ordinances required by state law in matters wherein state law preempts local law; actions calling an election or otherwise relating to an election; resolutions and actions relating to eminent domain; adoption of budget; amendment of budget; fixing of compensation of officers and employees; position authorizations; establishment of fees; issuance of bonds; and all matters subject to the power of initiative and referendum.

The Charter specifically excludes from the veto power the following:

- Emergency ordinances (Charter § 605(c)),
- Land use decisions, other than text amendments and the initial adoption of land use plans (general, community and specific) (Charter § 605(c)), and
- Matters which would be deemed administrative or quasi-judicial decisions (Charter § 605(a)).

As a general rule, legislative acts include the adoption of general rules of conduct or governance for the future (e.g. adoption of general and specific plans). Decision-making bodies act in a quasi-judicial or administrative capacity on matters which involve the application of a rule to a specific set of existing facts. *Pacific Corp. v. City of Camarillo*, 149 Cal.App.3d 168, 175 (1983). A classic example of a quasi-judicial decision is the Council consideration of a CUP on appeal. An example of an administrative decision over which the Mayor would not have veto authority is the award of a contract for an approved project within existing appropriations. Under Section 605 all Council quasi-judicial or administrative decisions are exempt from the Mayoral veto power.

The Mayor has ten days from receipt of each ordinance or resolution adopted by the Council to exercise the veto power by signing and returning her written objections to the Clerk. Any failure to make the return within the required time limit shall constitute an approval

and the ordinance or resolution will take effect without the Mayor's signed approval (Charter § 605(d)). The Mayor may also, within the ten day timeline, request that the Council reconsider a matter, subject to the veto power, which it previously denied. The Council must reconsider the matter within thirty days (Charter § 605(d)). The Council may, at its discretion and by a five vote majority, override a veto (Charter § 609).

D. The Mayor and City Manager Relationship.

The legislative history associated with the Mayor-Council form of government indicates an intent to maintain the traditional role of a professional City Manager, but have him/her appointed and removed solely by the Mayor. (See Charter Review Committee Report November 3, 1992, and Charter § 400.) The City Manager continues to be the head of the administrative branch of the City government. (Charter §§ 705 and 706)

The Mayor, like the Council, continues to be prohibited from directly or indirectly giving orders to any subordinate of the City Manager (Charter § 706).

E. The Council and City Manager Relationship

One of the most significant changes of the current form of government is that the Mayor, and not the Council, has the power to appoint or remove the City Manager (Charter § 400(b)). Additionally, the Mayor is given authority to exercise control over the City Manager (§ 400(c)). The Council continues to be prohibited from directly interfering with the administrative service (departments, etc.). (Charter § 706).

The Council still possesses the power to seek information from given departments, but must direct all other administrative service communication through the City Manager (Charter § 706). The Mayor is also to be the liaison between the administrative service and the Council (Charter § 400(h)). This provision does not constrain the Council from all direct communication with the City Manager, as the Charter has no express prohibition on such communication; in fact § 706 authorizes and mandates contact by Council through the City Manager on all administrative service issues.

F. The City Attorney Relationship with the Mayor, Council and Staff.

The City Attorney has historically served all City officials (Council, Mayor, City Manager, City Clerk, Departments, etc.) on legal matters pertaining to their duties (Charter § 803(a)). Under Charter Section 803 which was not amended by the ballot measure, the Council is vested with the control of all legal business of the City. However, the Charter was amended to vest in the Council the authority to appoint and remove the City Attorney. Notwithstanding this amendment, the role of City Attorney continues to be that of representing the City as an entity represented by the Council body and its officers, not that of a personal representative of each officer. The City Attorney is not the Council's personal attorney, is not the Mayor's personal attorney, is not the staff's personal attorney. The City Attorney is the City's attorney. This reasoning is consistent not only with the Charter but also with State Bar Rules of Professional Conduct, Rule 3-600. This rule governs the ethical obligations of a lawyer who represents an entity rather than a natural person. This relationship has been described as follows:

"One of the most interesting aspects of Rule 3-600 is that it clearly resolved the age old question: "Who is the client of the public lawyer?" The rule states clearly that it is the entity itself. Thus, for the City Attorney, the client is the City, the municipal corporation." (Public Law Journal, Vol. 17, No. 2, page 3.)

Rule 3-600 provides that "the client is the organization itself, acting through its highest authorized officer." Under the Charter, the Council is the ultimate manifestation of the client.

At a practical level, the role of the City Attorney with the Council and the Mayor remains the same:

- The attorney provides legal advice to City officials (elected officers and staff) on the development or implementation of City projects or legislative procedures or matters.
- The City Manager factors in the City Attorney advice and prepares a staff recommendation.
- The Council and the Mayor consider the attorney advice in their policy consideration of a staff recommendation on a given matter.

- Council takes action subject to the Mayoral veto process.
- The City Attorney represents the City in all legal proceedings defending a given City action.

G. The City Clerk Relationship with the Mayor, Council and Staff.

Similar to the City Attorney, the City Clerk has traditionally served all City officials. Under the Charter, the City Clerk is primarily responsible for serving as the recorder of Council proceedings and custodian of City records. The City Clerk maintains official ordinances, resolutions, and contracts, administers oaths, and certifies copies of official records.

There are many duties performed by the City Clerk that are established by state law particularly in the area of election proceedings and filing and serving of lawsuits against the City. Also, a variety of duties and responsibilities are set forth by ordinance in the Fresno Municipal Code. Under the Code, a primary responsibility of the City Clerk relates to the preparation of agendas for Council meetings. Finally, throughout the Code, the Clerk is given responsibility to accept certain documents for filing.

H. Labor Relations/Administrative Service Issues.

While the Mayor is granted appointment and removal powers and authority to exercise control over the City Manager (Charter § 400(b)(c)), the City Manager is delegated direct control over all departments, offices and agencies of the City government (Administrative Service) under Charter § 705(a). The Manager is also to advise the Mayor concerning the creation,

organization, conduct, operation, alteration, or abolition of the various City departments, offices and agencies (Charter § 705(b)).

The Council and Mayor are prohibited from direct supervision of departments (§ 706) except by official action taken in policy matters. The Council is granted policy authority to provide for the organization, conduct and operation of the Charter offices and for the creation, consolidation, alteration or abolition of City departments and divisions (Charter § 801). Thus, neither the Council nor the Mayor may hire or fire department directors or their subordinates, but they do control the broader policy and budget issues associated with terms and conditions of employment.

Under the Meyers-Milias-Brown Act (MMBA), the Council as the governing body may designate a labor negotiator to meet and confer with recognized employee organizations regarding wages, hours, and other terms and conditions of employment. Ultimately, the Council approves a Memoranda of Understanding (MOU) addressing terms and conditions of City employment with each recognized organization (Government Code §§ 3500, et seq.). Pursuant to Fresno Municipal Code Section 3-615, the City Manager is the City's designated labor negotiator.

Section 3505.1 of the MMBA provides that once agreement is reached between the City's labor negotiator(s) and the recognized employee organization through the meet and confer process, they are to prepare a written MOU, which shall not be binding. Such MOU is required to be submitted to the "governing body or its statutory representative for determination." Under

the Mayor-Council form of government, MOU's must still be presented to the Council for determination, but MOU's are subject to the Mayoral veto process. The reason for this is that Section 605 of the Charter provides that the Mayor shall have veto power over all legislative acts and expressly includes the "fixing of compensation of officers and employees."

CONCLUSION

Inherent system of checks and balances in Mayor-Council form of government present some unique policy implementation challenges:

1. Requires strong communication between executive and legislative branches.
2. Each charter official must exercise their powers/duties in a manner that does not unreasonably interfere with power of the other charter officials.

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION.....	1
SUMMARY OF MAYOR - COUNCIL FORM OF GOVERNMENT.....	2
ANALYSIS	3
A. Mayor Powers and Duties.....	3
B. Council Powers and Duties.....	4
C. Mayoral Veto Authority Over Legislative Matters.....	6
D. The Mayor and City Manager Relationship	8
E. The Council and City Manager Relationship.....	8
F. The City Attorney Relationship with the Mayor, Council and Staff.....	9
G. The City Clerk Relationship with the Mayor, Council and Staff.....	11
H. Labor Relations/Administrative Service Issues.....	11
CONCLUSION	13