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City Attorney

November 27, 2013

MEMORANDUM

To: Council, Mayor, City Manager, City Clerk

Re: Authority and Responsibility Under Fresno City Charter and Ordinances

Background

The City of Fresno form of government is similar to the state and federal schemes, with a legislative branch, executive branch, administration (City Manager and staff), plus specifically identified offices of City Attorney, City Clerk, and Controller. The government provided by the Charter shall be known as the "Mayor-Council" form of government. (Charter § 204) (all references, unless otherwise designated, are to the Fresno City Charter). There is a system of checks and balances with a separation of powers, each branch or office having specific authority and responsibility, with both express and implied powers. The Charter also specifically denies authority at times.

The Charter, Fresno Municipal Code (FMC), resolutions, and policies provide numerous locations where information concerning the authority, obligations, and restrictions upon each Charter official can be found. This Memo compiles that information in one, relatively easy to reference, document.

Council

Express Powers: "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." (§ 500) The Council is "vested with all powers of legislation." (§ 500) Additional express powers and obligations include:

- Vote on all matters coming before the Council (§ 300)
- Appoint a Council Assistant (individual Councilmembers) (§ 500)
- Establish rules for Council meetings (§ 504)
- Compel the attendance of witnesses (§ 505)
- Enact Ordinances (§ 600)
- Review the proposed budget and make such revisions as it may deem advisable (§ 1203), then adopt a budget prior to June 30 (§ 1205)
- After adoption, amend or supplement the budget by affirmative votes of at least five members (§ 1206)

- On or before the last Tuesday in August in each year, by ordinance, levy such tax as may be necessary to meet the appropriations made (§ 1207)
- Override veto of the Mayor (with at least five votes) (§§ 605(a), 609)
- Reconsider items at the request of the Mayor (§ 605(d))
- Approve municipal matters to be placed on a public ballot (§ 1400)
- Appoint and terminate the City Attorney and City Clerk (§ 800)
- Approve the City Manager's appointment and termination of the Controller (§ 804)
- Provide by resolution for the organization, conduct and operation of the several offices established by the Charter, and for the creation of departments, divisions, offices and agencies, and for their consolidation, alteration or abolition; the Council by resolution, may assign additional functions or duties to offices, departments or agencies not inconsistent with the Charter (§ 801)
- Establish by ordinance the compensation of the elective officers of the City (§ 308(a))
- Cause to be classified and codified under appropriate heads all general ordinances in force and cause the same to be printed for the use of the City, its officers, and the public (§ 607)
- Fix by ordinance or resolution the amounts and terms of the official bonds of all officials or employees who are required by ordinance to give such bonds; all bonds shall be executed by responsible corporate surety, shall be approved as to form by the City Attorney, and shall be filed with the City Clerk; premiums on official bonds shall be paid by the City (§ 808)
- May create by ordinance boards or commissions, and may grant to them such powers and duties as are consistent with the provisions of the Charter (§900)
- Control all legal business and proceedings and may employ other attorneys to take charge of any litigation or matter or to assist the City Attorney therein (§ 803)

Implied Powers:

- Meet with members of the public, other elected officials, and proponents or opponents of projects or other matters (U.S. Const., Amend. I)
- Employ others to assist in the Council offices

Restrictions:

- May act only with quorum present, in public meetings (unless exception applies), by majority (or greater) vote (§§ 502, 503)
- Except by official action taken in policy matters, shall not interfere with the execution by the City Manager of his powers and duties, or order, directly or indirectly, the City Manager or any department heads (§ 706)
- Except for inquiry, shall deal with the administrative service solely through the City Manager and shall not give orders to any subordinates of the City Manager, either publicly or privately (§ 706)
- Compensation of an elective officer shall not be increased or diminished during that elective officer's term of office (§ 308(b))

- May not engage in any communication with any Proposer concerning any matter which is currently the subject of a competitive procurement (FMC § 4-605(a))

Council President

Express Powers: On the first Tuesday after the first Monday in January, the Council shall elect a President of the Council from among its members to serve for a one-year term; the President of the Council shall be the presiding officer of the Council. (§ 501)
Additional express powers and obligations include:

- Preside at Council Meetings (§ 501; FMC § 2-304; Council Rules of Procedure (CRP) 3a, 4)
- In addition to serving as Presiding Officer at Council meetings, it shall be the duty of the Council President:
 - To sign all instruments requiring execution or agreement by the Council
 - To serve as the chief spokesperson and representative for the Council for matters before the public, the state and federal governments, and the City Administration
 - To develop an Annual Calendar of events to include, but not restricted to Council meetings, recesses, special meetings, holidays, etc.
 - To delegate by administrative directive any of the duties assigned to the Council President
 - To assist in preparing the Council meeting agenda (CRP 3)
 - To open all meetings of the Council at the appointed hour by taking the chair and calling the Council to order
 - To call for the approval of the minutes
 - To maintain order and proper decorum
 - To announce the business before the Council in the order prescribed by these rules
 - To receive and submit all matters properly brought before the Council, to call for votes upon the same, and to announce the results
 - To make known all Rules of Procedure when so requested, and to decide all questions of order, subject to an appeal of the Council
 - To preside at all closed sessions of the Council
 - To perform such other duties as may be required by law or as may pertain to such office (CRP 4)
- Determine the method for voting, unless requested otherwise by a member of Council or overruled by a majority of the Council (CRP 8c)
- During a Council meeting, decide any question of order without debate, subject to an appeal to the Council; in addition, the Presiding Officer may call for the sense of the Council on any question of order (CRP 12c)
- Upon instructions of the Presiding Officer, the sergeant-at-arms (Police Chief, or designee) may place any person who engages in conduct in violation of the Council Rules of Decorum under arrest, and cause him/her to be prosecuted, the complaint to be signed by the Presiding Officer (CRP 12g)
- The Council President, City Clerk, City Manager, and City Attorney shall meet prior to the printing of the final agenda to ensure the agenda is not overly

congested and that agenda items are appropriately worded to meet Brown Act requirements. All final decisions on matters regarding the agenda shall reside with the Council President (CRP 6g)

- Authority to appoint a designee to attend Committee meetings and participate as a voting member of the Committee in his/her absence, as permitted by the implementing document that formed the Committee (CRP 25d)
- Serve as Mayor Pro Tempore; in addition to his or her regular duties as Councilmember, the Mayor Pro Tempore shall perform the duties of the Mayor during the Mayor's absence except, however, the Mayor Pro Tempore shall not have veto authority in the absence of the Mayor; if the Mayor Pro Tempore is appointed Mayor pursuant to subsection 305(d)(2) of this Charter, he or she shall exercise all of the powers of the office of Mayor until a successor is elected and qualified (§ 401)
- Fill the office of the Mayor, if vacant (§ 501)

Mayor

Express Powers: The executive power of the City shall be vested in the office of the Mayor. The Mayor shall be the Chief Executive Officer of the City, responsible for providing leadership and taking issues to the people and marshalling public interest in and support for municipal activity. The Mayor shall be responsible to the People of Fresno for the proper and efficient administration of all affairs of the City. (§ 400)

Additional express powers and obligations include:

- Appoint and Remove a Chief Administrative Officer (City Manager) (§ 702)
- Exercise control over the City Manager (§ 400)
- Either approve each ordinance, resolution or other action adopted by Council subject to power of the mayor's veto adopted by the Council by signing and returning same to the City Clerk within the required time limits, or veto any ordinance, resolution or other action adopted by Council and shall return each such ordinance, resolution or action to the City Clerk with his or her written objections within the required time limit; failure to make such return within the required time limit shall constitute approval and such ordinance, resolution, or action shall take effect without the Mayor's signed approval (§ 605(d))
- Power of veto in all legislative and budget matters which must be passed by the City Council, except as provided in the Charter, including line item budgetary veto authority over all programs and budgetary units; authority includes the ability to reduce or eliminate the fiscal year funding to any program or budget unit (§ 400(f))
- For veto purposes, 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 (§ 605(b))

- Execute and enforce all laws and ordinances and policies of the City (§ 400)
- Prepare or cause to be prepared the proposed annual City budget and submit the budget to the Council for its deliberation and approval at least 30 days prior to the beginning of the fiscal year (§ 1203)
- Is the liaison between the Administrative Service and the Council, fostering a sense of cohesion among Councilmembers and educating the public about the needs and prospects of the City (§ 400)
- Provide community leadership and actively promote economic development to broaden and strengthen the commercial and employment base of the City (§ 400)
- Recommend to the Council such measures and ordinances as he or she may deem necessary or expedient and to make such other recommendations to the Council concerning the affairs of the City as the Mayor finds desirable (§ 400)
- Investigate those affairs of the City under the Mayor's supervision (§ 400)

Implied Powers:

- Directly manage the Office of the Mayor
- Direct employees in preparation of the proposed budget
- Meet with members of the public, other elected officials, and proponents or opponents of projects or other matters (U.S. Const., Amend. I)

Restrictions:

- Except by official action taken in policy matters, shall not interfere with the execution by the City Manager of his powers and duties, or order, directly or indirectly, the City Manager or any department heads (§ 706)
- Except for inquiry, shall deal with the administrative service solely through the City Manager and shall not give orders to any subordinates of the City Manager, either publicly or privately (§ 706)
- Shall not directly supervise any City department (§ 706)
- Compensation of an elective officer shall not be increased or diminished during that elective officer's term of office (§ 308(b))
- Veto power shall not extend to administrative decisions or quasi-judicial decisions of the Council, and shall not extend to override votes taken pursuant to Section 609 of the Charter (§ 605(a))
- Veto power shall also not extend to emergency ordinances; certain land use decisions, including the amendment of specific plans, community plans, and general plans; rezonings; conditional use permits or other special use permits approved by Council after consideration by the Planning Commission; or any other land use action, other than text amendments to the Fresno Municipal Code, and whether legislative or quasi-judicial in nature, in which the matter has been considered at a public hearing before the City Council and Planning Commission (§ 605(c))

City Manager

Express Powers: The City Manager is the head of administrative branch of the City government, (§ 700) working under the direct supervision of the Mayor; is responsible to the Mayor for the administration of all affairs of the City not otherwise assigned in the Charter. (§ 705) Additional express powers and obligations include:

- Exercise control over all departments, offices and agencies under his or her jurisdiction (§ 705(a))
- Advise the Mayor concerning the creation, organization, conduct, operation, alteration, or abolition of the various departments, offices and agencies of the City government (§ 705(b))
- Appoint, suspend or remove, subject to the Civil Service System provisions of this Charter, all department heads and officers of the City except elective officers and officers the power of whose appointment is vested by this Charter in the Council (§ 705(c))
- Approve or disapprove all proposed appointments and removals of deputies, assistants and subordinate employees by department heads or officers except those officers whose appointment is vested by this Charter in the Council or Mayor (§ 705(c))
- Administer the budget after adoption (§ 705(d))
- Establish such financial and accounting records and procedures as will reflect the current financial status of all municipal activities (§ 705(e))
- Establish a central purchasing system of all City offices, departments and agencies (§ 705(f))
- Keep the Mayor advised of the financial affairs and conditions and future needs of the City and make recommendations to the Mayor concerning the administration of City affairs (§ 705(g))
- Prepare and submit to the Mayor reports in answer to requests for information made to him or her by the mayor (§ 705(h))
- Perform such other duties as may be prescribed by this Charter or required of him or her by the Mayor, not inconsistent with this Charter (§ 705(i))
- Attend all meetings of the Council, unless excused therefrom by the Mayor (§ 705(j))
- Prepare and submit to the Mayor reports in answer to requests for information made to him or her by the mayor (§ 705(h))
- Prepare and submit to the Mayor reports in answer to requests for information made to him or her by the mayor (§ 705(h))
- Give the Mayor at least thirty days' notice in writing of the intention to resign, stating the reasons therefor (§ 703)
- Designate a secretary for the recording of minutes for each of the City's boards and commissions (§ 904)
- Designate City officers and employees to meet with and participate in the discussions of the Planning Commission (§ 906)
- Except for contracts for legal services, the City Manager is authorized to contract for all services required by the City for which an appropriation has been made;

provided the contract involves an expenditure of City moneys of less than or equal to fifty thousand dollars (\$50,000); Council approval of any contract or any amendment to the contract for services is required if the total proposed expenditure of City moneys under the contract and any amendments thereto exceeds the respective amount for which the City Manager is authorized to contract. (FMC § 4-107(b))

- Except for legal services, the City Manager shall establish an Administrative Order setting forth criteria and procedures for the selection of consultants to provide professional consulting services (including, but not limited to, auditors, certified public accountants, engineers, architects, landscape architects, management consultants, planners, surveyors, and construction project managers) to the City. The City Manager may make non-material changes to the Administrative Order at any time, subject to approval as to form by the City Attorney. Material changes to the Administrative Order shall be submitted to the Council for review and approval. (FMC § 4-107(g))
- The City Manager or designated enforcing officers have the authority and powers necessary to gain compliance with the provisions of the FMC and applicable laws. These powers include the power to inspect public and private property and use whatever judicial and administrative remedies are available under the Code or applicable laws. (FMC § 1-302)

Implied Powers:

- Issue Administrative Orders, not inconsistent with the Charter, FMC, or official policies (some of which may require approval of the Council)

City Attorney

Express Powers: The City Attorney shall have power and may be required to:

- Represent and advise the Council and all City officers in all matters of law pertaining to their offices (§ 803)
- Represent and appear for the City in any or all actions or proceedings in which the City is concerned or is a party, including the prosecution of violations of the Charter and ordinances enacted by the Council, and represent and appear for any City officer or employee, or former City officer or employee, in any or all actions and proceedings in which any such officer or employee is concerned or is a party for any act arising out of his employment or by reason of his official capacity provided the interest of the City in such action or proceeding is not adversely affected (§ 803)
- Attend all regular meetings of the Council and give his advice or opinion in writing whenever requested to do so by the Council or by any of the boards or officers of the City (§ 803)
- Approve the form of all contracts made by and all bonds given to the City, endorsing his approval thereon in writing (§ 803)
- Contract for all legal services required by the City for which an appropriation has been made (FMC § 4-107(c))

- Prepare any and all proposed ordinances or resolutions for the City and amendments thereto (§ 803)
- Surrender to his successor all books, papers, files and documents pertaining to the City's affairs (§ 803)
- To be valid hereunder, any contract with the City for property, goods, services, materials, supplies, equipment or work shall be in writing and approved as to form by the City Attorney (§ 1208(d))
- All proposed resolutions, ordinances, and contracts shall be approved as to form by the City Attorney's Office prior to placement on the Council Agenda (CRP 6b)
- Upon request, assist Council in the formation of motions (CRP 14a)
- Discretion to institute the appropriate civil action to ensure compliance with the FMC, including an action for a temporary restraining order, a preliminary or permanent injunction or an action to recover any damages incurred as a result of any Code violation (FMC § 1-304(f))
- Pursue collection of debts owed to the City and may, in furtherance of such collection:
 - Accept a promissory note to repay the claim over a period of time
 - File an action in the appropriate court to secure a judgment
 - Assign the claim, promissory note, or judgment to a collection agency
 - Authorize the Controller to accept a compromise settlement and write off the balance of the claim as uncollectible, where the amount of the write-off does not exceed fifteen thousand dollars (\$15,000.00)
 - Authorize the Controller to file an action in Small Claims Court and write off any amount in excess of such court's jurisdiction, where the amount of the write-off does not exceed fifteen thousand dollars (\$15,000.00)
 - Authorize the Controller to write off the claim in full where the amount of the write-off does not exceed fifteen thousand dollars (\$15,000.00)
 - When the City Attorney determines it is in the best interest of the City to accept a compromise settlement of the claim and write off the balance as uncollectible, or to write off the claim in full as uncollectible, he shall submit the matter to the Council for approval where the amount of the write-off exceeds fifteen thousand dollars (\$15,000.00) (FMC § 7-910(b))

City Clerk

Express Powers: The City Clerk shall have power and may be required to:

- Be responsible for the recording and maintaining of a full and true record of all the proceedings of the and attend all meetings of the Council either in person or by deputy (§ 802)
- Maintain separate books, in which shall be recorded respectively all ordinances and resolutions; keep all books properly indexed and open to public inspection when not in actual use (§ 802)
- Maintain separate files of all contracts the execution of which was specifically authorized by Council action, and of all official bonds of the City (§ 802)
- Be the custodian of the Seal of the City (§ 802)

- Administer oaths or affirmations, take affidavits and depositions pertaining to the affairs and business of the City and certify copies of official records (§ 802)
- Be ex-officio Assessor, unless the Council has availed itself, or does in the future avail itself, of the provisions of the general laws of the State relative to the assessment of property and the collection of City taxes by county officers, or unless the Council by ordinance provides otherwise (§ 802)
- Maintain in appropriate books and files such other records, documents, instruments, and papers as the Council shall provide by ordinance (§ 802)
- In the absence of all members of the Council from any regular meeting or adjourned regular meeting the City Clerk may declare the same adjourned to a stated day and hour (§ 503)
- Furnish each member of the Council, the Mayor, the City Manager, the City Attorney, and department directors with a copy of the agenda prior to the Council meeting as far in advance of the meeting as time permits. (CRP 6h)
- Post and prepare the Agenda in accordance with the Brown Act (CRP 6j)
- Record each vote and each abstention in the Minute Book and announce the result to the Council. (CRP 8e)
- Record all motions and read them back when requested (CRP 14a)
- Attest all ordinances and resolutions (§ 604)
- Pursuant to the Brown Act, attend a closed session of the Council and keep and enter in a minute book a record of topics discussed and decisions made at each meeting (CRP 21b)

Controller

Express Powers: The Treasurer of the City shall receive on behalf of the City all moneys collected by the City and retain the same in his custody to the order of the City. The Controller shall be ex-officio treasurer of the City. (FMC § 7-901) The Controller shall have power and be required to:

- Have charge of the Finance Department and the administration of the financial affairs of the City under the direction of the Chief Administrative Officer (§ 804)
- Supervise and be responsible for the disbursement of all moneys and have control of all expenditures to insure that budget appropriations are not exceeded (§ 804)
- Submit to the Council through the City Manager a monthly statement of all receipts and disbursements in sufficient detail to show the exact financial condition of the City; and as of the end of each fiscal year, submit a complete financial statement and report (§ 804)
- Supervise the keeping of current inventories of all property of the City by all City departments, offices and agencies (§ 804)
- Pursue collection of any claims of the City against others; the Controller may, in furtherance of such claims collection:
 - Accept a promissory note to repay the claim over a period of time
 - File a Small Claims Court action to secure a judgment, when the amount of the claim does not exceed the Small Claims Court jurisdictional limit

- Assign the claim, promissory note, or judgment to a collection agency
- Accept a compromise settlement and write off the balance of the claim as uncollectible, where the amount of the write-off does not exceed the Small Claims Court jurisdictional limit
- File an action in Small Claims Court and write off any amount in excess of such court's jurisdiction, where the amount of the write-off does not exceed the Small Claims Court jurisdictional limit
- Write off the claim in full where the amount of the write-off does not exceed the Small Claims Court jurisdictional limit
- Any claim which cannot be collected in full or disposed of in accordance with this subsection shall be sent to the City attorney's office for collection (FMC § 7-910(a))

This memorandum is intended to provide general information about the Charter offices, and is not intended to reflect researched and analyzed legal opinion. It is also not intended to cover every possible grant of authority, obligation, or restriction.

If there are any questions, please let me know.

Respectfully submitted,

DOUGLAS T. SLOAN
City Attorney