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MEMORANDUM

TO: Riverside City Council

FROM: Michael G. Colantuono, Esq.  DATE: February 23, 2018
Lindsey F. Zwicker, Esq.

RE: Mayor's Authority to Exercise Veto Power over City Manager's
Amended Employment Contract

INTRODUCTION AND SUMMARY OF CONCLUSION

As you asked, we write to express our opinion as to the scope of the Mayor's veto power: May he veto a decision of the City Council to renew and amend the employment contract of a charter officer (City Manager, City Attorney, City Clerk)?

We conclude he may not. Section 600 of the City Charter states the "City Manager serves at the pleasure of the City Council," and Section 700 states the same as to the City Clerk and City Attorney. These sections indicate that decisions regarding all aspects of the employment of a charter officer fall within the province of the Council's — and not Mayor's — authority. Although section 413 of the Charter empowers the Mayor to veto nearly all formal actions of the City Council, interpreting that power to reach employment actions as to charter officers contradicts the apparent intent of Sections 600 and 700.

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DISCUSSION

I. THE CITY CHARTER ESTABLISHES CITY COUNCIL'S AUTHORITY TO APPOINT CERTAIN CHARTER OFFICERS

Section 600 of the City Charter provides that the process for selecting a City Manager shall be determined by the City Council. The City Manager is appointed by a majority Council vote and "shall serve at the pleasure" of the City Council. Similarly, Section 700 of the City Charter states: "In addition to the City Manager, there shall be a City Attorney and a City Clerk who shall be appointed by and serve at the pleasure of the City Council."

II. THE MAYOR HAS VETO POWER OVER CERTAIN FORMAL ACTIONS OF THE CITY COUNCIL

Section 413 of the Charter provides, in relevant part:

At any time before the adjournment of a meeting, the Mayor may, by public declaration spread upon the minutes of the meeting, veto any formal action taken by vote of the City Council including any ordinance or resolution, except an emergency ordinance, the annual budget or an ordinance proposed by initiative petition.

This provision appears in "Article IV. City Council and Mayor" and is entitled "Adoption of ordinances and resolutions." By its terms, however, it reaches "any formal action taken by vote of the City Council," other than emergency ordinances, the annual budget, and initiatives.

It can be argued that section 413 empowers the Mayor to veto Council actions regarding the employment of Charter officers other than decisions to hire, terminate or extend their tenure. Sections 600 and 700 state only that charter officers are to be appointed by and "serve at the pleasure of the City Council." Section 413 is not expressly limited to legislative acts but reaches "any formation action taken by vote of the City Council." Even, if the location of the Mayor's veto power in a section entitled "Adoption of ordinances and resolutions" were understood to limit it to legislative matters — as is a common limit to veto powers (Cf. U.S. Const., art. I, § 7 [U.S. President]; Cal. Const.,

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art. IV, § 10 [California Governor]) — case law treats contracting decisions as legislative in character.

Accordingly, we conclude the City Council's approval of an employment contract for a charter officer, as well as decisions regarding its financial terms, amount to legislation.

However, for the reasons stated below, we conclude this is not the intent of the voters who approved the Riverside Charter and the Mayor may not veto an action to appoint, reappoint, terminate, or compensate a charter officer, including an action regarding an employment or re-employment contract.

III. SERVICE "AT THE PLEASURE OF THE CITY COUNCIL" IS INCONSISTENT WITH VETO OF CHARTER OFFICER CONTRACTS

If the Mayor could veto a contract for a charter officer, that officer would have an obvious incentive to take direction from the Mayor and to seek his approval. That incentive is in tension with, if not fully inconsistent with, the Charter's statement that charter officers "serve at the pleasure of the City Council." We doubt the framers of the charter would have created two rules at obvious tension with one another on something as vital as the chain of authority in City administration. If they did, we would expect them to do so expressly and not merely by implication. Accordingly, we conclude the statements that charter officers "serve at the pleasure of the City Council" preclude the exercise of the Mayor's veto as to contracts and other employment decisions affecting the three charter officers.

Furthermore, Section 413 excludes from the Mayor's veto authority the power to veto annual budget — the primary appropriation of the Council each year. Employment contracts amount to the appropriation of funds — the creation of spending authority — and are thus comparable to the budget and outside the reach of the veto power for that reason, too.

Our conclusion draws strength from the contrast between Charter sections 600 and 700, on the one hand, and section 802, on the other. Section 802 establishes appointment authority for boards and commissions: "The members of each such board or commission

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shall serve at the pleasure of the Mayor and City Council and shall be nominated and appointed by the Mayor and City Council from the qualified electors of the City" Inclusion of the Mayor in the authority to appoint members of boards and commissions contrasts with exclusive Council control over the appointment and removal of charter officers. This suggests the Mayor was intentionally excluded from those decisions.

Finally, the rules which govern construction of a charter, ordinance, statute or constitutional provision require specific provisions to cover the subject to which they apply instead of potentially inconsistent, more general provisions. The Mayor's veto power is stated broadly, but the Council's employment power is stated specifically — it alone has authority to hire and fire just three City officials. We conclude a court would apply this rule to conclude the veto power does not extend to employment contracts for the three Charter officers of the City.

It is worth noting that the principal distinction between charters creating weak mayors in California cities and those creating strong mayors is the role and reporting responsibility of the chief executive employee. A strong Mayor rarely sits in Council, as Riverside's Mayor does. In strong-Mayor cities, the Mayor is solely an executive and the Council elects its own presiding officer. This is the model in San Francisco, Los Angeles and San Diego, for example. Weak mayors commonly sit in Council (i.e., attend and participate in Council meetings from the dais) as is true in Sacramento, Chula Vista, and Riverside. Strong-mayor cities rarely have city managers (using lesser titles like "administrator" or "chief operating officer") and this position invariably reports to the strong mayor. This is the case in Los Angeles, Oakland, and San Diego, too. Indeed, when San Diego amended its charter recently, and Sacramento rejected a proposal to do so, both measures transferred power to hire and fire the city manager from the city council to a newly empowered mayor. Thus, to whom the city manager reports is a fundamental issue in charter-city governance and Riverside's charter provides for a weak Mayor and a strong City Manager reporting to a strong City Council. This background supports our conclusion the Mayor's veto does not reach Charter officer's contracts.

It can be argued that there is nothing inconsistent with allowing the Council to hire and fire the City Manager, but allowing the Mayor a role in setting the term of his or her contract, pay and benefits, and other terms of employment. We expect a court to find

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that argument unpersuasive for two reasons. First, it ignores the very real leverage this would give a Mayor over a Manager, Clerk or Attorney, necessarily diluting their loyalty to the Council. Second, it ignores the historical differences between strong and weak mayors in California charter cities described above. Cities with weak mayors chose that system for the same reason the Progressive movement created city managers at the turn of the 20th Century – to professionalize city management, insulate it to the extent possible from politics, and to discourage in California the Tammany Hall / Cook County-style of political, patronage-based, local governments experienced elsewhere in the 19th century.

Accordingly, we conclude the power to appoint and set the terms of employment for these positions therefore lies exclusively with the City Council and is not subject to the Mayor's veto. The Charter officers have one boss – the City Council.

CONCLUSION

Although the Mayor has veto power over most formal legislative actions of the Council, we conclude that power does not include decisions regarding the appointment and terms of employment of charter officers.

Thank you for the opportunity assist in this matter. If we can be of further assistance, please contact either of us.