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REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

AUTHORITY OF MAYOR AND INDEPENDENT DEPARTMENT HEADS TO BRING
MATTERS BEFORE OPEN SESSION OF CITY COUNCIL

INTRODUCTION

Effective January 1, 2006, the City of San Diego changed from a Council-Manager form of governance to a Mayor-Council form of governance. In general, a new executive branch of government was created, headed by the Mayor, and the City Council became an eight member legislative branch. The Mayor also assumed the day to day operations of the City that had formerly been the responsibility of the City Manager.

The changes in governance are reflected in newly adopted San Diego Charter article XV. One of the issues addressed in the changes was the Mayor's and independent department head's right to bring matters before the City Council for consideration in its open session meetings. This report discusses the rights and responsibilities of the Mayor, independent department heads, and the City Council with respect to docketing matters for open session.

DISCUSSION

I. The Mayor and Independent Department Heads have the Right to be Heard in Open Session Meetings of City Council.

Article XV of the Charter provides that "[a]ll executive authority, power, and responsibilities conferred upon the City Manager in Article V, Article VII, and Article IX [are] transferred to, assumed, and [will be] carried out by the Mayor" San Diego Charter § 260 (b). This includes the Manager's previous duties "to make such recommendation to the Council concerning the affairs of the City as may seem to him desirable; [and] to keep the Council advised of the financial condition and future needs of the City." San Diego Charter § 28. He must "perform . . . [the] duties as may be prescribed by [the] Charter or required of him by ordinance or resolution of the Council." San Diego Charter § 28.

Article XV of the Charter also expressly conferred on the Mayor a number of "additional rights, powers, and duties" to those conferred by Charter section 260(b). San Diego Charter § 265(b). These rights include the express right and obligation "[t]o recommend to the Council

such measures and ordinances as he or she may deem necessary or expedient . . .” San Diego Charter § 265 (b)(3). In addition, the Mayor has been given the express right “[t]o attend and be heard at any regular or special open session meeting of the Council” San Diego Charter § 265 (b)(4).

Article XV provides that the City Council may not interfere with the Mayor’s hiring or administrative powers. San Diego Charter § 270 (g) and (h). However, Article XV provides the Council with the “the right to determine its own rules and order of business” San Diego Charter § 270(d). This includes the right to select its new “presiding officer who shall have the responsibility for chairing meetings of the Council and managing the docket process.” San Diego Charter § 270 (d). The City Council’s right to create its own rules is tempered by a new obligation that those rules “provide a process for the Mayor and independent department heads to propose matters for consideration by the Council in open session” and the Charter requirements that the Mayor be permitted “[t]o recommend to the Council such measures and ordinances as he or she may deem necessary or expedient” San Diego Charter §§ 270 (d), 265 (b)(3).¹

It is settled law in this State that governmental officials may exercise such additional powers as are necessary for the due and efficient administration of powers expressly granted by statute, or as may fairly be implied from the statute granting the powers. *Dickey v. Raisin Proration Zone No. 1*, 24 Cal. 2d 796, 810 (1944). The express grant of these additional rights, powers and duties to the Mayor necessarily carries with them his implied authority to gain reasonable and timely access to the full City Council for those purposes. Denial of such access to the legislative body would thwart the Mayor’s express right, powers, and duties to recommend to them what he sees as necessary and expedient legislation or other measures concerning the City.

The Charter language is not ambiguous. It does not give the Mayor access only to City Council committees, or subject his right of access to the full City Council to another’s discretion. This is consistent with the new duty placed on the City Council to provide within its rules a “process for the Mayor and independent department heads to propose matters for consideration by the Council in open session.” San Diego Charter § 270 (d). This can mean only that the Mayor and independent department heads must be given access to the full City Council in open session.²

¹ We interpret “measures” to include both emergency measures and ballot measures. *See* San Diego Charter §§ 23, 106, 295(e); San Diego Municipal Code §§ 27.0103, 27.2903.

² “Independent department” is not defined in the Charter, but historically, the phrase has referred to those departments that were not subject to supervision by the City Manager’s Office, such as Council District Offices, the Mayor’s Office, the City Attorney’s Office, Personnel, Retirement, the Ethics Commission, and the City Clerk’s Office.

Accordingly, we interpret the plain language of Article XV of the City Charter to require the Mayor be provided with a guaranteed and timely access to the full City Council to consider any measure or ordinance he recommends to City Council and any recommendation he may make to the Council concerning the affairs of the City. Similarly, the Charter requires the City Council rules provide guaranteed and timely access to the full City Council for matters proposed by independent department heads.

II. The Permanent Rules of Council Should be Amended to More Clearly Reflect the Charter Requirements.

It is settled law “that a charter city may not act in conflict with its charter” and that “[a]ny act that is violative of or not in compliance with the charter is void.” *Domar Electric, Inc. v. City of Los Angeles*, 9 Cal.4th 161, 171 (1994). A charter city may not enact an ordinance that conflicts with its charter. *Hubbard v. City of San Diego*, 55 Cal. App. 3d 380 (1976). San Diego Municipal Code section 22.0101.5 codifies the City Council’s Permanent Rules [Rules] regarding the procedures for Council meetings, including the docking of matters to be heard in open session. This report examines whether those rules implement the Charter requirements to provide the Mayor and independent department heads guaranteed and timely access to full City Council consideration of the matters they propose in open session.

Section 22.0101.5 of the San Diego Municipal Code was enacted October 31, 2005, by San Diego Ordinance O-19429 N.S. With the possible exception of Rule 7.2.2 (Former Rule 27)³, the new Permanent Rules do not insure the Mayor and independent department heads the guaranteed and timely access to the full City Council as required by the Charter.

For example, under the new rules only the Council President (alone or in response to a written request of four Councilmembers), or a majority of the Council may directly place matters on the Council agenda. Rules 2.9.1 and 2.9.2. Even if placed on the agenda, if a matter has not been through a committee, any three Council members, or the appropriate Committee Chair may transfer the matter to a committee. Rule 2.9.2. The Mayor, City Attorney, and independent department heads may certainly initiate resolutions and ordinances related to their official duties using the Form 1472 process. Rule 7.2.1. But the Council President may refer those matters to a Council Standing Committee rather than placing them on the Agenda. Rule 7.2.1.

³ Rule 7.2.2 provides in pertinent part: “Any resolution or ordinance on which action of the Council is mandatory under any federal, state or local law shall be placed on the Adoption Agenda by the City Clerk without further action of the President. Such matters include but are not limited to the following: . . . ¶ Such resolution or ordinance shall be prepared and delivered by the City Attorney and a copy thereof shall be delivered by the City Attorney to the President for information.” Rule 7.2.2.

In addition, the new rules provide the Committee chair with complete discretion “whether and when” to hear matters, other than those matters referred by a Council majority, or those involving resolutions and ordinances. Moreover, the new rules increased the time period to 120 days before a first hearing must be held for the latter category of matters. Rule 6.7.4. Previously the rules *required* a committee hearing within 30 days of the referral to a committee. Former Rule 14.⁴ Even resolutions and ordinances referred to committee may only be returned to Council if the committee recommends them, or two members of the committee request it. Rule 6.9.1. There is no mandatory return to the full Council for matters referred to a committee, even those matters “held in committee” for more than 120 days, unless a majority of the Council decrees it. Rule 2.3.3.

Referring a matter to committee for further review is a process that at its best permits greater opportunity for discussion and public input, and provides valuable information on which a full City Council may base their decision when the matter is back before them. At its worst, the process can be used to substantially delay a matter that the Mayor or independent department head believes should be addressed by the full City Council. Under the mandates of our current Charter, procedures which may preclude the Mayor or independent department heads from access to the full City Council conflict with the Charter’s new mandate of access. In short, the new rules do not guarantee that a resolution, ordinance, or measure recommended by the Mayor or independent department heads will be timely heard by the full City Council, a process the Charter now plainly requires.

Because the Charter is a local law requiring access to the full City Council for matters proposed by the Mayor or other department heads, it is possible that new Rule 7.2.2 could be construed to provide direct access to the City Council’s Adoption Agenda for resolutions and ordinances the Mayor or independent departments propose. However, we believe the better approach is for the City Council to revisit the Permanent Rules codified in San Diego Municipal Code section 22.0101.5 and amend them to provide a method for guaranteed and timely access to the full City Council for all matters proposed or recommended by the Mayor or independent department heads as required by the Charter. Such an amendment would be:

- 7.2.1. Requests for Council action may be initiated by the City Attorney or Mayor, or any other independent department head for any matter that is germane to his or her official duties as prescribed by law. Resolutions or ordinances drafted in accordance with such requests shall be assigned by the President to the Adoption Agenda or, with the consent of the requesting party, referred to committee in the same way as all other resolutions or ordinances. (*Proposed amendment underlined.*)

⁴ These changes were recommended by the six-member Council Transition Committee. See Chairperson’s Report to the City Council Strong Mayor-Strong Council Transition Committee, dated September 27, 2005, pp.2-3.

The Permanent Rules also provide that, after the 1472 and supporting materials are submitted, the Council President has discretion to place it on the docket for the second or third week after receipt of the 1472. Rule 7.4.1. To ensure that the Mayor and independent department heads are not unduly delayed in bringing matters before the City Council, we recommend the following revision to the rule:

Rule 7.4.1 The official who originated the Form 1472 shall cause the resolution or ordinance, with attached digest, and any other supporting materials, prepared in accordance with this Rule, to be delivered to the President or his/her designee no later than 10:00 a.m. on Wednesday for listing on the agenda of a regular Council meeting to be held, at the discretion of the President, the second or third week after receipt of the 1472. However, the President shall place the item on the earlier docket when the Mayor, City Attorney, or independent department head requests in writing that the matter be docketed at the earlier regular Council meeting. (Proposed amendment underlined.)

Until these or other appropriate amendments are in place, access by the Mayor and independent department heads to the City Council for their proposals should not be unduly delayed in order to ensure compliance with the express and implied provisions of Article XV of the Charter.

CONCLUSION

The rules adopted by City Council in October 2005, incorporated the changes the City Council felt were necessary during a period when San Diego was without an elected Mayor and elected representatives for two City Council Districts. They incorporated many of the City Council's previous procedures and created new ones. However, we conclude that they do not adequately address the new Charter provisions, requiring a process for the Mayor and independent department heads to propose matters for consideration by the full City Council in open session. Such a situation is particularly problematic and conflicts with the Mayor's special powers and duties given him under Article XV of the Charter "to recommend to Council such measures and ordinances . . . he . . . may deem necessary or expedient." Also, the extended 120 day timeline before some matters may be returned from a committee referral may unduly delay action on a proposed ordinance or ballot measure by the City Council. Accordingly this Office

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recommends the City Council amend its Permanent Rules to provide a method for full City Council consideration in open session for any matter proposed by the Mayor or independent department heads.

Respectfully submitted,

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