

August 27, 1997

REPORT TO THE COMMITTEE ON PUBLIC
SAFETY AND NEIGHBORHOOD SERVICES

POWER OF THE COUNCIL UNDER CHARTER SECTION 26 TO CHANGE THE
ORGANIZATION OF CITY DEPARTMENTS

At the July 30, 1997, meeting of the Public Safety & Neighborhood Services Committee, Deputy Mayor Warden and Councilmember Wear proposed that the Lifeguard Service be separated from the Fire & Life Safety Services business center and be incorporated as its own business center, reporting directly to the City Manager. This office was asked to opine whether the reorganization of City departments was within the authority of the City Council, or instead was a power reserved to the Manager as the Chief Administrative Officer of the City.

Charter section 26 provides that the Council shall establish, by ordinance, an "administrative code" detailing the powers and duties of the administrative departments of the City¹. In addition:

[T]he Council may change, abolish, combine, and rearrange the departments, divisions and boards of the City Government provided for in said administrative code, but such ordinance creating, combining, abolishing or decreasing the powers of any department, division or board shall require a vote of two-thirds of the members elected to the Council.

The word "may" in this section denotes that it is a discretionary power of the Council. Gyler v. Mission Ins. Co., 10 Cal. 3d 216, 219 (1973). That is, the Council "may," if it chooses, reorganize City departments by a two-thirds vote of the Council, or it "may" leave such matters to the Manager.

The Manager remains in charge of the operation of administrative departments, however, irrespective of how they are organized. The Manager's powers derive primarily from Charter sections 27, 28 and 29, which state that the Manager "shall be the chief administrative officer of the City," and detail the broad powers of the Manager to direct and supervise the operations of the City departments under the Manager's control. The Manager's powers also include the power to appoint department directors and other employees², and to reorganize those departments. The power to reorganize departments, however, is subject to any contrary or additional action by the Council if it chooses to act under Charter section 26.

Based upon the language of Charter section 26, we believe that the Council has the right to take the action proposed by Deputy Mayor Warden and Councilmember Wear at the Committee meeting of July 30, 1997. This type of power may be exercised by the Manager as well, pursuant to Charter sections 27 and 28, but the Council has the independent, and overriding, power to organize the City's administrative departments.

Respectfully submitted,

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