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MEMORANDUM OF LAW

DATE: September 26, 2011

TO: Danell Scarborough, Executive Director Citizens' Review Board on Police Practices

FROM: City Attorney

SUBJECT: Stakeholder Departments

INTRODUCTION

The Citizens' Review Board on Police Practices (CRB) has asked for clarification regarding the roles and responsibilities of various City of San Diego departments that interact with the CRB in response to questions raised at the CRB's open meetings by individual members of the public who have expressed concerns about the process. Specifically, these individuals stated that they had appropriately filed complaints¹ but had never received a response to their complaints from either the CRB or the San Diego Police Department (SDPD). Additionally, these same individuals had also filed claims² against the City. Under current practice, if a claim against the City is filed with the City's Risk Management Department, and a citizen's complaint is filed, that complaint is not reviewed by CRB.

QUESTIONS PRESENTED

1. What are the roles and responsibilities of the following departments with respect to the investigation and resolution of citizen complaints and claims filed by members of the public against sworn members of the SDPD: (1) the SDPD, specifically IA; (2) Risk Management; (3) the City Attorney; and (4) the CRB?
2. Should an individual who files both a citizen complaint and a claim have that complaint reviewed by the CRB?

¹ California state law mandates that law enforcement agencies have a procedure for handling complaints by citizens. Cal. Penal Code § 832.5.

² A "claim" is a procedural requisite for filing a lawsuit in state court against a government entity. Cal. Gov't Code § 900-915.4.

SHORT ANSWER

1. The SDPD receives, investigates, and responds to citizen complaints. Risk Management handles claims against the City. The City Attorney provides legal advice to the City and defends the City against lawsuits. The CRB is responsible for reviewing and evaluating citizen complaints and the administration of discipline arising from such complaints.

2. Yes, if the claim/complaint constitutes a Category 1 Complaint. Under current rules established by the Mayor, the CRB reviews more serious citizen complaints, commonly referred to as Category 1 Complaints.

ANALYSIS

I. CITY FUNCTIONS

A. ROLES AND RESPONSIBILITIES OF THE SDPD

California Penal Code (Penal Code) section 832.5 provides generally³ that every agency in the state that employs peace officers must establish a procedure to investigate complaints by members of the public against the sworn personnel of the department or agency. It also provides that the department establish a written procedure for the complaint process and that the procedure be available to the public.

To comply with the requirements of Penal Code section 832.5, the SDPD has implemented SDPD Procedure 1.10, entitled "Citizen Complaints, Officer Involved Shootings and In-Custody Deaths; Reception, Investigation and Routing Procedures (Sept. 11, 2006)" (Procedure 1.10).⁴ Procedure 1.10, section V describes the process by which individuals may file complaints against officers. It provides that a complaint may be filed at any police facility, the City Administration Building (which includes the CRB office), certain community-based organizations, or with any member of the SDPD. Complaints may be made in person, by telephone, or in writing (by letter, facsimile, or electronic mail).

The procedure further provides detailed information about how a complaint is received and processed by SDPD. Section VI describes the details of the investigation process. Section VI(A)(9) includes a provision that at the conclusion of the investigation, a complainant will be notified of the results of the investigation in a letter from the IA unit. This notification requirement is mandated by Penal Code section 832.7(e)(1), which provides that "[t]he department . . . shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition." Penal Code section 832.7(e)(2) provides that the disposition notification to the complainant is not conclusive or binding or admissible in any subsequent legal proceeding against the SDPD or the named officer or officers.

³ The full text of Penal Code section 832.5 is attached to this Memorandum as Attachment A.

⁴ A copy of the policy has not been attached to this memorandum because of its length. However, it is available on the CD-rom provided to all CRB members with their "Red Binder" training materials.

Section VII of Procedure 1.10 describes the routing process at the completion of the investigation. Section VII(A) provides that the CRB receives all complaints that contain at least one Category I complaint except those citizen complaints that are “City claim” cases.⁵ Finally, Section VII(F) provides that in all cases that were reviewed by the CRB if discipline is imposed, IA will provide a copy of the discipline for the CRB’s review.

Thus, SDPD’s role is to: (1) receive and document the citizen complaint; (2) conduct a thorough investigation of the complaint; (3) determine the discipline, if any, to be imposed; (4) route completed cases to the appropriate individuals; and (5) provide responses to complaining individuals. Additionally, pursuant to Penal Code 832.5(b), IA retains copies of complaints for five years.

B. ROLES AND RESPONSIBILITIES OF THE CITY’S RISK MANAGEMENT DEPARTMENT

The City’s Risk Management Department (Risk Management) has four areas of responsibility. They are: (1) employee benefits; (2) Workers’ Compensation; (3) safety and environmental health; and (4) public liability and loss recovery. The division that resolves claims issues against the City, whether the claim is against an individual employee or results from some alleged negligence on the part of the City, is the Public Liability and Loss Recovery Division. This division administers a self-insured program for public liability (tort) risks, which is supplemented by purchased excess liability insurance. The division supports the investigation and settlement of all claims arising from the City’s operation as a municipality. Any claim against the City must be made in writing using the “Claim Against the City of San Diego” Form (RM-9), and be completed in accordance with California Government Code sections 900-915.4. Most claims must be presented to Risk Management no later than six months after the date of the incident or event on which the claim is based. *See* Cal. Gov’t Code § 911.2. Claims that are filed after the statutory time to file a claim has lapsed are summarily denied.

The following information is taken from the Risk Management website and its “frequently asked questions” section regarding the procedures for filing a claim against the City:

After your claim is received by Risk Management, it is assigned to a Claims Representative. The Claims Representative reviews the claim and supporting documents. If the claims representative has any questions, he or she will contact you. If not, he or she proceeds with review of your claim. The Claims Representative will move quickly to resolve your claim. State law allows a 45-day period to conduct the investigative process. As soon as the Claims Representative has all the necessary information, you will be advised if your claim is approved or denied. When a claim is denied, the claimant is provided with a written response outlining the remedies allowed by state law.

⁵ The CRB does not review internal investigations. Internal investigations are defined as “those investigations conducted when someone other than a citizen alleges misconduct by a Department member (e.g., another Department member or another law enforcement agency).” SDPD Procedure 1.10, § (V)(E). City claim cases are not defined in the Procedure.

When Risk Management receives a claim, it sends a copy of the claim to the named City department and requests that the department provide Risk Management a brief written description of events alleged in the claim so that it may evaluate the strength of the claim and determine whether or not to deny the claim. Risk Management follows this procedure regardless of which City department is named in the claim. In some instances, Risk Management may also confer with the City Attorney's Office to assist in its evaluation of a claim regarding potential liability issues. After evaluating the information received from the various resources, Risk Management makes a decision to accept the claim and begin settlement negotiations or deny the claim and send its written response. The written response sent to the claimant from Risk Management in response to a claim is completely separate from any response IA sends to a complainant regarding the department's disposition of a citizen complaint against a police officer. Although compliance with the California Government Code is required in order to bring a lawsuit against the City, a citizen complaint filed pursuant to California Penal Code section 832.5 is not a prerequisite to filing a claim or bringing a lawsuit against the City. Risk Management considers SDPD's input in reaching its decision regarding whether or not to accept or deny a claim, but Risk Management has no authority to impact IA's response to a complaint against a police officer. As previously noted, IA's duty to provide a response to a complainant is mandated by Penal Code section 832.7(e).

C. THE DUTIES AND RESPONSIBILITIES OF THE CITY ATTORNEY'S OFFICE

The duties and responsibilities of the City Attorney and his or her deputies are set out in San Diego Charter (Charter) section 40. For purposes of this memorandum regarding the City Attorney's duties vis-à-vis the CRB and SDPD, the pertinent paragraphs of Charter section 40⁶ provide:

It shall be the City Attorney's duty, either personally or by such assistants as he or she may designate, to perform all services incident to the legal department; to give advice in writing when so requested, to the Council, its Committees, the Manager, the Commissions, or Directors of any department, but all such advice shall be in writing with the citation of authorities in support of the conclusions expressed in said written opinions; to prosecute or defend, as the case may be, all suits or cases to which the City may be a party; to prosecute for all offenses against the ordinances of the City and for such offenses against the laws of the State as may be required of the City Attorney by law; to prepare in writing all ordinances, resolutions, contracts, bonds, or other instruments in which the City is concerned, and to endorse on each approval of the form or correctness thereof;

⁶ The full text of Charter section 40 is attached to this Memorandum as Attachment B.

And also:

The City Attorney shall apply, upon order of the Council, to a court of competent jurisdiction for a writ of mandamus to compel the performance of duties of any officer or commission which fails to perform any duty expressly enjoined by law or ordinance.

Deputies in the Criminal Division conduct all prosecutions under Charter section 40 and deputies in the Civil Litigation Division defend and prosecute all court actions in which the City is a party. Deputies in the Civil Advisory Division provide legal advice to the Mayor, the City Council and its committees, City departments, boards, and commissions. When advising a board or commission such as the CRB, the main duties of a Deputy City Attorney are to advise on general legal issues applicable to all City boards and commissions, such as Brown Act requirements (Cal. Gov't Code §§ 54950-54969) and Public Records Act request requirements (Cal. Gov't Code §§ 6250-6270). Additionally, advisory attorneys provide legal advice on issues which are specific to the particular board or commission to assist their clients in performing their duties in a lawful manner.

Since the CRB was established after the passage of Proposition G in 1989, much of the written legal advice to the CRB has outlined the parameters of the CRB's authority. Previous Memoranda of Law (MOL) may be found on the "Red Binder" CD-rom provided to CRB members. There are several Memoranda that might be of specific interest at this juncture because they address issues regarding the CRB's duties and the City Attorney's role in assessing whether or not those duties can be expanded, and, if so, how that might be accomplished:⁷

A recurring question raised by CRB members is whether or not Charter section 40 requires that all legal advice be in writing. The specific language of Charter section 40 says "to give advice in writing when so requested" Thus, when a specific request is made by the Executive Director or the chair of the CRB on a subject of general interest or concern for the entire board, written legal advice is provided. Any member of the CRB may raise an issue that he or she feels warrants a written analysis based on issues that arise during case review, as a result

⁷ 1. 1990 City Att'y MOL 792 (90-78; Jul. 5, 1990)
CRB Document: "4.2e ML 19900705 Citizens Review Board Q&A per City Attorney.pdf"

2. City Att'y MOL No. 91-20 (Mar. 11, 1991)
CRB Document: "4.2h ML 19910311 Access to Certain Police Personnel Records.pdf"

3. 1992 City Att'y MOL 759 (92-101; Oct. 30, 1992)
CRB Document: "4.2i ML 19921030 Officer Complaint History and Red Flagging.pdf"

4. 1994 City Att'y MOL 744 (94-84; Oct. 24, 1994)
CRB Document: "4.2m ML 19941024 Access to Complainants.pdf"

5. 1998 City Att'y MOL 232 (98-9; Mar. 24, 1998)
CRB Document: "4.2r ML 19980324 Confidentiality of PC 832.7.pdf"

6. City Att'y MOL No. 2010-7 (Mar. 17, 2010)
CRB Document: "4.2x ML 20100317 Case Comments by the CRB.pdf"

7. City Att'y MOL No. 2010-18 (Sept. 21, 2010)
CRB Document: "4.2y ML 20100921 Role of CRB.pdf"

of a policy issue or, as in this instance, as a result of an issue brought to the CRB's attention by a member of the public. However, once the board has determined that an issue warrants a written analysis, pursuant to the CRB's practice, the Executive Director or the chair submits a written request for a legal opinion.

In addition to requests for written legal analyses, the very nature of providing advice to a board or commission, whether it is the City Council or the CRB, requires that some advice be given during the course of a meeting as it arises to prevent either violations of the law or violations of the board or commission's own bylaws. This type of advice typically involves Brown Act issues or an issue regarding the law as it applies to a particular topic under discussion. Such advice is not provided in writing, nor is there a written follow-up regarding the advice unless a larger issue evolves from the discussion and a written request for further analysis is made.

D. DUTIES AND RESPONSIBILITIES OF THE CRB

The role of the CRB was recently addressed in detail in City Att'y MOL No. 2010-18 (Sept. 21, 2010). That MOL can be found on the CD-rom provided to CRB members. Therefore, that analysis will not be repeated in this MOL.

II. CITIZEN COMPLAINTS

The pertinent language of Charter section 43(d) provides that the City Manager (now Mayor) shall "create and establish a citizens' review board on police practices to review and evaluate citizens' complaints against members of the San Diego Police Department and the San Diego Police Department's administration of discipline arising from such complaints." Under ordinary rules of statutory construction the courts will look to the plain language of the statute. The courts have often said:

The objective of statutory construction is to determine the intent of the enacting body so that the law may receive the interpretation that best effectuates that intent. "We first examine the words themselves because the statutory language is generally the most reliable indicator of legislative intent. The words of the statute be given their ordinary and usual meaning and *should be construed in their statutory context.*" If the plain, commonsense meaning of a statute's words is unambiguous, the plain meaning controls.

Fitch v. Select Products Co., 36 Cal. 4th 812, 818 (2005) (emphasis added) (citations omitted). In addition, we must avoid a statutory construction that renders some words surplusage. *Valley Circle Estates v. VTN Consolidated, Inc.*, 33 Cal. 3d 604, 610 (1983). The courts are loath to infer legislative intent when the words of a statute are unambiguous.

An intent that finds no expression in the words of the statute cannot be found to exist. The courts may not speculate that the legislature meant something other than what it said. Nor may they rewrite a statute to make it express an intention not expressed therein. The plain meaning of words in a statute may be

disregarded only when that meaning is repugnant to the general purview of the act, or for some other compelling reason. Courts must take a statute as they find it, and if its operation results in inequality or hardship in some cases, the remedy therefor lies with the legislative authority.

Unzueta v. Ocean View School Dist., 6 Cal. App. 4th 1689, 1697 (1992) (citations omitted). See also *Page v. MiraCosta Community College Dist.*, 180 Cal. App. 4th 471, 492 (2009).

Charter section 43(d) places no limitations on the CRB's access to citizen complaints that have been properly filed. The section does provide that the Mayor may establish rules and regulations (the bylaws) to allow the CRB to carry out its functions. The section also requires that "such rules and regulations shall be consistent with the laws of the State of California concerning citizens' complaints against peace officers." Thus, CRB members are required, pursuant to Charter section 43(d), to abide by the confidentiality provisions of Penal Code 832.7, which provides that investigations of citizens' complaints conducted by the SDPD pursuant to Penal Code 832.5 are confidential and not subject to disclosure except through a *Pitchess* motion brought under the provisions of California Evidence Code section 1043. While the Mayor has the authority to promulgate rules for the CRB, he or she cannot establish rules and regulations that contravene or restrict the language of the Charter. Similarly, the SDPD cannot, by internal departmental policy, restrict the authority granted to the CRB by Charter section 43(d).

A citizen complaint, whereby a citizen files a complaint pursuant to Penal Code section 832.5 and in accordance with Procedure 1.10, is reviewable by the CRB pursuant to the Charter, subject to the rules and regulations promulgated by the City Manager (Mayor). Procedure 1.10 has been read to mean that citizen complaints filed along with claims and internal investigations are not subject to review by the CRB. This reading restricts the authority granted to the CRB by the Charter. The language in Procedure 1.10 should be clarified. To the extent the CRB has not been receiving Category 1 citizen complaints because there was a claim or internal investigation related to the same matter and absent new legislation restricting the complaints, the CRB may review these complaints. This Office finds no legal distinction between citizen complaints and citizen complaints filed in matters where there is also a claim or internal investigation.

The complaints that are generated by the SDPD, as occurs when an officer or employee of the SDPD reports the actions of a police officer that he or she thinks violates a SDPD policy or procedure, are categorized as internal complaints pursuant to SDPD policy. They are acted upon based solely on the SDPD investigation and recommendations that may flow from the investigation. These complaints are not reviewable by the CRB because no citizen has complained about the officer's actions and Charter section 43(d), which establishes the CRB, gives the CRB jurisdiction over citizen complaints only.

There are also some "hybrid" situations where no citizen has filed a complaint, but the SDPD generates its own investigation. These are commonly referred to as "internals," and that designation may have contributed to the current situation. For example, if an officer's allegedly improper actions are captured by a television crew or a photographer for a newspaper or reported by a member of the SDPD, the SDPD might begin an immediate investigation based on that information. If a citizen complaint is subsequently filed by a member of the public after such an

investigation has begun, the CRB should be allowed to review that complaint because Charter section 43(d) does not restrict citizen complaints to only complaints where there is no concurrent internal investigation.

CONCLUSION

The SDPD is required by Penal Code sections 832.5 and 832.7 to establish a procedure to respond to complaints brought by members of the public against peace officers in the SDPD. These written procedures must be available to the public. However, any information obtained during the course of an investigation conducted pursuant to the provisions established pursuant to Penal Code section 832.5 is confidential and may be disclosed only through a *Pitchess* motion brought under California Evidence Code section 1043.

The City's Risk Management Department handles all claims filed against the City, including those brought against individual police officers by members of the public. Risk Management follows the same procedure for any claim filed against the City regardless of whether it is a claim against an individual employee, a claim of negligence or any other type of claim brought against the City. Risk Management has no control over SDPD's internal process for investigating and responding to citizen complaints against police officers.

The roles of the CRB and the City Attorney are defined in the Charter provisions establishing those offices. The City Attorney's role, in its advisory capacity, is to provide legal advice to the Mayor and City Council as well as City departments, boards, and commissions.

The CRB is tasked with reviewing and evaluating citizens' complaints against police officers and the discipline that arises from those complaints. In the situation where a citizen complainant also files a claim, the Charter does not prohibit CRB from reviewing that complaint, nor does the Charter prevent IA from responding to the complainant.

JAN I. GOLDSMITH, CITY ATTORNEY

By Sharon A. Marshall
Sharon A. Marshall
Deputy City Attorney

SAM:ccm:jab
Attachments
ML-2011-15
Doc #250938_5

California Penal Code section 832.5

832.5. (a) (1) Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public.

(2) Each department or agency that employs custodial officers, as defined in Section 831.5, may establish a procedure to investigate complaints by members of the public against those custodial officers employed by these departments or agencies, provided however, that any procedure so established shall comply with the provisions of this section and with the provisions of Section 832.7.

(b) Complaints and any reports or findings relating to these complaints shall be retained for a period of at least five years. All complaints retained pursuant to this subdivision may be maintained either in the peace or custodial officer's general personnel file or in a separate file designated by the department or agency as provided by department or agency policy, in accordance with all applicable requirements of law. However, prior to any official determination regarding promotion, transfer, or disciplinary action by an officer's employing department or agency, the complaints described by subdivision (c) shall be removed from the officer's general personnel file and placed in separate file designated by the department or agency, in accordance with all applicable requirements of law.

(c) Complaints by members of the public that are determined by the peace or custodial officer's employing agency to be frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or unfounded or exonerated, or any portion of a complaint that is determined to be frivolous, unfounded, or exonerated, shall not be maintained in that officer's general personnel file. However, these complaints shall be retained in other, separate files that shall be deemed personnel records for purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and Section 1043 of the Evidence Code.

(1) Management of the peace or custodial officer's employing agency shall have access to the files described in this subdivision.

(2) Management of the peace or custodial officer's employing agency shall not use the complaints contained in these separate files for punitive or promotional purposes except as permitted by subdivision (f) of Section 3304 of the Government Code.

(3) Management of the peace or custodial officer's employing agency may identify any officer who is subject to the complaints maintained in these files which require counseling or additional training. However, if a complaint is removed from the officer's personnel file, any reference in the personnel file to the complaint or to a separate file shall be deleted.

(d) As used in this section, the following definitions apply:

(1) "General personnel file" means the file maintained by the agency containing the primary records specific to each peace or custodial officer's employment, including evaluations, assignments, status changes, and imposed discipline.

(2) "Unfounded" means that the investigation clearly established that the allegation is not true.

(3) "Exonerated" means that the investigation clearly established that the actions of the peace or custodial officer that formed the basis for the complaint are not violations of law or department policy.

San Diego Charter section 40

City Attorney

At the municipal primary and general election in 1977, a City Attorney shall be elected by the people for a term of seven (7) years. A City Attorney shall thereafter be elected for a term of four (4) years in the manner prescribed by Section 10 of this Charter.

Notwithstanding any other provision of this Charter and commencing with elections held in 1992, no person shall serve more than two (2) consecutive four-year terms as City Attorney. If for any reason a person serves a partial term as City Attorney in excess of two (2) years, that partial term shall be considered a full term for purposes of this term limit provision. Persons holding the office of City Attorney prior to the November 1992 election shall not have prior or current terms be counted for the purpose of applying this term limit provision to future elections.

The City Attorney shall be the chief legal adviser of, and attorney for the City and all Departments and offices thereof in matters relating to their official powers and duties, except in the case of the Ethics Commission, which shall have its own legal counsel independent of the City Attorney. The attorney and his or her deputies shall devote their full time to the duties of the office and shall not engage in private legal practice during the term for which they are employed by the City, except to carry to a conclusion any matters for which they have been retained prior to taking office.

The City Attorney shall appoint such deputies, assistants, and employees to serve him or her, as may be provided by ordinance of the Council, but all appointments of subordinates other than deputies and assistants shall be subject to the Civil Service provisions of this Charter. The City Attorney may appoint no more than six Assistant City Attorneys and four other assistants, who shall serve at the pleasure of the City Attorney and may be removed by the City Attorney at any time.

No Deputy City Attorney, who has served continuously as a Deputy City Attorney in the Office of the City Attorney for two years or more shall be terminated or suspended without good cause, except that any Deputy City Attorney may be subject to layoff due to lack of work or insufficient appropriation to meet the salary requirements necessary to maintain existing personnel in the Office of the City Attorney.

To ensure that Deputy City Attorneys conduct their legal work with the highest level of integrity, honesty, and professionalism, good cause for purposes of termination or suspension includes, but is not limited to, failure to comply with the California Rules of Professional Conduct.

It shall be the City Attorney's duty, either personally or by such assistants as he or she may designate, to perform all services incident to the legal department; to give advice in writing when so requested, to the Council, its Committees, the Manager, the Commissions, or Directors of any department, but all such advice shall be in writing with the citation of authorities in support of the conclusions expressed in said written opinions; to prosecute or defend, as the case may be, all suits or cases to which the City may be a party; to prosecute for all offenses against the ordinances of the City and for such offenses against the laws of the State as may be required of the City Attorney by law; to prepare in writing all ordinances, resolutions, contracts, bonds, or other instruments in which the City is concerned, and to endorse on each approval of the form or correctness thereof; to preserve in the City Attorney's office a docket of all cases in which the City is interested in any of the courts and keep a record of all proceedings of said cases; to

San Diego Charter section 40

preserve in the City Attorney's office copies of all written opinions he or she has furnished to the Council, Manager, Commission, or any officer. Such docket, copies and papers shall be the property of the City, and the City Attorney shall, on retiring from office, deliver the same, together with all books, accounts, vouchers, and necessary information, to his or her successor in office.

The City Attorney shall have charge and custody of all legal papers, books, and dockets belonging to the City pertaining to his office, and, upon a receipt therefor, may demand and receive from any officer of the City any book, paper, documents, or evidence necessary to be used in any suit, or required for the purpose of the office.

The City Attorney shall apply, upon order of the Council, in the name of the City, to a court of competent jurisdiction for an order or injunction to restrain the misapplication of funds of the City or the abuse of corporate powers, or the execution or performance of any contract made in behalf of the City which may be in contravention of the law or ordinances governing it, or which was procured by fraud or corruption.

The City Attorney shall apply, upon order of the Council, to a court of competent jurisdiction for a writ of mandamus to compel the performance of duties of any officer or commission which fails to perform any duty expressly enjoined by law or ordinance.

The City Attorney shall perform such other duties of a legal nature as the Council may by ordinance require or as are provided by the Constitution and general laws of the State.

The Council shall have authority to employ additional competent technical legal attorneys to investigate or prosecute matters connected with the departments of the City when such assistance or advice is necessary in connection therewith. The Council shall provide sufficient funds in the annual appropriation ordinance for such purposes and shall charge such additional legal service against the appropriation of the respective Departments.

The salary of the City Attorney shall be fixed by the Council and set forth in the annual appropriation ordinance, provided that the salary of the City Attorney may not be decreased during a term of office, but in no event shall said salary be less than \$15,000.00 per year. In the event of a vacancy occurring in the office of the City Attorney by reason of any cause, the Council shall have authority to fill such vacancy, which said authority shall be exercised within thirty (30) days after the vacancy occurs. Any person appointed to fill such vacancy shall hold office until the next regular municipal election, at which time a person shall be elected to serve the unexpired term. Said appointee shall remain in office until a successor is elected and qualified.