

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: March 23, 2016

TO: Public Safety and Livable Neighborhoods Committee of the
City Council of the City of San Diego

FROM: City Attorney

SUBJECT: City Council Authority to Adopt Ordinances Pertaining to the Citizens'
Review Board on Police Practices

The Office of the City Attorney was asked by Councilmember Gloria's staff whether the San Diego City Council has authority to adopt an ordinance (or ordinances) pertaining to the Citizens' Review Board on Police Practices (CRB).

San Diego City Charter (Charter) section 43(d) provides that:

Notwithstanding any other provisions of this Charter, the City Manager shall have the exclusive authority to create and establish a citizen's 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.

Charter section 43(d) further provides that "[t]he City Manager shall establish such rules and regulations as may be necessary for this board to carry out its functions; provided, however, that such rules and regulations shall be consistent with the laws of the State of California concerning citizen's complaints against peace officers."

The City's Charter is its governing law. The Charter is the City's constitution, and the City, acting through its officers and employees, must comply with it. *Miller v. City of Sacramento*, 66 Cal. App. 3d 863, 867 (1977); *City and County of San Francisco v. Patterson*, 202 Cal. App. 3d 95, 102 (1988).

Charter provisions are construed in the same manner by courts as are constitutional provisions. *Woo v. Superior Court*, 83 Cal. App. 4th 967, 974-75 (2000). The principal determination is what voters intended in approving the Charter provisions. Courts look first to the actual words of the provisions, giving "the usual, ordinary, and commonsense meaning to them. . . ."

Howard Jarvis Taxpayers Ass'n v. County of Orange, 110 Cal. App. 4th 1375, 1381 (2003); *Powers v. City of Richmond*, 10 Cal. 4th 85, 91 (1995). If the language is clear and unambiguous, the courts will presume the voters intended the meaning apparent on the face of the measure and end their inquiry. *Woo*, 83 Cal. App. 4th at 975; *Bowens v. Superior Court*, 1 Cal. 4th 36, 48 (1991). If there is some ambiguity in the language, courts may look to extrinsic aids, such as the information and arguments contained in the official ballot pamphlet, to “indicate the voters’ understanding of the measure and their intent in passing it.” *Woo*, 93 Cal. App. 4th at 976. Under ordinary rules of statutory construction, courts have repeatedly said “it is not the court’s place to insert words into the statute. ‘An appellate court should be ‘loathe to construe a statute which has the effect of “adding” or “subtracting” language.’” *Friends of Lagoon Valley v. City of Vacaville*, 154 Cal. App. 4th 807, 826 (2007) (quoting *People v. Pecci*, 72 Cal. App. 4th 1500, 1504 (1999) (footnote omitted)); see also *Jurcoane v. Superior Court*, 93 Cal. App. 4th 886, 894 (2001).

Charter section 43(d) is clear in its designation of the City Manager, now Mayor, as possessing the exclusive power to both create the CRB, and to establish its rules and regulations necessary to operation of the Board and discharge of its duties.¹ It does not grant any authority to the City Council to adopt ordinances pertaining to it. To do so would be inconsistent or in conflict with Charter, and thus would likely be held by a court to be void. *Domar Electric, Inc. v. City of Los Angeles*, 9 Cal. 4th 161, 171(1994) (citations omitted).

Since the language of Charter section 43(d) is clear in vesting exclusive authority in the City Manager, now Mayor, with regard to both the creation and the operation of the CRB, the rules of statutory construction require no further analysis. Nonetheless and of note, are the November 8, 1988 ballot arguments in favor of Proposition G and against Proposition F, which further support the conclusion that the authority to create the CRB and manage its operations is exclusively vested in the City Manager, now Mayor.²

The ballot argument in favor of Proposition G stated:

WILL TAKE THE POLITICS OUT OF POLICE REVIEW.

....

WILL NOT CREATE A BOARD STAFFED BY POLITICAL APPOINTEES.

....

¹ While the language of Charter section 43(d) is clear, it provides only the broad parameters of the CRB’s duties and lacks specificity about how the duties are to be carried out. However, Charter section 43(d) also provides that the City Manager, now Mayor, is charged with the duty to establish the rules and regulations necessary for the CRB to carry out its functions. This is accomplished by the adoption of the CRB Policies and Procedures Bylaws.

² Proposition G and Proposition F were competing ballot measures relating to the creation and governance of the CRB placed on the ballot in November, 1988. Proposition G creating the CRB in its present state passed and Proposition F failed.

**WILL NOT CREATE A BOARD DESIGN BASED ON THE
BERKELEY MODEL**³

....

Ballot Pamp., Gen. Elec. (Nov. 8, 1988), argument in favor of Prop. G.

The ballot argument in opposition to Proposition F stated:

Proposition F is modeled after the Police Review Board in Berkeley. It is a radical move that places politics in the middle of law enforcement in San Diego.

....

Ballot Pamp., Gen. Elec. (Nov. 8, 1988), argument against Prop. F.

These ballot arguments are consistent with the plain language of Charter section 43(d), which vests in the City Manager, now Mayor, the sole authority to create the CRB and promulgate rules and operating procedures governing its operation.

The foregoing does not completely exclude a role for the City Council with respect to the operations of the CRB. The City Council can propose to the Mayor recommendations regarding the rules and operating procedures of the CRB, which the Mayor may incorporate into the CRB Bylaws or written procedures as appropriate.

JAN I. GOLDSMITH, CITY ATTORNEY

By */s/William Gersten*

William Gersten

Deputy City Attorney

WG:hm:ccm

MS-2016-10

cc: City Councilmembers

Mary Ann Wallace, Committee Consultant

Sharmaine Moseley, CRB Executive Director

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³ The Berkeley model was based on shared authority amongst the Mayor and City Council with regard to both appointments and operating procedures.