TO: Porterville Charter Review Committee
Cc: John Lollis, City Manager

FROM: Julia M. Lew, City Attorney

DATE: October 1, 2013

SUBJ: Background Information concerning “Councilmanic Interference” Charter provisions

The attached are samples of charter provisions from other California cities that address councilmanic interference, and an interesting article from Santa Clara University/Markkula Center for Applied Ethics that addresses the issues that arise in relationships between elected officials and city staff.

Included in the samples is the City of Oakland’s charter language, along with a memorandum the City Attorney prepared this past March. The memorandum was prepared in response to a report issued by Oakland’s City Auditor concerning various alleged instances of such interference.
SECTION 701. NON-INTERFERENCE BY CITY COUNCIL.

Neither the City Council, nor any Council Member shall:

(a) Order or direct the City Manager to appoint or remove any person to or from any position of employment with the City;

(b) Except as otherwise permitted by this Charter or by ordinance, order or direct the City Manager to enter into a municipal contract or make a purchase of supplies from any particular person or entity;

(c) Interfere in any way with the performance of the duties of any City employee; or

(d) Interfere in any way with the duties of the City’s elections official in the conduct of elections.

Nothing in this section shall prevent the City Council, or any of its members, from advising the City Manager of any information which might assist the City Manager in the discharge of the City Manager’s duties; or contacting City employees for the purpose of inquiry, obtaining information or advising employees of citizen complaints.

ARTICLE VIII. ANNUAL BUDGET

SECTION 800. BUDGET PREPARATION.

All Department Heads shall, upon request, provide the City Manager with estimates of revenues and expenditures for their departments, detailed in the manner prescribed by the City Manager. The City Manager shall review the estimates, hold conferences with department personnel, and prepare a proposed budget.

SECTION 801. SUBMISSION TO CITY COUNCIL.

At least 45 days prior to the beginning of each fiscal year, the City Manager shall submit a proposed budget to the City Council. After reviewing the proposed budget, the City Council shall set the date and time for a public hearing on the proposed budget and, at least 10 days prior to its scheduled date, shall cause notice of such public hearing to be published in a newspaper circulated in the City and designated by the City Council.
SECTION 2011. ELIMINATION OF TRANSITION PROVISIONS.

If, in the judgment of the City Attorney, any of the sections included in this Article become obsolete by virtue of the completion of all acts required under those sections, the City Attorney shall so advise the City Council. Upon the adoption by the City Council of a resolution to such effect, the obsolete sections shall be deemed to have expired, and the City Clerk shall then remove those sections from the next printing of this Charter.

ARTICLE XXI. MISCELLANEOUS

SECTION 2100. VIOLATIONS.

A violation of any provision of this Charter shall be a misdemeanor, except that such violation may be prosecuted as an infraction at the discretion of the prosecuting authority. The City Council shall, by ordinance, establish the penalties for a violation of this Charter, but in no event shall such penalties exceed the maximum penalties permitted under State law.

Any violation of this Charter may be prosecuted in the name of the People of the State of California or may be redressed by the City through any legal or equitable remedies.

SECTION 2101. VALIDITY.

If any provision of this Charter, or the application of any Charter provision to any person or circumstance, is held invalid, the remainder of this Charter, and the application of such provision to other persons or circumstances, shall not be affected.
Section 405 Powers Vested in the City Council.
All powers of the City shall be vested in the City Council except as otherwise provided in this Charter.

Section 406 Interference in Administrative Service.
Neither the City Council nor any of its members shall interfere with the execution by the City Manager of his or her powers and duties, or order, directly or indirectly, the appointment by the City Manager or by any of the department heads in the administrative service of the City, of any person to an office or employment or his or her removal therefrom. Except for the purpose of inquiry, the City Council and its members shall deal with the administrative service under the City Manager solely through the City Manager and neither the City Council nor any member thereof shall give orders to any subordinates of the City Manager, either publicly or privately. (As amended by amendments effective on December 20, 2010)
1404 Violations.
(a) The violation of any provision of this Charter shall be deemed a misdemeanor, which may be prosecuted in the name of the People of the State of California, and be punishable by a fine not exceeding One Thousand Dollars ($1000.00) or by imprisonment in the City Jail for a term not exceeding six (6) months or by both such fine and imprisonment. Additionally, such violations of this Charter may also be redressed by civil action and/or administrative citation.

(b) The City Council may make the violation of any ordinance of the City a misdemeanor or an infraction which may be prosecuted in the name of the People of the State of California. Unless specifically designated as an infraction, a violation of any ordinance of the City shall constitute a misdemeanor. The maximum fine and/or penalty for any violation of a City ordinance, whether a misdemeanor or an infraction, shall be established by ordinance. Additionally, the violation of any City ordinance may be addressed by civil action and/or administrative citation. (As amended effective June 6, 1974, and December 20, 2010)
Relationships Between Elected Officials and Staff

These materials were prepared for the Markkula Center for Applied Ethics program in Government Ethics by Senior Fellow Judy Nadler and Communications Director Miriam Schulman. The Center provides training in local government ethics for public officials. For more information, contact Judy Nadler.

What is the relationship between elected officials and staff?  
What do these relationships have to do with ethics?  
What ethical dilemmas arise between elected officials and staff?  
Resources on relationships between elected officials and staff
What is the relationship between elected officials and staff?

City councilmembers, county supervisors, and other elected officials represent the citizens. Staff—such as traffic engineers, waste management specialists, budget directors, IT professionals and others—are the experts who make government run. Elected officials are responsible for setting the priorities for the municipality or other district; staff have the know-how to make those priorities into realities.

The fact that the professional staff, unlike many elected officials, are not subject to term limits means that they have an institutional history, which is very beneficial in developing the concrete plans to put policy decisions into practice. They also often have advanced degrees in management, engineering, finance, and other technical areas, a knowledge base they can bring to bear in devising solutions to local problems.

In many municipalities, city councilmembers are elected by wards or districts. Once invested in office, they are supposed to serve the entire city, but often they feel a special responsibility to the constituents who elected them. By contrast, staff are mandated to serve the needs of the municipality as a whole.

In a council-manager form of government, staff report to the city manager. In a strong mayor system, staff answers to the mayor. In either case, when council makes policy decisions, it is the role of the manager or mayor to see that they are carried out by the staff. City council has no role in staff personnel issues; they hire and fire only the city attorney and city manager. As the Institute for Local Self Government explains in Everyday Ethics for Local Officials, "The manager [holds] staff accountable on the council’s behalf for implementing the council's policies and directives. The entire council, in turn, holds the manager accountable for staff’s overall performance."

What do these relationships have to do with ethics?

Many of the ethical issues that come up between elected officials and staff are best seen through the lens of virtue ethics, especially the virtue of respect. Elected officials need to show respect for the expertise of staff and avoid undercutting their efforts by ignoring the evidence-based solutions they propose. Conversely, staff need to respect the political give and take inherent in democratic government and the negotiation that is bound to be part of any council decision.

These relationships also raise ethical issues when elected officials try to circumvent established procedures and priorities to gain an advantage for their friends, family, or constituents. Going over the head of the city manager to pressure a staff member for special consideration is actually illegal. As an example, here is a section from the code of the city of Sunnyvale, California, about what is called "councilmanic interference":

Neither the City Council nor any member shall give orders to any subordinates of the City Manager, either publicly or privately.

Typically, elected officials may make inquiries or exchange information, but they cannot issue directives.

What ethical dilemmas arise between elected officials and staff?

Many newly elected officials have an imperfect understanding of the division of labor between council and staff; they may act as though staff work for them as individuals and should be responsive...
to their individual priorities and the needs of their specific constituents. If a councilmember ran on a platform of clean streets, for example, he or she may believe that the proper course of action once elected is to meet directly with the sanitation director and encourage prompt action. But the councilmember must work through the democratic process with other councilmembers to make clean streets a priority across the city. That priority would then be conveyed to the city manager, to whom the sanitation director reports.

Another set of ethical dilemmas arises when council sets priorities but then ignores them. In a public meeting the council may agree on the top five goals for the year-like renovate central park, draw up plans for a teen center, etc.-but during course of the year, individual councilmembers come up with separate projects and introduce them without regard to what the majority of the council decided. This puts a lot of pressure on city staff, when they have been given their marching orders on the top priorities, and they are now being diverted from accomplishing them.

Sometimes elected officials have their own staffs, and may ask their own transportation or sanitation expert to study a problem and make proposals. When the elected officials either on their own or though council or mayoral staff conduct their own research, they are not only duplicating the work of the technical staff and therefore wasting time and money, but they are also undercutting the authority and marginalizing the recommendations of the professional staff, who work for the entire city and not for any individual elected official.

It is also demoralizing to staff when they come up with a clear, technical report with an evidence-based proposal, which is then thrown out the window because there are 100 people in the audience or 100 names on a petition asking for something else. Traffic calming is a common area of contention, where, for example residents of a senior citizens housing complex may be agitating for a stoplight so that they can cross the street safely. But city staff may have evidence that a stoplight at that intersection will create more problems than it solves.

John Nalbandian, who has studied public administration as a professor at University of Kansas and also served as a city commissioner, points out, however, that such problems do not necessarily have a right answer. "From the engineer's perspective," he writes, "I suspect that there is a right answer to the problem, and the engineer might ask, 'Will the council have the political courage to accept it?' But, as an elected official, I do not see the right answer. I see a very complicated set of forces and a problem infused with choices about values symbolized by a decision about a traffic light."

**Resources on Relationships Between Elected Officials and Staff**

Cases on Relationships Between Elected Officials and Staff

- The Mayor and the Manager
- The Councilmember and the Manager

All Cases on Government Ethics

Articles About Government Ethics on This Web Site

Articles About Ethical Decision Making on This Web Site

Links to Other Sites About Relationships Between Elected Officials and Staff

Introduction to Government Ethics Homepage

http://www.scu.edu/ethics/practicing/focusareas/government_ethics/introduction/staff-relat... 9/20/2012
New Materials

- **Five Ethical Choices You Will Have to Make in College**
  Top issues for undergraduates
- **Mandatory Flu Shots**
  Is it ethical to require health care workers to be immunized?
- **Religion and the 2012 Elections**
  Thomas Reese, SJ, analyzes the theme of religious liberty

Center News

- **Tech Forum**
  Federal Trade Commissioner on campus Sept. 20
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  Ann Ravel discusses transparency Oct. 5
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in any case cause to be paid him/her forthwith any unpaid balance of his/her salary and his/her salary for the next calendar month following adoption of the preliminary resolution. (Amended by electors at an election held March 7, 2000, Charter Chapter 11 of the State Statutes of 2000)

**Sec. 807 Prohibition against Councilmanic interference.**

Neither the City Council nor any of its members shall order or request the appointment of any person to an office or employment or his/her removal therefrom, by the City Manager, or by any of the department heads in the administrative service of the City. Except for the purpose of inquiry, the City Council and its members shall deal with the administrative service under the City Manager solely through the City Manager and neither the City Council nor any member shall give orders to any subordinates of the City Manager, either publicly or privately.

Any City Council member violating the provisions of this section, or voting for a resolution or ordinance in violation of this section shall be guilty of a misdemeanor and, upon conviction, shall cease to be a Council Member. (Amended by electors at an election held March 7, 2000, Charter Chapter 11 of the State Statutes of 2000)

**Sec. 808 Ordinances.**

The enacting clause of every ordinance shall be "Be it ordained by the City of Santa Clara as follows." No ordinance shall be finally adopted by the Council on the day of its introduction, nor within five days thereafter, nor at any time other than a regular meeting, nor until its publication as required in Section 812. However, ordinances calling elections and ordinances carrying out the provisions of elections need not be published prior to adoption. In case an ordinance is amended before its final adoption and after its publication, it shall in like manner be republished as required in Section 812, at least one day before its adoption as amended; provided, however, that where such amendment is made for the correction of clerical errors or omissions of form only, then such ordinances need not be given a first reading or a republication as corrected. (Amended by electors at an election held March 7, 2000, Charter Chapter 11 of the State Statutes of 2000)

**Sec. 809 Repeal or amendment of ordinances.**

No ordinance or portion thereof shall be repealed except by ordinance. No ordinance shall be revised, re-enacted or amended by reference to its title only; but the ordinance to be revised or re-enacted, or the section or sections thereof to be amended, or the new section or sections to be added thereto, shall be set forth and adopted according to the method provided in this article for the enactment of ordinances, and such revision, re-enactment, amendment or addition, shall be done by ordinance only.

**Sec. 810 Effective date of ordinances.**

No ordinance shall become effective until thirty (30) days from and after the date of its adoption, except the following, which shall take effect upon adoption: (a) An ordinance calling or otherwise relating to an election; (b) An improvement proceeding ordinance adopted under some law, or procedural ordinance; (c) An ordinance declaring the amount of money necessary to be raised by taxation, or fixing the rate of taxation; or (d) An emergency ordinance adopted in the manner herein provided.
Sec. 1701 State Elections Code.
(Repealed by electors at an election held March 7, 2000, Charter Chapter 11 of the State Statutes of 2000)

Sec. 1702 Amendments to State Elections Code.
(Repealed by electors at an election held March 7, 2000, Charter Chapter 11 of the State Statutes of 2000)

Article XVIII. Miscellaneous

Sec. 1800 Definitions.
Unless the provision or the context otherwise requires, as used in the Charter:
(a) "Shall" is mandatory, and "may" is permissive.
(b) "City" is the City of Santa Clara and "department," "board," "commission," "agency," or "employee," is a department, board, commission, agency, officer or employee as the case may be, of the City of Santa Clara,
(c) The masculine and feminine gender include the neuter. (Amended by electors at an election held March 7, 2000, Charter Chapter 11 of the State Statutes of 2000)

Sec. 1801 Violations.
The violation of any provision of this Charter shall be deemed a misdemeanor and be punishable upon conviction by a fine of not exceeding one thousand dollars ($1,000.00) or by imprisonment for a term of not exceeding one year or by both such fine and imprisonment.

Sec. 1802 Validity.
If any provisions of this Charter, or the application thereof to any person or circumstance is held invalid, the remainder of the Charter and the application of such provision to other persons or circumstances, shall not be affected thereby.

Sec. 1803 Effective date.
For the purpose of nominating and electing members of the City Council, this Charter shall take effect from the time of its approval by the legislature. For all other purposes it shall take effect on the Tuesday next succeeding the date of election of the first City Council at 8:00 P.M.
reason or reasons for his action, which notice the City Clerk shall forthwith deliver to the members of the Council. Such notification shall automatically cause the reconsideration of the ordinance by the Council at its regular meeting next following the sixth day after the aforesaid final adoption of the ordinance. If, upon reconsideration, the ordinance is approved by the affirmative vote of at least five members of the Council, it shall take effect immediately; and if not so approved, it shall be ineffective.


Section 217. Penalty for Violation of Ordinances. The Council may make the violation of its ordinances a misdemeanor, which may be prosecuted in the name of the People of the State of California or may be redressed by civil action, and may prescribe punishment for such violations by a fine not to exceed $1,000 or by imprisonment not to exceed one year, or by both such fine and imprisonment.

Section 218. Non-Interference in Administrative Affairs. Except for the purpose of inquiry, the Council and its members shall deal with the administrative service for which the City Administrator, Mayor and other appointed or elected officers are responsible, solely through the City Administrator, Mayor or such other officers. Neither the Council nor any Council member shall give orders to any subordinate of the City under the jurisdiction of the City Administrator or such other officers, either publicly or privately; nor shall they attempt to coerce or influence the City Administrator or such other officers, in respect to any contract, purchase of any supplies or any other administrative action; nor in any manner direct or request the appointment of any person to or his removal from office by the City Administrator or any of his subordinates or such other officers, nor in any manner take part in the appointment or removal of officers or employees in the administrative service of the City. Violation of the provisions of this section by a member of the Council shall be a misdemeanor, conviction of which shall immediately forfeit the office of the convicted member.


Section 219. Ordinance: When Required. In addition to other actions required by law or by specific provision of this Charter to be done by ordinance, those actions of the Council shall be by ordinance which:

1. Adopt or amend an administrative code or establish, alter or abolish any City department, office or agency as authorized in Article VI of this Charter.
2. Provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed.
3. Levy taxes except as otherwise provided in this Charter with respect to the property tax levied by adoption of the budget.
4. Regulate the rates charged for its services by a public utility.
5. Authorize the borrowing of money except as otherwise provided in Section 812 of this Charter.
6. Convey or lease, or authorize the conveyance or lease for longer than one year, of any real property of the City, or any interest therein, or the acquisition of real property, the purchase price of which is more than Five Thousand Dollars ($5,000.00).
7. Amend or repeal any ordinance previously adopted.

Provided, acts other than those referred to hereinabove under this section, or other than may be specifically otherwise provided for in other sections of this Charter, may be done either by ordinance or by resolution.

City Council Rules and Procedures > (/Government/o/CityCouncil/a/City%20Charter/OAK025836)
TO: All City staff, City Councilmembers, Mayor Quan, City Administrator Santana and City Auditor Ruby
FROM: City Attorney Barbara Parker

Re: City Council Non-Interference in Administrative Affairs

City of Oakland staff and City Councilmembers should be aware of the following prohibitions of the City Charter Section 218 (Non-Interference in Administrative Affairs). Violation of these provisions of this section by a member of the Council is a criminal misdemeanor. A conviction would trigger immediate forfeiture of office.

- A City Councilmember may only contact City administrative staff only to make inquiries. All other communications about the administration of the City must only be through the City Administrator or Mayor.

- A City Councilmember shall not give orders to any administrative employee, either publicly or privately. A City administrative staff person shall not carry out the orders of a City Councilmember. Instead, the staff person should consult and follow the direction of the City Administrator or department head.

- A City Councilmember shall not attempt to coerce or influence the City Administrator or any administrative employee in respect to any contract, purchase of supplies or any other administrative action. A City staff person should not be influenced in respect to any contract, purchase of supplies or any other administrative action by a Councilmember.

- A City Councilmember may not in any manner direct or request the appointment to or removal from office of any person by the City Administrator, City Administrator subordinates or any other such officers.

- A City Councilmember may not in any manner take part in the appointment or removal of any administrative employee.

If you have any questions about the above or believe a violation has occurred you should contact the City Administrator's Office. Until the position of the Executive Director to the Public
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Ethics Commission is filled, please contact Deputy City Administrator Arturo Sanchez at 238-7542 or at asanchez@oaklandnet.com.

Or, you can anonymously call the City Auditor’s Fraud, Waste, and Abuse Hotline: (888) 329-6390.

For more information about the charter power of City Councilmembers re: contracting, use of public funds and other issues, please see the series of legal opinions issued to the City Council in 2006 and posted on the City Attorney’s Web site since that time at: http://www.oaklandcityattorney.org/Ops-Reps/Opinions.html

Thank you for your attention to this matter.

Very truly yours,

Barbara Parker
Oakland City Attorney

By:
Mark T. Morodomi
Supervising Deputy City Attorney