

**City of Long Beach***Working Together to Serve***Memorandum****Office of the City Attorney**

**DATE:** February 3, 2021

**TO:** Honorable Members, Ethics Commission

**FROM:** Amy R. Webber, Deputy City Attorney *ARW*

**SUBJECT:** Memo Re Parameters of Ethics Commission Authority

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Please see attached memo regarding the parameters of the authority of the City Ethics Commission, prepared at the request of the City Manager in response to the City Auditor's audit of ethics issues. This memo has been shared with both those offices.

I will be available to discuss this memo at your next meeting if you have questions or comments. Thank you.

ARW

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cc: Charles Parkin, City Attorney  
Laura Doud, City Auditor  
Tom Modica, City Manager  
Rebecca Guzman Garner, Administrative Deputy City Manager



## City of Long Beach

*Working Together to Serve*

### Office of the City Attorney

## Memorandum

**DATE:** January 13, 2021

**To:** Thomas B. Modica, City Manager

**FROM:** Amy R. Webber, Deputy City Attorney *ARW*

**SUBJECT:** Parameters of Ethics Commission Authority

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In 2018, the Long Beach City Charter was amended by initiative ordinance to add Article 24, establishing a City Ethics Commission. The legislation gave the Commission the following specific powers and duties:

"Sec. 2402. Powers and Duties of the Ethics Commission.

The Ethics Commission is responsible for the impartial and effective administration and implementation of the provisions of the Charter, statutes and ordinances concerning campaign financing, lobbying, conflicts of interest, and governmental ethics.

The City Ethics Commission shall have the following duties and responsibilities:

- (a) to provide support to agencies and public officials in administering the provisions of the Charter and other laws relating to campaign finance, conflicts of interest, and government ethics;
- (b) to make recommendations to the Mayor and City Council concerning campaign finance reform, lobbying, governmental ethics and conflicts of interest and to report the Council concerning the effectiveness of these laws;
- (c) to assist departments in developing their conflict of interest codes as required by state law;
- (d) to advocate understanding of the Charter, City ordinances and the roles of elected and other public officials, City institutions and the City electoral process;
- (e) to develop an educational program to familiarize newly elected and appointed officers and employees, candidates for elective office and their campaign treasurers, and lobbyists with City, state and federal ethics laws and the importance of ethics to the public's confidence in municipal government; and
- (f) such other duties as may be established by this Charter or the Municipal Code."

You have asked for an opinion on the current powers of the Ethics Commission; what additional powers could be created in the Municipal Code; and what powers would require future City Charter amendments to provide clarity and options for the Mayor and City Council to consider.

I. Current Powers.

When legislation was drafted creating the Ethics Commission, it envisioned that the Commission would act as a central policy-making body for City employees and officials. As can be seen from Section 2402, most of the powers listed involve increasing awareness of ethical responsibilities; supporting agencies which currently have enforcement authority, such as the District Attorney and the FPPC; and establishing clear City policy on compliance with current ethics laws and regulations. These powers are consistent with those of many ethics commissions in the state, such as those of Santa Clara and Berkeley.

However, there are also ethics commissions which have investigatory authority as well as enforcement powers, such as those in Los Angeles and San Diego. They have investigators and sizeable staffs, and are authorized to make findings regarding particular conduct, and may impose fines and discipline, if appropriate. These powers are not currently part of the Commission's duties and powers.

These issues were brought to prominence by the City Auditor's Ethics Audit. The Audit was prepared by Harvey Rose and Associates, a consultant to the Auditor's office. The Audit was presented to City management and this office, and many legal and practical issues were raised by both. The Audit was subsequently presented to the Ethics Commission.

II. Changes to Current Powers and Duties Which Require a Charter Amendment.

The City Charter currently includes provisions regarding the authority to impose discipline on City employees. To the extent the Ethics Commission seeks to establish powers in conflict with existing Charter authority, a Charter amendment approved by a vote of the people would be required. In addition, actions which could impose new discipline on employees represented by labor unions would require participation in a meet-and-confer process. The following City departments have Charter authority to investigate and impose discipline on affected employees. Moreover, within some departments, such as the Police and Fire Departments, there are additional state law requirements related to investigation of misconduct and discipline.

- City Council and Mayor (see Charter, Art. 2, especially sec. 207);
- City Attorney (see Charter Art. VI, especially sec. 603);
- City Prosecutor (see Charter Art. VII);
- City Auditor (see Charter Art. VIII)

- Civil Service (see Charter Art. XI, especially sec. 1101(b), affecting all classified City employees)

A. Civil Service -- Employee Right of Appeal

Pursuant to section 1100(g) of the City Charter, the Civil Service Commission has been delegated exclusive authority to adjudicate appeals involving employee discipline. Moreover, per section 1103 of the City Charter, no employee in the classified service can be suspended, discharged or reduced in classification for disciplinary reasons until the employee has been presented with the reasons for such action specifically stated in writing. Additionally, employees are afforded the right to appeal disciplinary action to the Civil Service Commission.

At the Appeal hearing, the Civil Service Commission is represented by the City Attorney's Office while the City is represented by outside counsel retained by the City Attorney's Office. The retention of outside counsel is to avoid a conflict of interest in having the City Attorney represent both the Civil Service Commission and the City at appeal hearings. After an appeal hearing is heard, per section 83 of the Civil Service Rules and Regulations, the Civil Service Commission may, at its discretion, either sustain, reduce, or deny the charges alleged against an employee. The decision of the Commission is final. Once the Commission has adopted a final decision, employees have the right to file a petition for judicial review of the Commission's decision within 90 days of the Commission adopting its final decision.

The Ethics Commission has no authority to impose discipline upon employees. Thus, in order to grant the Ethics Commission more authority beyond making recommendations and vest final authority with the Ethics Commission to hear and adjudicate employee appeals of discipline, a Charter amendment would be required to divest the Civil Service Commission of this authority and vest it with the Ethics Commission.

III. Changes to Current Powers and Duties Which Could be Made by Municipal Code.

When Measure CCC was drafted, it was not possible to include all possible powers the City, its citizens and Ethics Commissioners might find appropriate or useful, so the language of the measure was very broad. It also included subsection 2402(f), which allows amendments "...for such other duties as may be established by this Charter or the Municipal Code." Essentially, this would permit duties and responsibilities not in conflict with a current Charter provision to be added to the Municipal Code.

If you have questions regarding this matter, please feel free to contact us.

ARW:bg

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Thomas B. Modica, City Manager

January 13, 2021

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cc: Charles Parkin, City Attorney  
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