

Date: December 14, 2022

To: Ethics Commission

From: Julian Cernuda, Assistant to the City Manager

Subject: **Overview of California Ethics Commissions**

On September 14, 2022, the Ethics Commission (Commission) requested a report on the authorities of other local government ethics commission, with a focus on staffing, enforcement capabilities, scope of duties, powers, and responsibilities. The Local Jurisdictions Ethics Commissions Matrix (Matrix – Attachment A) provides an overview of the Commission duties and responsibilities as well as information on findings in the requested areas of other local ethics commissions.

Ethics Commission Powers and Duties

The Long Beach City Charter (Charter) was amended in 2018 through Measure CCC to add Article XXIV, establishing the Commission and the powers and duties outlined in Section 2402.

“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, conflict of interest, and governmental 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 lobbyist 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”

On February 3, 2021, pursuant to a request by the City Manager, the City Attorney provided an opinion via memorandum outlining the parameters of the authority of the City Ethics Commission (Attachment B). The memorandum notes that when legislation was drafted to create the Commission, it envisioned that the Commission would act as a central policy-making body for City employees and officials related to government ethics with a focus on increasing awareness of ethical responsibilities and establishing a clear City policy on compliance with current ethics laws and regulations.

A Charter amendment would be necessary to add investigatory authority and the ability to discipline employees to the Commission's duties in the Charter. Since the Civil Service Commission currently has exclusive authority in the City to adjudicate appeals involving employee discipline, a Charter amendment would be required to divest discipline authority from the Civil Service Commission to grant said authority to the Ethics Commission. Any change to the Charter that could impose new discipline on employees would also require meet and confer with City employee labor unions.

Finally, Charter section 2402(f) allows the City Council to assign addition duties and responsibilities consistent with current Charter provisions to the Commission in the Municipal Code.

Survey Jurisdictions Ethics Commissions Powers and Duties

Local Jurisdictions Ethics Commissions Matrix

The Matrix includes information on the Ethics Commissions of the following jurisdictions:

- City of Berkeley
- City of Long Beach
- City of Los Angeles
- City of Oakland
- Orange County
- City of Sacramento
- City of San Diego
- City and County of San Francisco
- City of San Jose
- City of Santa Clara

The City of Berkeley and City of Santa Clara commissions have atypical structures and differ significantly from the remaining commissions in the Matrix. Despite these commissions' differences, they were included in the Matrix as to demonstrate how much commissions can differ in the State.

The Matrix provides information on the 13 categories below for each of the jurisdictions included in this report, if available.

- Jurisdiction Name
- Year Established
- Operating Budget
- Mission/Vision Statement
- Member Compensation
- Staff Support
- Makes Policy Recommendations
- Authority to Audit/Investigate

- Roles and Responsibilities
- Member Structure
- Member Restrictions While Serving
- Authority to Discipline
- Creating Authority

Commissions Commonalities and Patterns Overview

Staff identified seven comparable Ethics Commissions across California jurisdictions, identifying several patterns and takeaways across the categories above. Below is an overview of the Matrix.

Year Established – Historically, ethics commissions in California are a recent undertaking, with most being created in the 1990’s and 2000’s.

Operating Budget – Ethics Commission operating budgets varied widely. For example, the City of San Jose Ethics Commission has a Fiscal Year (FY) 2023 budget of \$40,000, while the City of Los Angeles has an operating FY23 budget of \$9 million. The difference between budgets for these and other jurisdictions in the report can be attributed to a variety of factors such as: the number of staff working for a city, the nature of a commission’s roles and responsibilities, the staffing support framework approach, facilities use charges, and even the way in which the budget is reported. San Jose may reflect a lower operating budget because it appears that wages and benefits of its Commission’s staff is accounted for by the staff’s department and not the commission. San Jose also has a staffing model where an investigator is contracted on a case-by-case basis and does not have an inhouse investigator. This may lead to lower operating costs, especially when compared with commissions that have inhouse investigatory staff.

Mission and Vision Statement – Five of the seven commissions included in the report have a mission and/or vision statement. Statements generally espouse values that promote public trust and confidence, and fairness and integrity while conducting city business.

Roles and Responsibilities – All commissions shared common elements of responsibilities related to campaign finance and policies, Brown Act compliance, lobbying, conflict of interest, and governmental ethics. Although these areas were common across all commissions, the level or depth of responsibility within each element varied among the commissions. Most commissions have the responsibility to ensure impartial and effective administration over their jurisdiction’s entire Code of Ethics. Yet, the Campaign Finance and Ethics Commission of Orange County is only responsible for Code of Ethics sections that pertain to the use of public assets and the revolving door policy. Research found that differences like these were common not only with commissions’ responsibilities for the Code of Ethics, but also several other areas within each of the elements listed earlier.

There were also responsibilities that appeared to be more unique or uncommon. The City of Los Angeles Ethics Commission is responsible for the impartial and effective administration and implementation of the provisions of the Charter, statutes and ordinances that concern

contracts and developers. However, no other surveyed commission oversees contracts and developers. Additional uncommon roles and responsibilities found include reviewing gifts policy, setting councilmember salaries, reviewing councilmember existing employment for potential conflict of interest, and establishing Closed Session procedures for council.

Member Structure – Commissions' size ranged between five to seven members and terms served were generally set to two terms of three to four years.

Members Restrictions While Serving – Restrictions on serving members across Commissions centered on holding public office, serving on other commissions, participating in elections – in support or in opposition towards candidates or ballot measures, registered lobbyist status, and employment. Commissions restrictions also varied in scrutiny within each type of restriction. For example, some commissions prohibited a commissioner from only being a registered lobbyist with its jurisdiction, while other commissions prohibited being a registered lobbyist on a county or even federal level.

Member Compensation – Five of the commissions do not compensate members, while two commissions compensate members.

Staff Support – The level of staff support varied based on the level of roles and responsibilities of each commission and the size of the jurisdiction which the commission serves. The City of Los Angeles Ethic Commission, for example, has what may be the widest range of roles and responsibilities. The support of 37 total staff support reflects this by having a range of staff roles, which include an Executive Director, Directors and Program Managers that lead a range of programs, and Analysts, Auditors, and Investigators that support each of the programs. In contrast, the City of San Jose's Board of Fair Campaign and Political Practices does not appear to have dedicated full-time staff, and instead, relies on existing departmental staff and a contract investigator to fulfill their set roles and responsibilities.

Makes Policy Recommendations – Commissions may make policy recommendations.

Authority to Audit/Investigate – Survey commissions have the authority to audit/investigate matters relating to their prescribed roles and responsibilities. A commission's depth of involvement in an audit/investigation also varies from commission to commission and by audited/investigated area.

The Commissions' oversight is also largely focused on elected officials, elected official offices, and lobbyists. It is also common for commissions to have written investigation procedures that describe the investigation process, such as the role of the commission, departments, hearings, appeals, and disciplinary actions. As examples, here are the City and County of San Francisco [procedures](#), and City of San Jose [procedures](#).

Authority to Discipline – Having been given the authority to audit/investigate, it follows that surveyed commissions may also discipline based on their findings. The most common allowed discipline that a commission may impose is that of a monetary penalty. Monetary penalties also varied based on the area (campaign finance, gifts, lobbyist, etc.) in which the violation took

place and the degree of severity. An order to cease and desist activity, requiring the filing of documents, and public reprimands are also common disciplinary actions commissions may take.

Creating Authority - Four of the seven survey commissions were established through city charters, while the remaining three rely on municipal codes.

Conclusion

All commissions surveyed share similarities yet, remain unique. Shared similarities include general roles and responsibilities that an ethics commission is prescribed to assist with in their city. The individuality of each commission – their roles and responsibilities, structure, budget, and staff support – is born out of the unique needs of the city in which it serves.

If you have any questions, please contact Julian Cernuda, Assistant to the City Manager, at (562) 570-6154.

ATTACHMENT A – CALIFORNIA JURISDICTIONS ETHICS COMMISSIONS MATRIX

ATTACHMENT B – MEMO RE PARAMETERS OF ETHICS COMMISSION AUTHORITY

CC: APRIL WALKER, ADMINISTRATIVE DEPUTY CITY MANAGER
HEATHER VAN WIJK, ETHICS OFFICER
TAYLOR ANDERSON, DEPUTY CITY ATTORNEY
JONATHAN NAGAYAMA, CITY CLERK ANALYST

California Jurisdictions Ethics Commission Matrix													
Jurisdiction Name	Year Established	Operating Budget	Mission/Vision Statement	Roles and Responsibilities	Member Structure	Member Restrictions while Serving	Member Compensation	Department/Staff Support	Makes Policy Recommendations	Authority to Audit/Investigate	Authority to Discipline	Creating Authority	
Long Beach	2018	FY 23 - \$100,000	To advance public trust and confidence in the City's government through education and the development of policies and processes that promote each of the City's values of Accountability, Fairness, Impartiality, Diversity, Transparency, and Integrity.	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.	<ul style="list-style-type: none"> 2 - Appointed by Mayor 2 - Appointed by City Auditor 3 - Appointed by existing Commissioners from a public recruitment process <p>Total: 7 members at up to 2 consecutive terms of 4 years</p>	<p>Members cannot:</p> <ul style="list-style-type: none"> Hold elective office, including the LBUSD Board or the LBCC Board of Trustees Serve as an officer in any election campaign for or against a candidate for any elected office or any City or District measure Be a City employee Employ or be employed as a person required to register as a lobbyist with the City 	Yes	Deputy City Manager Ethics Officer Assistant to the City Manager Deputy City Attorney City Clerk Analyst 5 total positions	Yes	No	No	City Charter	
Berkeley (Open Government Commission)	2010	N/A	N/A	Oversees the Open Government Ordinance and the Lobbyist Registration Act. Hears complaints regarding non-compliance, and advises Council on actions to enhance open and effective government	<ul style="list-style-type: none"> Members consist of the Berkeley Fair Campaign Practices Commission Up to 9 members, based on number of active Fair Campaign Practices Commission. Serve the duration of appointing councilmember. 	<p>Members cannot:</p> <ul style="list-style-type: none"> Hold or seek election to any other public office Serve as an officer of any political party or partisan organization or participate in or contribute to a City municipal election campaign Endorse, support, oppose, or work on behalf of or against any candidate or measure in a City election 	Yes	City Attorney	Yes	No	No	City Municipal Code	
Los Angeles	1990	FY23 - \$ 9 million	To help preserve the public trust and foster public confidence in city government and elections.	Impartial and effective administration and implementation of the provisions of the Charter, statutes and ordinances concerning campaign financing, contracts, developers, lobbying, conflicts of interest and governmental ethics.	<ul style="list-style-type: none"> 1 - Appointed by Mayor 1 - Appointed by City Attorney 1 - Appointed by Controller 1 - Appointed by President of the Council 1 - Appointed by President Pro Tem of the Council <p>Total: 5 members at 1 term of 5 years</p>	<p>Members cannot:</p> <ul style="list-style-type: none"> Hold any other public office Participate in or contribute to a City election campaign Participate in or contribute to an election campaign for a member of the Los Angeles Unified School District Board of Education Participate in or contribute to a City official or member of the Los Angeles Unified School District Board of Education running for an elective office Employ or be employed as a person required to register as a lobbyist with the City of Los Angeles 	Yes	Executive Director Deputy Executive Director Directors Secretary Program Managers Analysts Auditors Investigators Other Employees 37 total positions	Yes	Yes	Alleged violations of state law, the Charter and City ordinances relating to campaign financing, lobbying and conflicts of interest and governmental ethics. Executive Director can also refer cases to another appropriate agency.	<ul style="list-style-type: none"> Cease and desist Require filings of reports, statements, other documents required by law Monetary penalty 	City Charter
Oakland	1996	FY22 - \$1.4 million	Fairness, openness, honesty, and integrity in City government.	Oversee compliance with campaign finance reform, conflict of interest, lobbying, Brown Act and Public Records Act, governmental ethics, elections and campaign policy reviews, City Councilmember compensation.	<ul style="list-style-type: none"> 3 - Appointed by Mayor 4 - Appointed by existing Commissioners from a public recruitment process <p>Total: 7 members at 1 consecutive term of 3 years</p>	<p>Members cannot:</p> <ul style="list-style-type: none"> Be employed by the city or have any direct and substantial financial interest in any work or business or official action by the city Seek election to any other public office, or participate in or contribute to an Oakland municipal campaign Endorse, support, oppose, or work on behalf of any candidate or measure in an Oakland election 	No	Executive Director Commission Assistant Enforcement Chief Disclosure/Filing Officer Education Analyst Investigator 6 total positions	Yes	Yes	Matters relating to the Commission's prescribed duties through investigations, audits, public hearings, issuing of subpoenas.	<ul style="list-style-type: none"> Monetary penalty/fine 	City Charter
Orange County (Campaign Finance and Ethics Commission)	2016	FY22 - \$469,000		Responsible for the impartial and effective administration and implementation of the provisions of the County Campaign Reform Ordinance, Lobbyist Registration and Reporting Ordinance, the Gift Ban Ordinance and Code of Ethics (use of public property and revolving door)	<ul style="list-style-type: none"> 5 - Appointed by each of the 5 board districts and confirmed by the majority vote of the Board of Supervisors <p>Total: 5 members at up to 2 consecutive terms of 3 years</p>	<p>Members cannot:</p> <ul style="list-style-type: none"> Hold an elected or appointed public office in any jurisdiction Be an employee of any holder of an elected or appointed public office, or any member of a public body whose members are appointed by an elected official, or any employee of such public body Be an employee of a person who is acting as a County Lobbyist, State Lobbyist, or Federal Lobbyist Have been, during the previous ten (10) years, an Elective County Officer, a County Agency/Department Head, or a County Executive Manager Have been, during the previous ten (10) years, an elected or appointed official of a national, state or local partisan political (central) committee Be in a profession, occupation, or employment that provides services to candidates for public office or elected official in Orange County, engage in public affairs for an employer doing business with the County, or any Special District operating within the County Have been, during the previous ten (10) years, employed the County, or with any Joint Powers Authority or with any Special District operating within the County, or with any employee representative organization whose members are employees of the County Have served on a County Grand Jury may serve for ten (10) years from the date of the Commission's enactment. Have proposed, sponsored or co-sponsored the measure establishing the Commission for ten (10) years from the date of this article's enactment. 	No	Executive Director County Counsel	Yes	Yes	Matters relating to the Commission's prescribed duties.	<ul style="list-style-type: none"> Comply with penalties found in the issued Notice of Violation Cease and desist violation File any reports, statements or other documents or information required by law Perform remedial measures Monetary penalty 	City Charter
Sacramento	2017	FY 23 - \$188,000	To review and consider complaints against elected and appointed city officials, to ensure those city officials are conforming their conduct to the city's laws and policies.	To review, investigate, and consider complaints alleging violations of: limitations of employment, Code of Fair Campaign Practices, campaign contribution limitations, campaign spending limits and public campaign financing, lobbying, governmental ethics, Sunshine Ordinance, and conduct of members and Closed Session of the Council Rules of Procedures. The commission's authority extends only to city elected officials, candidates for city elected office, independent expenditure committees, members of boards and commissions, the city manager, the city clerk, the city attorney, the city treasurer, the city auditor, the independent budget analyst, and the public safety accountability officer.	<ul style="list-style-type: none"> 5 - Nominated by the Personnel and Public Employees Committee and appointed by the Mayor <p>Total: 5 members at up to 2 consecutive terms of 4 years</p>	<p>Members cannot:</p> <ul style="list-style-type: none"> Serve at another City commission Be a paid staff/consultant to any City elected official Receive a non-competitive bid contract with the City Be a registered as a city lobbyist Contribute to or participate in any candidate campaign for City elective office 	Yes	City Attorney City Clerk Independent Evaluator	Yes	Yes	Matters relating to the Commission's prescribed duties.	<ul style="list-style-type: none"> A reprimand A warning letter Monetary penalty 	City Municipal Code

ATTACHMENT A

San Diego	2001	FY23 - \$1.5 million	To preserve public confidence in our city government through education, advice, and the prompt and fair enforcement of local governmental ethics laws.	To monitor, administer, and enforce the City's governmental ethics law reforms, conduct investigations, refer violations to appropriate enforcement agencies, audit disclosure statements, and advise and educate City officials and the public about governmental ethics laws.	<ul style="list-style-type: none"> 7 - Appointed by Mayor from a pool of nominees submitted by the City Council and City Attorney Total: 7 members at up to 2 terms of 4 years 	<p>Members cannot:</p> <ul style="list-style-type: none"> Hold any other public office during their tenure or for 12 months after the leave the Commission Contribute financially to a City election campaign Participate in or contribute to an election campaign to support or oppose a candidate for City office Participate in a campaign supporting or opposing a City ballot measure (exception made to measure involving activities/authorities of the Commission) 	No	<p>Executive Director</p> <p>Clerical Assistant</p> <p>Investigator</p> <p>Independent legal counsel</p> <p>Other employees</p> <p>6 total positions</p>	Yes	Yes	violations of Governmental Ethics Laws, including referral to other enforcement agencies when appropriate.	<ul style="list-style-type: none"> Cease and desist Require filings of reports, statements, other documents required by law Monetary penalty Public reprimand 	City Municipal Code
San Francisco	2002	FY23 - \$7.1 million	To practice and promote the highest standards of ethical behavior in government and to promote a work environment that values health, wellness and diversity.	Impartial and effective administration and implementation of the provisions of this charter, statutes and ordinances concerning campaign finance, lobbying, conflicts of interest and governmental ethics.	<ul style="list-style-type: none"> 1 - Appointed by Mayor 1 - Appointed by Board of Supervisors 1 - Appointed by City Attorney 1 - Appointed by District Attorney 1 - Assessor Total: 5 members at 1 term of 6 years 	<p>Members cannot:</p> <ul style="list-style-type: none"> Hold a City, County, or political party office Be a registered lobbyist, campaign consultant Be employed by or receive gifts from registered lobbyist or campaign consultants Be employed by the City or County Participate in any campaign support/opposing a candidate for City elective office, a City ballot measure, City officer 	No	<p>Executive Director</p> <p>Other Employees</p> <p>Legal Advisor</p> <p>34 total positions</p>	Yes	Yes	Campaign statements and other relevant documents and investigate alleged violations of state law, city charter, city ordinances relating to roles and responsibilities and to report the findings to the City Attorney. City Attorney participation may also be required during certain instances prior to the Commission delivering findings to the City Attorney.	<ul style="list-style-type: none"> Cease and desist Require filings of reports, statements, other documents required by law Monetary penalty Forfeiture of campaign contributions 	City Charter
San Jose (Board of Fair Campaign and Political Practices)	N/A	FY23 - \$40,000	N/A	To monitor compliance with the City's campaign and ethics ordinances, which includes: elections, campaign contributions, gifts, revolving door restrictions, lobbying, income and time disclosure, concurrent and prospective employments of Councilmembers or City/agency employees.	<ul style="list-style-type: none"> 5 - Appointed by no less than two-thirds of Council Total: 5 members at a maximum of 2 terms of 4 years 	<p>Members cannot:</p> <ul style="list-style-type: none"> Be employed by the City Have any direct or substantial financial interest in any business, work or official action taken by the City Hold any public office Publicly endorse any candidate for City office or engage in any political or campaign activity on behalf of any candidate for City office 	No	<p>City Clerk</p> <p>City Attorney</p> <p>Investigator - contracted case by case</p>	Yes	Yes	Matters relating to the Commission's prescribed duties.	<ul style="list-style-type: none"> Issue public statement or reprimand Require corrective action Monetary penalty 	City Municipal Code
Santa Clara (Governance and Ethics Committee)	2019	FY23 - \$0	N/A	To refine or establish policies and procedures regarding City Council operations and general good government practices, as well as the further implementation of the City's Code of Ethics and Values program. The Committee is also responsible for reviewing requests for facility naming and honorary recognitions.	<ul style="list-style-type: none"> 4 Councilmembers Total: 4 members at terms unknown 	N/A	N/A	N/A	Yes	No	No		Council Committee

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

DATE: January 13, 2021

TO: Thomas B. Modica, City Manager

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

SUBJECT: Parameters of Ethics Commission Authority

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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