
Subject: FW: Response to Question for Charter Review Committee Subcommittee on Independent Audits re Subpoenas

From: Min, Elliot

Sent: Wednesday, August 4, 2021 10:37 AM

To: Malissa Mckeith <malissacurepres@gmail.com>; Warren Avery <warrenavery14@gmail.com>

Cc: Randolph Ben Clymer Jr. <benjr@benclymers.com>; Arseo, Eva <EARseo@riversideca.gov>

Subject: Response to Question for Charter Review Committee Subcommittee on Independent Audits re Subpoenas

Good morning Vice Chair Mckeith and Member Avery,

Yesterday, Vice Chair Mckeith requested that City staff research the following questions:

1. Where or if Charter Officers (or Council) have the power to subpoena.
2. How noncompliance with subpoenas is enforced.
3. What happens with Ethics when people refuse to comply.

Please see my responses below.

1. **Where or if Charter Officers (of Council) have the power to subpoena.**

City subpoena authority is found in three places in the City Charter:

City Charter § 412 states: “The City Council shall have the power and authority to compel the attendance of witnesses, to examine them under oath and to compel the production of evidence before it. Subpeonas shall be issued in the name of the City and be attested by the City Clerk. Disobedience of such subpoenas, or the refusal to testify (upon other than constitutional grounds), shall constitute a misdemeanor, and shall be punishable in the same manner as violations of this Charter are punishable.”

City Charter § 804 states in pertinent part: “Each board or commission may request from the City Council the power to compel the attendance of witnesses, to compel the production of evidence before it and to administer oaths and affirmations. The City Council, by resolution, shall have sole power to provide such power to boards and commissions.”

City Charter § 810 states in pertinent part: “There shall be a Community Police Review Commission which shall have the power and duty to: . . . (f) Exercise the power of subpoena to require the attendance of witnesses, including persons employed by the City of Riverside, and the production of books and papers pertinent to the investigation and to administer oaths to such witnesses and to take testimony to the extent permissible by law. Subpoenas shall only be issued by the commission upon the affirmative vote of six commission members.

Furthermore, Riverside Municipal Code § 2.80.040 states in pertinent part: “The duties of the Board of Ethics shall include the following: . . . (5) Issue subpoenas compelling the attendance of witnesses or the production of books, papers, or documents on any complaint before the Board of Ethics where a super majority (four affirmative votes) of the hearing panel determines it necessary for a meaningful hearing or decision on complaints of violations of RMC Chapter 2.78.”

2. How noncompliance with subpoenas is enforced.

City Charter Section 1401 states: “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 or by imprisonment for a period not exceeding six months or by both such fine and imprisonment.”

CA Government Code § 37107 provides the City with the additional remedy of petitioning the superior court to “issue an attachment directed to the sheriff of the county where the witness was required to appear, commanding the sheriff to attach the person, and forthwith bring the person before the judge”, where that person could be subject to contempt proceedings.

3. What happens with Ethics when people refuse to comply.

Riverside Municipal Code § 2.78.060(M) states: “No public official of the City of Riverside shall intentionally or repeatedly violate the Charter of the City of Riverside, the Riverside Municipal Code, or any established policies of the City of Riverside affecting the operations of local government, or be convicted of violation of any state or federal law pertaining to the office which they hold.”

Riverside Municipal Code § 2.78.030 states the City’s Code of Ethics and Conduct “shall apply to the Mayor, members of the City Council, and to all members of the boards, commissions, and committees appointed by the City Council, the Mayor, or the Mayor and City Council, including any *ad hoc* committees (collectively referred to herein as ‘public officials.’) The provisions of this chapter shall also apply to all members of committees appointed by individual members of the City Council, Mayor, the City Manager or by Department Heads.”

If a City public official refuses to comply with a subpoena, he/she may be subject to a complaint for violation of the City Charter and/or the RMC, entitled to a hearing in front of the Board of Ethics, and be subject to the following sanctions: “1. Referral to the board, commission or committee of which the appointed official is a member for public censure, 2. Public censure by the Mayor and City Council; or, 3. Removal from office by a majority of the Mayor and City Council.” (RMC § 2.78.100).

Please let me know if you have more questions.

Best,



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