

Prepared and provided by: Councilmember Melendrez

EXHIBIT 1

From: Bailey, Rusty
Sent: Wednesday, February 7, 2018 11:35 AM
To: Craig Marshall (cmarshall@tclaw.net)
Subject: FW: [External] memo re scope of mayor's veto
Attachments: 20171213100039.cleaned.pdf

This is the anti-opinion.

RIVERSIDE PRIDE!!!

Rusty Bailey

Mayor
City of Riverside
(951)826-5551 office
(951)801-8439 cell

From: Geuss, Gary
Sent: Tuesday, February 06, 2018 11:00 AM
To: Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <AMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>
Cc: Bailey, Rusty <RBailey@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>; Russo, John A. <jrusso@riversideca.gov>
Subject: FW: [External] memo re scope of mayor's veto

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The Mayor adamantly disagreed with this interpretation of the Charter so, in an abundance of caution, and in an attempt to ease discord, I asked Michael Colantuono to review our Charter and all recent revisions and legislative history and provide me with an opinion. That four page opinion is attached.

The bottom line is that my opinion, supported by Colantuono's similar opinion, is that the Mayor does not have the authority under the Charter to veto employment contracts for the Charter Officers. Rather, it is the Council and only the Council that has the authority to hire, fire, and approve or disapprove employment contracts for Charter Officers.

Gary

From: Michael G. Colantuono [mailto:mcolantuono@chwlaw.us]
Sent: Wednesday, December 13, 2017 10:14 AM

To: Geuss, Gary <GGeuss@riversideca.gov>

Subject: [External] memo re scope of mayor's veto

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Click [here](#) if the original attachments are required (justification needed).

As you asked.

Michael G. Colantuono

CERTIFIED SPECIALIST IN APPELLATE LAW
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Colantuono, Highsmith & Whatley, PC

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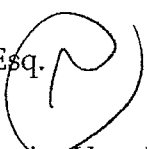
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Fax (213) 542-5710

**COLANTUONO
HIGHSMITH
WHATLEY, PC**

Michael G. Colantuono
MColantuono@chwlaw.us
(530) 432-7359

MEMORANDUM

TO: Gary Geuss
Riverside City Attorney

FROM: Michael G. Colantuono, Esq.  DATE: December 11, 2017
Lindsey F. Zwicker, Esq.

RE: Mayor's Authority to Exercise Veto Power over City Manager's
Amended Employment Contract

INTRODUCTION AND SUMMARY OF CONCLUSION

As you asked, we write to opine on the scope of the Mayor's veto power: May he veto a decision of the City Council to renew and amend the employment contract of a charter officer (City Manager, City Attorney, City Clerk)?

We conclude he may not. Section 600 of the City Charter states the "City Manager serves at the pleasure of the City Council," and Section 700 states the same as to the City Clerk and City Attorney. These sections indicate that decisions regarding all aspects of the employment of a charter officer fall within the province of the Council's — and not Mayor's — authority. Although section 413 of the Charter empowers the Mayor to veto certain formal actions of the City Council, interpreting that power to reach employment actions as to charter officers contradicts the apparent intent of Sections 600 and 700.

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Gary Geuss
Riverside City Attorney
December 11, 2017
Page 2

DISCUSSION

I. THE CITY CHARTER ESTABLISHES CITY COUNCIL'S AUTHORITY TO APPOINT CERTAIN CHARTER OFFICERS

Section 600 of the City Charter provides that the process for selecting a City Manager shall be determined by the City Council. The City Manager is appointed by a majority Council vote and "shall serve at the pleasure" of the City Council. Similarly, Section 700 of the City Charter states: "In addition to the City Manager, there shall be a City Attorney and a City Clerk who shall be appointed by and serve at the pleasure of the City Council."

II. THE MAYOR HAS VETO POWER OVER CERTAIN FORMAL ACTIONS OF THE CITY COUNCIL

Section 413 of the Charter provides, in relevant part:

At any time before the adjournment of a meeting, the Mayor may, by public declaration spread upon the minutes of the meeting, veto any formal action taken by vote of the City Council including any ordinance or resolution, except an emergency ordinance, the annual budget or an ordinance proposed by initiative petition.

This provision appears in "Article IV. City Council and Mayor" and is entitled "Adoption of ordinances and resolutions." By its terms, however, it reaches "any formal action taken by vote of the City Council," excluding emergency ordinances, the annual budget, and initiatives.

It can be argued that section 413 empowers the Mayor to veto Council actions regarding the employment of Charter officers other than decisions to hire, terminate or extend their tenure. Sections 600 and 700 state only that charter officers are to be appointed by and "serve at the pleasure of the City Council." Section 413 is not expressly limited to legislative acts but reaches "any formation action taken by vote of the City Council." Even, if the location of the Mayor's veto power in a section entitled "Adoption of ordinances and resolutions" were understood to limit it to legislative matters — as is

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An award of a contract by a public agency, and all acts leading to the award, are legislative. (E.g., *Mike Moore's 24-hour Towing v. City of San Diego* (1996) 45 Cal.App.4th 1294, 1303 ("*Mike Moore*").) Generally, a legislative act is any that establishes a policy or procedure to be applied to future cases. (*Strumsky v. San Diego County Employees Retirement Ass'n* (1974) 11 Cal.3d 28, 34, fn. 2.) A decision requiring a legislative body to exercise discretion is a legislative act and is deferentially reviewed by courts. (*Mike Moore, supra*, 45 Cal.App.4th at p. 1303.) Contracting by a governmental entity "necessarily requires an exercise of discretion guided by considerations of the public welfare." (*Joint Council of Interns & Residents v. Board of Supervisors* (1989) 210 Cal.App.3d 1202, 1211.) The City Council's approval of an employment contract for a charter officer, as well as decisions regarding its financial terms, amount to legislation.

However, for the reasons stated below, we conclude this is not the intent of the framers of the Riverside Charter and the Mayor may not veto an action to appoint, reappoint, terminate, or compensate a charter officer, including an action regarding an employment or re-employment contract.

III. SERVICE "AT THE PLEASURE OF THE CITY COUNCIL" IS INCONSISTENT WITH VETO OF CHARTER OFFICER CONTRACTS

If the Mayor could veto a contract for a charter officer, that officer would have an obvious incentive to take direction from the Mayor and to seek his approval. That incentive is in tension with, if not fully inconsistent with, the Charter's statement that charter officers "serve at the pleasure of the City Council." We doubt the framers of the charter would have created two rules at obvious tension with one another on something so vital as the chain of authority in City administration. If they did, we would expect them to do so expressly and not merely by implication. Accordingly, we conclude the statements that charter officers "serve at the pleasure of the City Council" preclude the exercise of the Mayor's veto as to contracts and other employment decisions affecting the three charter officers.

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Riverside City Attorney
December 11, 2017
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Furthermore, Section 413 excludes from the Mayor's veto authority the power to veto annual budget — the primary appropriation of the Council each year. Employment contracts amount to the appropriation of funds — the creation of spending authority — and are thus comparable to the budget and outside the reach of the veto power for that reason, too.

Finally, our conclusion draws strength from the contrast between Charter sections 600 and 700, on the one hand, and section 802, on the other. Section 802 establishes appointment authority for boards and commissions: "The members of each such board or commission shall serve at the pleasure of the Mayor and City Council and shall be nominated and appointed by the Mayor and City Council from the qualified electors of the City" Inclusion of the Mayor in the authority to appoint members of boards and commissions contrasts with exclusive Council control over the appointment and removal of charter officers. This suggests the Mayor was intentionally excluded from those decisions.

Accordingly, we conclude the power to appoint and set the terms of employment for these positions therefore lies exclusively with the City Council and is not subject to the Mayor's veto.

CONCLUSION

Although the Mayor has veto power over formal legislative actions of the Council, we do not believe that power includes decisions regarding the appointment and terms of employment of charter officers.

Thank you for the opportunity assist in this matter. If we can be of further assistance, please contact either of us.

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EXHIBIT 2

From:
Sent:
To:
Subject:
Attachments:

Bailey, Rusty
Thursday, February 8, 2018 3:52 PM
peter.boyd@sbcglobal.net
Fwd: [External] memo re scope of mayor's veto
20171213100039.cleaned.pdf; ATT00001.htm

RIVERSIDE Humble.

Rusty Bailey
Mayor
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(951)826-5551 office
(951)801-8439 cell

Begin forwarded message:

From: "Geuss, Gary" <GGeuss@riversideca.gov>
Date: February 6, 2018 at 10:59:57 AM PST
To: "Gardner, Mike" <MGardner@riversideca.gov>, "Melendrez, Andy" <ASMelendrez@riversideca.gov>, "Soubirous, Mike" <msoubirous@riversideca.gov>, "Conder, Chuck" <CConder@riversideca.gov>, "MacArthur, Chris" <CMacArthur@riversideca.gov>, "Perry, Jim" <JPerry@riversideca.gov>, "Adams, Steven" <SAdams@riversideca.gov>
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Sent: Wednesday, December 13, 2017 10:14 AM
To: Geuss, Gary <GGeuss@riversideca.gov>
Subject: [External] memo re scope of mayor's veto

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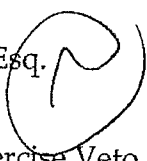
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Lindsey F. Zwicker, Esq.

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Riverside City Attorney
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EXHIBIT 3

From: Bailey, Rusty
Sent: Thursday, February 8, 2018 3:52 PM
To: Rusty
Subject: Fwd: [External] memo re scope of mayor's veto
Attachments: 20171213100039.cleaned.pdf; ATT00001.htm

RIVERSIDE Humble.

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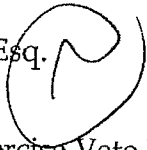
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Riverside City Attorney
December 11, 2017
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However, for the reasons stated below, we conclude this is not the intent of the framers of the Riverside Charter and the Mayor may not veto an action to appoint, reappoint, terminate, or compensate a charter officer, including an action regarding an employment or re-employment contract.

III. SERVICE “AT THE PLEASURE OF THE CITY COUNCIL” IS INCONSISTENT WITH VETO OF CHARTER OFFICER CONTRACTS

If the Mayor could veto a contract for a charter officer, that officer would have an obvious incentive to take direction from the Mayor and to seek his approval. That incentive is in tension with, if not fully inconsistent with, the Charter’s statement that charter officers “serve at the pleasure of the City Council.” We doubt the framers of the charter would have created two rules at obvious tension with one another on something so vital as the chain of authority in City administration. If they did, we would expect them to do so expressly and not merely by implication. Accordingly, we conclude the statements that charter officers “serve at the pleasure of the City Council” preclude the exercise of the Mayor’s veto as to contracts and other employment decisions affecting the three charter officers.

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Gary Geuss
Riverside City Attorney
December 11, 2017
Page 4

Furthermore, Section 413 excludes from the Mayor's veto authority the power to veto annual budget — the primary appropriation of the Council each year. Employment contracts amount to the appropriation of funds — the creation of spending authority — and are thus comparable to the budget and outside the reach of the veto power for that reason, too.

Finally, our conclusion draws strength from the contrast between Charter sections 600 and 700, on the one hand, and section 802, on the other. Section 802 establishes appointment authority for boards and commissions: "The members of each such board or commission shall serve at the pleasure of the Mayor and City Council and shall be nominated and appointed by the Mayor and City Council from the qualified electors of the City" Inclusion of the Mayor in the authority to appoint members of boards and commissions contrasts with exclusive Council control over the appointment and removal of charter officers. This suggests the Mayor was intentionally excluded from those decisions.

Accordingly, we conclude the power to appoint and set the terms of employment for these positions therefore lies exclusively with the City Council and is not subject to the Mayor's veto.

CONCLUSION

Although the Mayor has veto power over formal legislative actions of the Council, we do not believe that power includes decisions regarding the appointment and terms of employment of charter officers.

Thank you for the opportunity assist in this matter. If we can be of further assistance, please contact either of us.

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EXHIBIT 4

From: Bailey, Rusty
Sent: Saturday, February 10, 2018 3:53 PM
To: Rusty
Subject: Fwd: [External] memo re scope of mayor's veto
Attachments: 20171213100039.cleaned.pdf; ATT00001.htm

RIVERSIDE Humble.

Rusty Bailey
Mayor
City of Riverside
(951)826-5551 office
(951)801-8439 cell

Begin forwarded message:

From: "Geuss, Gary" <GGeuss@riversideca.gov>
Date: February 6, 2018 at 10:59:57 AM PST
To: "Gardner, Mike" <MGardner@riversideca.gov>, "Melendrez, Andy" <AMelendrez@riversideca.gov>, "Soubirous, Mike" <msoubirous@riversideca.gov>, "Conder, Chuck" <CConder@riversideca.gov>, "MacArthur, Chris" <CMacArthur@riversideca.gov>, "Perry, Jim" <JPerry@riversideca.gov>, "Adams, Steven" <SAdams@riversideca.gov>
Cc: "Bailey, Rusty" <RBailey@riversideca.gov>, "Nicol, Colleen" <CNicol@riversideca.gov>, "Russo, John A." <jrusso@riversideca.gov>
Subject: FW: [External] memo re scope of mayor's veto

Councilmembers,

In the last week, two of you have approached me with regard to the scope of the Mayor's veto and whether it applies to the contract of the City Manager. I was first contacted with this question early December by the Mayor "confirming" that he had the power to veto a charter officer's contract. I told him at that time that the Charter states in Sections 600 and 700 the Charter Officers serve at the pleasure of the City Council (no mention of the Mayor.) Furthermore, the veto provisions of the Mayor are located in Sec. 413 *Adoptions of ordinances and resolutions* and not in general duties of the Mayor.

The Mayor adamantly disagreed with this interpretation of the Charter so, in an abundance of caution, and in an attempt to ease discord, I asked Michael Colantuono to review our Charter and all recent revisions and legislative history and provide me with an opinion. That four page opinion is attached.

The bottom line is that my opinion, supported by Colantuono's similar opinion, is that the Mayor does **not** have the authority under the Charter to veto employment contracts for the Charter Officers. Rather, it is the Council and only the Council that has the authority to hire, fire, and approve or disapprove employment contracts for Charter Officers.

Gary

From: Michael G. Colantuono [<mailto:mcolantuono@chwlaw.us>]
Sent: Wednesday, December 13, 2017 10:14 AM
To: Geuss, Gary <GGeuss@riversideca.gov>
Subject: [External] memo re scope of mayor's veto

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As you asked.

Michael G. Colantuono

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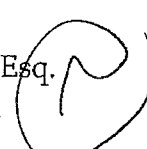
790 E. Colorado Boulevard, Suite 850
Pasadena, CA 91101-2109
Voice (213) 542-5700
Fax (213) 542-5710

**COLANTUONO
HIGHSMITH
WHATLEY, PC**

Michael G. Colantuono
MColantuono@chlwlaw.us
(530) 432-7359

MEMORANDUM

TO: Gary Geuss
Riverside City Attorney

FROM: Michael G. Colantuono, Esq.  DATE: December 11, 2017
Lindsey F. Zwicker, Esq.

RE: Mayor's Authority to Exercise Veto Power over City Manager's
Amended Employment Contract

INTRODUCTION AND SUMMARY OF CONCLUSION

As you asked, we write to opine on the scope of the Mayor's veto power: May he veto a decision of the City Council to renew and amend the employment contract of a charter officer (City Manager, City Attorney, City Clerk)?

We conclude he may not. Section 600 of the City Charter states the "City Manager serves at the pleasure of the City Council," and Section 700 states the same as to the City Clerk and City Attorney. These sections indicate that decisions regarding all aspects of the employment of a charter officer fall within the province of the Council's — and not Mayor's — authority. Although section 413 of the Charter empowers the Mayor to veto certain formal actions of the City Council, interpreting that power to reach employment actions as to charter officers contradicts the apparent intent of Sections 600 and 700.

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Gary Geuss
Riverside City Attorney
December 11, 2017
Page 2

DISCUSSION

I. THE CITY CHARTER ESTABLISHES CITY COUNCIL'S AUTHORITY TO APPOINT CERTAIN CHARTER OFFICERS

Section 600 of the City Charter provides that the process for selecting a City Manager shall be determined by the City Council. The City Manager is appointed by a majority Council vote and "shall serve at the pleasure" of the City Council. Similarly, Section 700 of the City Charter states: "In addition to the City Manager, there shall be a City Attorney and a City Clerk who shall be appointed by and serve at the pleasure of the City Council."

II. THE MAYOR HAS VETO POWER OVER CERTAIN FORMAL ACTIONS OF THE CITY COUNCIL

Section 413 of the Charter provides, in relevant part:

At any time before the adjournment of a meeting, the Mayor may, by public declaration spread upon the minutes of the meeting, veto any formal action taken by vote of the City Council including any ordinance or resolution, except an emergency ordinance, the annual budget or an ordinance proposed by initiative petition.

This provision appears in "Article IV. City Council and Mayor" and is entitled "Adoption of ordinances and resolutions." By its terms, however, it reaches "any formal action taken by vote of the City Council," excluding emergency ordinances, the annual budget, and initiatives.

It can be argued that section 413 empowers the Mayor to veto Council actions regarding the employment of Charter officers other than decisions to hire, terminate or extend their tenure. Sections 600 and 700 state only that charter officers are to be appointed by and "serve at the pleasure of the City Council." Section 413 is not expressly limited to legislative acts but reaches "any formation action taken by vote of the City Council." Even, if the location of the Mayor's veto power in a section entitled "Adoption of ordinances and resolutions" were understood to limit it to legislative matters — as is

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C O N F I D E N T I A L

Gary Geuss
Riverside City Attorney
December 11, 2017
Page 3

a common limit to veto powers (Cf. U.S. Const., art. I, § 7; Cal. Const., art. IV, § 10) — case law treats contracting decisions as legislative in character.

An award of a contract by a public agency, and all acts leading to the award, are legislative. (E.g., *Mike Moore's 24-hour Towing v. City of San Diego* (1996) 45 Cal.App.4th 1294, 1303 ("*Mike Moore*").) Generally, a legislative act is any that establishes a policy or procedure to be applied to future cases. (*Strumsky v. San Diego County Employees Retirement Ass'n* (1974) 11 Cal.3d 28, 34, fn. 2.) A decision requiring a legislative body to exercise discretion is a legislative act and is deferentially reviewed by courts. (*Mike Moore, supra*, 45 Cal.App.4th at p. 1303.) Contracting by a governmental entity "necessarily requires an exercise of discretion guided by considerations of the public welfare." (*Joint Council of Interns & Residents v. Board of Supervisors* (1989) 210 Cal.App.3d 1202, 1211.) The City Council's approval of an employment contract for a charter officer, as well as decisions regarding its financial terms, amount to legislation.

However, for the reasons stated below, we conclude this is not the intent of the framers of the Riverside Charter and the Mayor may not veto an action to appoint, reappoint, terminate, or compensate a charter officer, including an action regarding an employment or re-employment contract.

III. SERVICE "AT THE PLEASURE OF THE CITY COUNCIL" IS INCONSISTENT WITH VETO OF CHARTER OFFICER CONTRACTS

If the Mayor could veto a contract for a charter officer, that officer would have an obvious incentive to take direction from the Mayor and to seek his approval. That incentive is in tension with, if not fully inconsistent with, the Charter's statement that charter officers "serve at the pleasure of the City Council." We doubt the framers of the charter would have created two rules at obvious tension with one another on something so vital as the chain of authority in City administration. If they did, we would expect them to do so expressly and not merely by implication. Accordingly, we conclude the statements that charter officers "serve at the pleasure of the City Council" preclude the exercise of the Mayor's veto as to contracts and other employment decisions affecting the three charter officers.

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Gary Geuss
Riverside City Attorney
December 11, 2017
Page 4

Furthermore, Section 413 excludes from the Mayor's veto authority the power to veto annual budget — the primary appropriation of the Council each year. Employment contracts amount to the appropriation of funds — the creation of spending authority — and are thus comparable to the budget and outside the reach of the veto power for that reason, too.

Finally, our conclusion draws strength from the contrast between Charter sections 600 and 700, on the one hand, and section 802, on the other. Section 802 establishes appointment authority for boards and commissions: "The members of each such board or commission shall serve at the pleasure of the Mayor and City Council and shall be nominated and appointed by the Mayor and City Council from the qualified electors of the City" Inclusion of the Mayor in the authority to appoint members of boards and commissions contrasts with exclusive Council control over the appointment and removal of charter officers. This suggests the Mayor was intentionally excluded from those decisions.

Accordingly, we conclude the power to appoint and set the terms of employment for these positions therefore lies exclusively with the City Council and is not subject to the Mayor's veto.

CONCLUSION

Although the Mayor has veto power over formal legislative actions of the Council, we do not believe that power includes decisions regarding the appointment and terms of employment of charter officers.

Thank you for the opportunity assist in this matter. If we can be of further assistance, please contact either of us.

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EXHIBIT 5

From: Rusty Bailey <rustybailey9@aol.com>
Sent: Monday, February 12, 2018 11:57 AM
To: Bailey, Rusty
Subject: [External] Fwd: Draft Letter to City Manager and City Attorney

Rusty
#iloveriverside

Begin forwarded message:

From: Craig Marshall <cmarshall@TCLAW.net>
Date: February 12, 2018 at 09:46:38 PST
To: Rusty Bailey <rustybailey9@aol.com>
Cc: John Boyd <jboyd@TCLAW.net>, Gary Montgomery <gmontgomery@TCLAW.net>
Subject: Draft Letter to City Manager and City Attorney

Dear Rusty,

Below please find a draft letter to the city manager and city attorney per our meeting yesterday. John, Gary and I take no pride of authorship – please feel free to make any changes you desire but we would suggest you keep it as short and pointed as possible. This has to look like a real effort to resolve the crisis.

One idea we were tossing around is whether to copy all of the Councilmembers on the letter. I imagine it will be circulated anyway, so it probably is fine to copy them. Of course, this is your call. If you have any questions, please let us know.

Dear John and Gary (put their formal names and titles)

Due to the current climate and what may lie ahead I wanted to reach out and offer a simple solution to the existing situation. This situation is on a fast track that can only result in tremendous expenses to the City and loss of valuable time that should be directed to more pressing City needs.

The way I perceive the current situation is I have exercised lawful authority pursuant to the City Charter and current working rules resolution. The opinion offered by the City Attorney was done after the meeting was adjourned and the veto was entered in the record. That opinion was then validated outside any recognized meeting and apparently not authorized by the full Council. The personnel contract in question was then executed without proper authority granted by the Charter.

We both know our respective opinions will not be binding until either 1) a withdrawal or over-riding of my veto or 2) final binding judgment of the appropriate court. I cannot for reasons I have expressed withdraw my veto. The use of a veto by an elected official is not just focused on the instant situation but is for future Mayors of our City on future issues. The reasons I have stated for this veto were included in my statement.

I also realize that within the current situation there is a very real possibility that my veto will be over-ridden given the present positions of the Council. If that happens this crisis is averted. I pledge that

given the present facts I will not seek any legal action against the City or any of the parties involved in this issue, provided the veto is overridden. That would include any claim about the irregular manner in which the contract was executed by the City.

John, if the veto is overridden you have lost nothing and your contract is intact. I also realize that you would have the ability to seek legal review of the authority for my veto if the veto is sustained. But for now, do you want the validity and enforceability of your contract to be in question under a cloud of uncertainty?

So my offer is this. Let us avoid, at least for now any threatened or expected legal action and let the veto stand or fail as required by the City Charter. Due process as provided for in our operating documents should be given an opportunity to work and not frustrated by legal opinion(s) that we both know will never be binding. It may be that ultimately whether or not the Mayor has the authority to veto contracts similar to the current situation may be decided by the courts, but at least for now if we can avoid the first steps we may be able to put off that day until some time in the future when everyone will have cooler perspectives and less personal feelings at stake.

Please let me know if you can accept this offer.

From: Rusty Bailey [<mailto:rustybailey9@aol.com>]
Sent: Saturday, February 10, 2018 7:37 PM
To: Craig Marshall
Subject: Fwd: [External] memo re scope of mayor's veto

Rusty
#iloveriverside

Begin forwarded message:

From: "Bailey, Rusty" <RBailey@riversideca.gov>
Date: February 10, 2018 at 15:53:27 PST
To: Rusty <rustybailey9@aol.com>
Subject: Fwd: [External] memo re scope of mayor's veto

RIVERSIDE Humble.

Rusty Bailey
Mayor
City of Riverside
(951)826-5551 office
(951)801-8439 cell

Begin forwarded message:

From: "Geuss, Gary" <GGeuss@riversideca.gov>
Date: February 6, 2018 at 10:59:57 AM PST
To: "Gardner, Mike" <MGardner@riversideca.gov>, "Melendrez, Andy" <ASMelendrez@riversideca.gov>, "Soubirous, Mike"

<msoubirous@riversideca.gov>, "Conder, Chuck" <CConder@riversideca.gov>,
"MacArthur, Chris" <CMacArthur@riversideca.gov>, "Perry, Jim"
<JPerry@riversideca.gov>, "Adams, Steven" <SAdams@riversideca.gov>
Cc: "Bailey, Rusty" <RBailey@riversideca.gov>, "Nicol, Colleen"
<CNicol@riversideca.gov>, "Russo, John A." <jrusso@riversideca.gov>
Subject: FW: [External] memo re scope of mayor's veto

Councilmembers,

In the last week, two of you have approached me with regard to the scope of the Mayor's veto and whether it applies to the contract of the City Manager. I was first contacted with this question early December by the Mayor "confirming" that he had the power to veto a charter officer's contract. I told him at that time that the Charter states in Sections 600 and 700 the Charter Officers serve at the pleasure of the City Council (no mention of the Mayor.) Furthermore, the veto provisions of the Mayor are located in Sec. 413 *Adoptions of ordinances and resolutions* and not in general duties of the Mayor.

The Mayor adamantly disagreed with this interpretation of the Charter so, in an abundance of caution, and in an attempt to ease discord, I asked Michael Colantuono to review our Charter and all recent revisions and legislative history and provide me with an opinion. That four page opinion is attached.

The bottom line is that my opinion, supported by Colantuono's similar opinion, is that the Mayor does **not** have the authority under the Charter to veto employment contracts for the Charter Officers. Rather, it is the Council and only the Council that has the authority to hire, fire, and approve or disapprove employment contracts for Charter Officers.

Gary

From: Michael G. Colantuono [<mailto:mcolantuono@chwlaw.us>]
Sent: Wednesday, December 13, 2017 10:14 AM
To: Geuss, Gary <GGeuss@riversideca.gov>
Subject: [External] memo re scope of mayor's veto

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As you asked.

Michael G. Colantuono

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THE STATE BAR OF CALIFORNIA, BOARD OF LEGAL SPECIALIZATION
Colantuono, Highsmith & Whatley, PC
420 Sierra College Drive, Suite 140 | Grass Valley, CA 95945-5091
Direct 530-432-7357 **Main** 530-432-7357 **Fax** 530-432-7356

mcolantuono@chwlaw.us | www.chwlaw.us

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EXHIBIT 6

From: Hansberger, Cheryl-Marie on behalf of Bailey, Rusty
Sent: Thursday, February 22, 2018 10:30 PM
To: Hansberger, Cheryl-Marie
Subject: FW: [External] memo re scope of mayor's veto
Attachments: 20171213100039.cleaned.pdf; ATT00001.htm

From: Bailey, Rusty
Sent: Saturday, February 10, 2018 3:53 PM
To: Rusty <rustybailey9@aol.com>
Subject: Fwd: [External] memo re scope of mayor's veto

RIVERSIDE Humble.

Rusty Bailey
Mayor
City of Riverside
(951)826-5551 office
(951)801-8439 cell

Begin forwarded message:

From: "Geuss, Gary" <GGeuss@riversideca.gov>
Date: February 6, 2018 at 10:59:57 AM PST
To: "Gardner, Mike" <MGardner@riversideca.gov>, "Melendrez, Andy" <AMelendrez@riversideca.gov>, "Soubirous, Mike" <msoubirous@riversideca.gov>, "Conder, Chuck" <CConder@riversideca.gov>, "MacArthur, Chris" <CMacArthur@riversideca.gov>, "Perry, Jim" <JPerry@riversideca.gov>, "Adams, Steven" <SAdams@riversideca.gov>
Cc: "Bailey, Rusty" <RBailey@riversideca.gov>, "Nicol, Colleen" <CNicol@riversideca.gov>, "Russo, John A." <jrusso@riversideca.gov>
Subject: FW: [External] memo re scope of mayor's veto

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Gary

From: Michael G. Colantuono [<mailto:mcolantuono@chwlaw.us>]

Sent: Wednesday, December 13, 2017 10:14 AM

To: Geuss, Gary <GGeuss@riversideca.gov>

Subject: [External] memo re scope of mayor's veto

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As you asked.

Michael G. Colantuono

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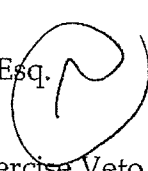
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**COLANTUONO
HIGHSMITH
WHATLEY, PC**

Michael G. Colantuono
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(530) 432-7359

MEMORANDUM

TO: Gary Geuss
Riverside City Attorney

FROM: Michael G. Colantuono, Esq.  DATE: December 11, 2017
Lindsey F. Zwicker, Esq.

RE: Mayor's Authority to Exercise Veto Power over City Manager's
Amended Employment Contract

INTRODUCTION AND SUMMARY OF CONCLUSION

As you asked, we write to opine on the scope of the Mayor's veto power: May he veto a decision of the City Council to renew and amend the employment contract of a charter officer (City Manager, City Attorney, City Clerk)?

We conclude he may not. Section 600 of the City Charter states the "City Manager serves at the pleasure of the City Council," and Section 700 states the same as to the City Clerk and City Attorney. These sections indicate that decisions regarding all aspects of the employment of a charter officer fall within the province of the Council's — and not Mayor's — authority. Although section 413 of the Charter empowers the Mayor to veto certain formal actions of the City Council, interpreting that power to reach employment actions as to charter officers contradicts the apparent intent of Sections 600 and 700.

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Gary Geuss
Riverside City Attorney
December 11, 2017
Page 2

DISCUSSION

I. THE CITY CHARTER ESTABLISHES CITY COUNCIL'S AUTHORITY TO APPOINT CERTAIN CHARTER OFFICERS

Section 600 of the City Charter provides that the process for selecting a City Manager shall be determined by the City Council. The City Manager is appointed by a majority Council vote and "shall serve at the pleasure" of the City Council. Similarly, Section 700 of the City Charter states: "In addition to the City Manager, there shall be a City Attorney and a City Clerk who shall be appointed by and serve at the pleasure of the City Council."

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Section 413 of the Charter provides, in relevant part:

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This provision appears in "Article IV. City Council and Mayor" and is entitled "Adoption of ordinances and resolutions." By its terms, however, it reaches "any formal action taken by vote of the City Council," excluding emergency ordinances, the annual budget, and initiatives.

It can be argued that section 413 empowers the Mayor to veto Council actions regarding the employment of Charter officers other than decisions to hire, terminate or extend their tenure. Sections 600 and 700 state only that charter officers are to be appointed by and "serve at the pleasure of the City Council." Section 413 is not expressly limited to legislative acts but reaches "any formation action taken by vote of the City Council." Even, if the location of the Mayor's veto power in a section entitled "Adoption of ordinances and resolutions" were understood to limit it to legislative matters — as is

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Riverside City Attorney
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a common limit to veto powers (Cf. U.S. Const., art. I, § 7; Cal. Const., art. IV, § 10) — case law treats contracting decisions as legislative in character.

An award of a contract by a public agency, and all acts leading to the award, are legislative. (E.g., *Mike Moore's 24-hour Towing v. City of San Diego* (1996) 45 Cal.App.4th 1294, 1303 ("*Mike Moore*").) Generally, a legislative act is any that establishes a policy or procedure to be applied to future cases. (*Strumsky v. San Diego County Employees Retirement Ass'n* (1974) 11 Cal.3d 28, 34, fn. 2.) A decision requiring a legislative body to exercise discretion is a legislative act and is deferentially reviewed by courts. (*Mike Moore, supra*, 45 Cal.App.4th at p. 1303.) Contracting by a governmental entity "necessarily requires an exercise of discretion guided by considerations of the public welfare." (*Joint Council of Interns & Residents v. Board of Supervisors* (1989) 210 Cal.App.3d 1202, 1211.) The City Council's approval of an employment contract for a charter officer, as well as decisions regarding its financial terms, amount to legislation.

However, for the reasons stated below, we conclude this is not the intent of the framers of the Riverside Charter and the Mayor may not veto an action to appoint, reappoint, terminate, or compensate a charter officer, including an action regarding an employment or re-employment contract.

III. SERVICE "AT THE PLEASURE OF THE CITY COUNCIL" IS INCONSISTENT WITH VETO OF CHARTER OFFICER CONTRACTS

If the Mayor could veto a contract for a charter officer, that officer would have an obvious incentive to take direction from the Mayor and to seek his approval. That incentive is in tension with, if not fully inconsistent with, the Charter's statement that charter officers "serve at the pleasure of the City Council." We doubt the framers of the charter would have created two rules at obvious tension with one another on something so vital as the chain of authority in City administration. If they did, we would expect them to do so expressly and not merely by implication. Accordingly, we conclude the statements that charter officers "serve at the pleasure of the City Council" preclude the exercise of the Mayor's veto as to contracts and other employment decisions affecting the three charter officers.

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Gary Geuss
Riverside City Attorney
December 11, 2017
Page 4

Furthermore, Section 413 excludes from the Mayor's veto authority the power to veto annual budget — the primary appropriation of the Council each year. Employment contracts amount to the appropriation of funds — the creation of spending authority — and are thus comparable to the budget and outside the reach of the veto power for that reason, too.

Finally, our conclusion draws strength from the contrast between Charter sections 600 and 700, on the one hand, and section 802, on the other. Section 802 establishes appointment authority for boards and commissions: "The members of each such board or commission shall serve at the pleasure of the Mayor and City Council and shall be nominated and appointed by the Mayor and City Council from the qualified electors of the City" Inclusion of the Mayor in the authority to appoint members of boards and commissions contrasts with exclusive Council control over the appointment and removal of charter officers. This suggests the Mayor was intentionally excluded from those decisions.

Accordingly, we conclude the power to appoint and set the terms of employment for these positions therefore lies exclusively with the City Council and is not subject to the Mayor's veto.

CONCLUSION

Although the Mayor has veto power over formal legislative actions of the Council, we do not believe that power includes decisions regarding the appointment and terms of employment of charter officers.

Thank you for the opportunity assist in this matter. If we can be of further assistance, please contact either of us.

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LOCAL NEWS

Split Riverside City Council stands by view that mayor can't veto city manager's contract





by **RYAN HAGEN** | rhagen@csong.com | The

Press-Enterprise

PUBLISHED: February 20, 2018 at 8:02 pm | UPDATED:
February 20, 2018 at 8:50 pm



After two weeks of public calls for a vote on Riverside Mayor Rusty Bailey's attempted veto of a new contract for the city manager, the City Council formally voted Tuesday, Feb. 20, to stand by the city attorney's opinion that the only way to reject the contract would be a lawsuit.

The council majority voted 4-2 to reaffirm the city attorney's Feb. 6 opinion that the mayor needed to go to court to enforce the veto, Councilman Chris Mac Arthur said in a statement after the council's closed session discussion.



“The charter is plain that the three charter officers report to, work for, and take direction from the council, not the mayor,” Mac Arthur said. “No one can have two bosses and work efficiently.”


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Councilmen Chuck Conder and Jim Perry voted no. Councilman Steve Adams was absent. The mayor doesn't vote, except to break a tie.

Bailey, who continues to reserve the right to



Bailey, who continues to reserve the right to sue, said in an interview after the meeting that there are two other remedies: The council could schedule a vote on whether to override his veto, or City Manager John Russo could agree not to accept the new contract.



“I don’t want us to have this conflict,” Bailey said, adding that he agrees the city manager works for the City Council. “I’m not his boss, and it’s not hiring or firing. I’m vetoing the compensation and (standing for) the principle



that it's bad timing, bad business and bad policy."

The council also asked an outside attorney to prepare a written version of his advice to share with the public within seven days, Mac Arthur said.

Feb 20th

The statement also rejects the idea that anyone but the city attorney "be permitted to obtain counsel at taxpayers' expense."

Before announcing his veto of Russo's contract, Bailey received a letter from attorney Philip Kohn of Rutan & Tucker to back his opinion that — despite City Attorney Gary Geuss' position — the charter allows the mayor to veto a contract with the city manager.

MORONGO
YAHOO! TRAVEL



Kohn wrote to Bailey on Feb. 9 that he had been told the city charter doesn't allow the mayor to hire legal counsel without the City Council's consent. To avoid any conflict, Kohn wrote, he would not charge the city for any of the services he provided or provide any further legal advice on the matter.

Mac Arthur said he would let the statement speak for itself and declined to comment further. He also deferred the question of who the outside counsel was to Geuss, who was not immediately available.





According to Bailey, the outside attorney is Michael Colantuono. Colantuono donated \$125 and provided \$1,375 in non-monetary contributions to Russo when Russo — then Oakland city attorney — ran for Assembly in 2006, Bailey said, citing a 2006 story in the Oakland Focus Blog News. Colantuono serves as city attorney for the cities of Auburn and Grass Valley.

“That outside counsel is morally conflicted because of his donations to John Russo and because he’s a city attorney,” Bailey said. “If you’re city attorney, you’re going to protect your domain.”

Colantuono was not immediately available to respond Tuesday.

Earlier in Tuesday’s meeting, more than 10 members of the public spoke about the veto issue with nearly all supporting Bailey



Council members responded with their thoughts and some additional questions, but Geuss said officials should not reply because neither Russo's contract nor the veto was on the agenda. The state's public meeting law, the Brown Act, limits what topics the council may discuss without putting it on the agenda in advance.

Since the Feb. 6 vote, the topic has been discussed in newspapers, social media and online comment sections, Perry said.

"It seems like it's being discussed everywhere except right here," Perry said. "These discussions need to happen on this dais and they need to happen in public."

The agenda included a closed session discussion of "significant exposure to litigation," which in general is allowed by the



The agenda included a closed session discussion of “significant exposure to litigation,” which in general is allowed by the Brown Act.

Councilman Mike Gardner said during the meeting that the veto issue was distracting the city from important business.

“It’s getting personal to some extent amongst ourselves, certainly amongst the public,” Gardner said. “The more we can get away from personalities and finger pointing... the better off we will all be.”

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**RUTAN**
RUTAN & TUCKER, LLPPhilip D. Katz
Dana Diaz (714) 641-1424
Philip.D.Katz@rutan.com

February 5, 2013

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Hon. Rusty Bailey
Mayor, City of Riverside



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RUTAN
RUTAN & TUCKER, LLP

Philip D. Kohn
Direct Dial: (714) 641-3415
E-mail: pkohn@rutan.com

February 5, 2018

**CONFIDENTIAL: ATTORNEY-CLIENT PRIVILEGED
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Hon. Rusty Bailey
Mayor, City of Riverside
Riverside City Hall
3900 Main Street
Riverside, CA 92501

Re: Charter Interpretation of Mayor's Veto Power

Dear Mayor Bailey:

As requested, I am writing to provide you with our opinion concerning Section 413 of the Riverside City Charter, which establishes the power of the Mayor to veto decisions of the City Council with certain exceptions. More specifically, you have inquired whether this veto power may be exercised in relation to a possible upcoming formal action of the City Council to renew or extend the otherwise expiring employment contract of the City Manager. As analyzed below, we preliminarily conclude that such a City Council decision is subject to the Mayor's veto power pursuant to Charter Section 413.

Charter Section 413 (entitled "Adoption of ordinances and resolutions") speaks to procedural aspects of the requirements for ordinances and resolutions to be adopted by the City Council. It states in relevant part as follows:

"At any time before the adjournment of a meeting, *the Mayor may*, by public declaration spread upon the minutes of the meeting, *veto any formal action taken by vote of the City Council including any ordinance or resolution*, except an emergency ordinance, the annual budget or an ordinance proposed by initiative petition. Thereupon, pending the vote to override the veto as herein provided, such ordinance, resolution or action shall be deemed neither approved nor adopted."

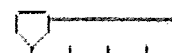
(Exhibit 1; emphasis added.) Section 413 obligates the Mayor to provide a written veto message to explain the reasons for the veto within a specified period. Subsequently, the City Council must reconsider the vetoed decision and determine whether to override the veto. An override necessitates five affirmative votes.



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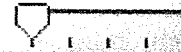




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Hon. Rusty Bailey
February 5, 2018
Page 2

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The City's first Charter was approved in 1907.¹ In this original iteration of the Charter, the Mayor was granted powers similar to the ones now at issue. Chapter 1 of Article III of the Charter dealt with "The Council," and section 9 thereof read as follows:

"Ordinances and resolutions are the formal acts of the council reduced to writing and passed under legal restrictions governing action thereon. Orders embrace all other actions which being less formal in character, require only to be duly passed by the council and spread upon the minutes. *No order, resolution or ordinance shall have any effect without the approval of the mayor.* In the case of orders, the approval of the mayor shall be presumed, unless at the same meeting at which the order was passed, the mayor causes his disapproval with his reasons therefor to be spread upon the minutes.

All resolutions and ordinances after passage by the council must be submitted to the mayor who shall, within ten days after he has received the same, endorse his approval or disapproval thereon, giving the reason of his disapproval; *provided, however, that if the mayor disapproves any order, resolution or ordinance it may be passed by a vote of not less than five members of the council and shall then be as valid as if approved by the mayor. Any written contract requiring the action of the council shall be subject to the approval of the mayor in the same manner as resolutions and ordinances.*"

(Exhibit 2; emphasis added.)² This language was retained when the Charter was amended in 1934. (Exhibit 3 [see Article III, Chapter 1, Section 10].)

¹ Charter cities exist by virtue of the California Constitution. (Cal. Const., art. XI, § 3(a).) The primary benefit of establishing a charter city is the constitutionally-created "supreme" authority to govern municipal affairs, thereby allowing the adopted charter to override state laws on the same subject. (*Donar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 170; Cal. Const., art. XI, § 5(a); see generally *Johnson v. Bradley* (1992) 4 Cal.4th 389, 394-398.) A charter functions as an instrument of limitation on powers otherwise available. (*City of Glendale v. Trondsen* (1957) 48 Cal.2d 93, 98.) So, for example, whereas the elective mayor in a general law city "is a member of the city council and has all of the powers and duties of a member of the city council" (Gov. Code § 34903), Section 405 of the Riverside City Charter states that the Mayor has no right to vote in City Council proceedings except to break a tie-vote.

² The last sentence of the quoted Charter excerpt did not differentiate between types of contracts (e.g., employment, purchases, real property transactions, etc.).

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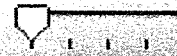




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Hon. Rusty Bailey
February 5, 2018
Page 3

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While unclear without further research as to whether there were intervening amendments, Section 412 of the 1964 version of the Charter recites the power of the Mayor to "request the reconsideration of any formal action taken by vote of the City Council including any ordinance or resolution, except an emergency ordinance or an ordinance proposed by initiative petition. Thereupon, upon reconsideration . . ., such ordinance, resolution or action is deemed neither approved, adopted nor rejected." (Exhibit 4.) Upon voting anew, the City Council may adopt or approve the ordinance, resolution or action with the same number of votes ordinarily required (i.e., no super-majority vote required). Apparently sometime in the 1970's, the term "veto" was inserted in place of "request for reconsideration" and the requirement for a super-majority override vote was restored.

Charter provisions are interpreted "using the same principles that govern construction of legislative enactments." (*Kreeft v. City of Oakland* (1998) 68 Cal.App.4th 46, 54; *First Street Plaza Partners v. City of Los Angeles* (1998) 65 Cal.App.4th 650, 663.) Thus, the "fundamental task" when "construing a statute" is "to ascertain the Legislature's intent so as to effectuate the purpose of the statute." (*Smith v. Superior Court* (2006) 39 Cal.4th 77, 83.) Courts begin by looking at the plain language of a statute. (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 1000.) This entails first examining the statute's words, giving them their ordinary, usual, and commonsense meanings. (*People v. Gonzales* (2017) 2 Cal.5th 1138, 1141.) The plain meaning of a statute controls if the statutory language is unambiguous. (*Fluor Corp. v. Superior Court* (2015) 61 Cal.4th 1175, 1198.) Only if the statutory language is reasonably susceptible to more than one interpretation would extrinsic aids (e.g., legislative history) be considered to determine intent. (*Ibid.*) Also, a literal construction of a statute may be rejected if it would frustrate the clear purpose of the statute or lead to an absurd result. (*Simpson Strong-Tie Co., Inc. v. Gure* (2010) 49 Cal.4th 12, 27.)

When reviewing the language of Section 413, its plain meaning and intent are clear and unambiguous. "[A]ny formal action taken by vote of the City Council," including but not limited to resolutions and ordinance, is subject to the Mayor's veto power with certain specified exceptions ("an emergency ordinance, the annual budget or an ordinance proposed by initiative petition"). The City Council's approval of a contract at a public meeting is certainly a formal action, and the approval of contracts is not listed as an exception from the scope of the veto authority. A court's task when construing a statute is "simply to ascertain and declare what is in terms and substance contained therein, not to insert what has been omitted." (Code Civ. Proc. § 1858.) "It is . . . against all settled rules of statutory construction that courts should write into a statute by implication

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Hon. Rusty Bailey
February 5, 2018
Page 4

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express requirements which the Legislature itself has not seen fit to place in the statute." (*In re Rudy L.* (1994) 29 Cal.App.4th 1007, 1011; quotation and citations omitted)³

Either by the 1964 Charter amendment, or another amendment between 1934 and 1964, the sentence in the 1907 and the 1934 Charters relating to contracts – "Any written contract requiring the action of the council shall be subject to the approval of the mayor in the same manner as resolutions and ordinances" – was deleted. We do not yet know specifically when this change occurred or, more importantly, if there was a particular reason why the quoted language was deleted. Obviously, if the express purpose was to remove contract approvals from the Mayor's power to disapprove such actions, that would be material to our analysis. However, preliminary research by your office reveals sixteen instances of a mayoral veto occurring between 1962 and 1993, including two actions dealing with contractual matters (Exhibit 5 [actions on March 19, 1985 and February 9, 1993].) Therefore, absent evidence to the contrary, we think it more likely that the authors of the Charter amendment believed the sentence to be superfluous inasmuch as the approvals of contracts would necessarily be encompassed within the newly-added phrase "any formal action taken by vote of the City Council including any ordinance or resolution."

A city charter defines and allocates the powers and duties of the city council, the mayor and other city officials, and the relative relationship and limits of those powers when interacting as a system of government. (See *In re Duncomb* (1922) 58 Cal.App. 610, 611-612.) Here, Riverside's Charter, from its origins in 1907 to the present day, has expressed an intent to repose extraordinary powers in the Mayor, specifically including the authority to (depending on the version of the Charter) veto or disapprove actions of the City Council, subject to an override process.⁴ A possible contention that the drafters of the subsequent Charter amendment must have intended to exempt the approval of contracts from the Mayor's veto power, even though such actions were not included from the list of excepted actions, would be also blunted by the fact the topic of the approval of contracts was referenced in prior versions of the Charter as being subject to the disapproval authority of the Mayor. So, the drafters, thereby presumably aware of the issue, could have (but did not) place the approval of contracts on the list of actions excluded from the veto power.

³ Courts are respectful of the maxim *expressio unius est exclusio alterius*: "The expression of some things in a statute necessarily means the exclusion of other things not expressed." (*Gikas v. Zolin* (1993) 6 Cal.4th 841, 852.)

⁴ The intent to place this veto power exclusively in the hands of the Mayor is manifested by the Section 405 of the Charter, which specifically provides that the Mayor Pro Tempore cannot exercise the veto power.

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Hon. Rusty Bailey
February 5, 2018
Page 5

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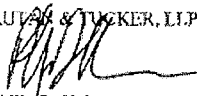
Additionally, with specific regard to a possible City Council action relating to the employment contract of the City Manager, the Charter's provisions for the appointment and tenure of the City Manager (*see* Section 600) do not create a carve-out from the Mayor's veto power. Nor does a veto of an action to renew or extend an expiring contract – an action separate and distinct from the action to enter into the contract in the first place – seem impermissibly in conflict with Section 600's recital that "[t]he City Manager shall serve at the pleasure of the City Council." The exercise of a veto in such circumstances is not equivalent to dismissal or otherwise premature termination of one's employment, and thus would not rise to the level of a breach of contract, assuming the contract has not created a vested right to the continuation of its duration once the contract has expired on its own terms by the passage of time.

In closing, for the reasons discussed above and based on the document review and research conducted to date, we believe that the Mayor's veto power pursuant to Section 413 of the Riverside City Charter may be exercised with regard to a formal action of the City Council to renew or extend the otherwise expiring employment contract of the City Manager.

Please do not hesitate to contact me if you have any questions concerning the matters set forth in this letter.

Very truly yours,

RUTAN & TUCKER, LLP


Philip D. Kolm

Attachments

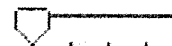
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COLANTUONO
HIGHSMITH
WHATLEY, PC

Michael G. Colantuono
MColantuono@schlaw.us
(530) 432-7339

MEMORANDUM

TO: Gary Geuss
Riverside City Attorney

FROM: Michael G. Colantuono, Esq. 
Lindsey F. Zwicker, Esq.

DATE: December 11, 2017

RE: Mayor's Authority to Exercise Veto Power over City Manager's
Amended Employment Contract

INTRODUCTION AND SUMMARY OF CONCLUSION

As you asked, we write to opine on the scope of the Mayor's veto power: May he veto a decision of the City Council to renew and amend the employment contract of a charter officer (City Manager, City Attorney, City Clerk)?

We conclude he may not. Section 600 of the City Charter states the "City Manager serves at the pleasure of the City Council," and Section 700 states the same as to the City Clerk and City Attorney. These sections indicate that decisions regarding all aspects of the employment of a charter officer fall within the province of the Council's — and not Mayor's — authority. Although section 413 of the Charter empowers the Mayor to veto certain formal actions of the City Council, interpreting that power to reach employment actions as to charter officers contradicts the apparent intent of Sections 600 and 700.

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Gary Geuss
Riverside City Attorney
December 11, 2017
Page 2

DISCUSSION**I. THE CITY CHARTER ESTABLISHES CITY COUNCIL'S AUTHORITY TO APPOINT CERTAIN CHARTER OFFICERS**

Section 600 of the City Charter provides that the process for selecting a City Manager shall be determined by the City Council. The City Manager is appointed by a majority Council vote and "shall serve at the pleasure" of the City Council. Similarly, Section 700 of the City Charter states: "In addition to the City Manager, there shall be a City Attorney and a City Clerk who shall be appointed by and serve at the pleasure of the City Council."

II. THE MAYOR HAS VETO POWER OVER CERTAIN FORMAL ACTIONS OF THE CITY COUNCIL

Section 413 of the Charter provides, in relevant part:

At any time before the adjournment of a meeting, the Mayor may, by public declaration spread upon the minutes of the meeting, veto any formal action taken by vote of the City Council including any ordinance or resolution, except an emergency ordinance, the annual budget or an ordinance proposed by initiative petition.

This provision appears in "Article IV, City Council and Mayor" and is entitled "Adoption of ordinances and resolutions." By its terms, however, it reaches "any formal action taken by vote of the City Council," excluding emergency ordinances, the annual budget, and initiatives.

It can be argued that section 413 empowers the Mayor to veto Council actions regarding the employment of Charter officers other than decisions to hire, terminate or extend their tenure. Sections 600 and 700 state only that charter officers are to be appointed by and "serve at the pleasure of the City Council." Section 413 is not expressly limited to legislative acts but reaches "any formal action taken by vote of the City Council." Even, if the location of the Mayor's veto power in a section entitled "Adoption of ordinances and resolutions" were understood to limit it to legislative matters — as is

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Gary Geuss
Riverside City Attorney
December 11, 2017
Page 3

a common limit to veto powers (Cf. U.S. Const., art. I, § 7; Cal. Const., art. IV, § 10) — case law treats contracting decisions as legislative in character.

An award of a contract by a public agency, and all acts leading to the award, are legislative. (E.g., *Mike Moore's 24 hour Towing v. City of San Diego* (1996) 45 Cal.App.4th 1294, 1303 ("Mike Moore").) Generally, a legislative act is any that establishes a policy or procedure to be applied to future cases. (*Sirinsky v. San Diego County Employees Retirement Ass'n* (1974) 11 Cal.3d 28, 34, fn. 2.) A decision requiring a legislative body to exercise discretion is a legislative act and is deferentially reviewed by courts. (*Mike Moore, supra*, 45 Cal.App.4th at p. 1303.) Contracting by a governmental entity "necessarily requires an exercise of discretion guided by considerations of the public welfare." (*Joint Council of Interns & Residents v. Board of Supervisors* (1989) 210 Cal.App.3d 1202, 1211.) The City Council's approval of an employment contract for a charter officer, as well as decisions regarding its financial terms, amount to legislation.

However, for the reasons stated below, we conclude this is not the intent of the framers of the Riverside Charter and the Mayor may not veto an action to appoint, reappoint, terminate, or compensate a charter officer, including an action regarding an employment or re-employment contract.

III. SERVICE "AT THE PLEASURE OF THE CITY COUNCIL" IS INCONSISTENT WITH VETO OF CHARTER OFFICER CONTRACTS

If the Mayor could veto a contract for a charter officer, that officer would have an obvious incentive to take direction from the Mayor and to seek his approval. That incentive is in tension with, if not fully inconsistent with, the Charter's statement that charter officers "serve at the pleasure of the City Council." We doubt the framers of the charter would have created two rules at obvious tension with one another on something so vital as the chain of authority in City administration. If they did, we would expect them to do so expressly and not merely by implication. Accordingly, we conclude the statements that charter officers "serve at the pleasure of the City Council" preclude the exercise of the Mayor's veto as to contracts and other employment decisions affecting the three charter officers.

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Gary Geuss
Riverside City Attorney
December 11, 2017
Page 4

Furthermore, Section 413 excludes from the Mayor's veto authority the power to veto annual budget — the primary appropriation of the Council each year. Employment contracts amount to the appropriation of funds — the creation of spending authority — and are thus comparable to the budget and outside the reach of the veto power for that reason, too.

Finally, our conclusion draws strength from the contrast between Charter sections 600 and 700, on the one hand, and section 802, on the other. Section 802 establishes appointment authority for boards and commissions: "The members of each such board or commission shall serve at the pleasure of the Mayor and City Council and shall be nominated and appointed by the Mayor and City Council from the qualified electors of the City" Inclusion of the Mayor in the authority to appoint members of boards and commissions contrasts with exclusive Council control over the appointment and removal of charter officers. This suggests the Mayor was intentionally excluded from those decisions.

Accordingly, we conclude the power to appoint and set the terms of employment for these positions therefore lies exclusively with the City Council and is not subject to the Mayor's veto.

CONCLUSION

Although the Mayor has veto power over formal legislative actions of the Council, we do not believe that power includes decisions regarding the appointment and terms of employment of charter officers.

Thank you for the opportunity assist in this matter. If we can be of further assistance, please contact either of us.

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Hansberger, Cheryl-Marie

From: Geuss, Gary
Sent: Tuesday, February 06, 2018 11:00 AM
To: Gardner, Mike; Melendrez, Andy; Soubirous, Mike; Conder, Chuck; MacArthur, Chris; Perry, Jim; Adams, Steven
Cc: Bailey, Rdsty; Nicol, Colleen; Russo, John A.
Subject: FW: [External] memo re scope of mayor's veto
Attachments: 20171213100039.cleaned.pdf

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Councilmembers,

In the last week, two of you have approached me with regard to the scope of the Mayor's veto and whether it applies to the contract of the City Manager. I was first contacted with this question early December by the Mayor "confirming" that he had the power to veto a charter officer's contract. I told him at that time that the Charter states in Sections 600 and 700 the Charter Officers serve at the pleasure of the City Council (no mention of the Mayor.) Furthermore, the veto provisions of the Mayor are located in Sec. 413 *Adoptions of ordinances and resolutions* and not in general duties of the Mayor.

The Mayor adamantly disagreed with this interpretation of the Charter so, in an abundance of caution, and in an attempt to ease discord, I asked Michael Colantuono to review our Charter and all recent revisions and legislative history and provide me with an opinion. That four page opinion is attached.

The bottom line is that my opinion, supported by Colantuono's similar opinion, is that the Mayor does not have the authority under the Charter to veto employment contracts for the Charter Officers. Rather, it is the Council and only the Council that has the authority to hire, fire, and approve or disapprove employment contracts for Charter Officers

Gary

From: Michael G. Colantuono [mailto:mcolantuono@chwlaw.us]
Sent: Wednesday, December 13, 2017 10:14 AM
To: Geuss, Gary <GGeuss@riversideca.gov>
Subject: [External] memo re scope of mayor's veto

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As you asked.

Michael G. Colantuono

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Ryan Hagen

Ryan Hagen covers the city of Riverside for the Southern California Newspaper Group. Since he began covering Inland Empire governments

in 2010, he's written about a city entering bankruptcy and exiting bankruptcy; politicians being elected, recalled and arrested; crime; a terrorist attack; fires; ICE; fights to end homelessness; fights over the location of speed bumps; and people's best and worst moments. His greatest accomplishment is breaking a coffee addiction. His greatest regret is any moment without coffee.

Follow Ryan Hagen @rmhagen

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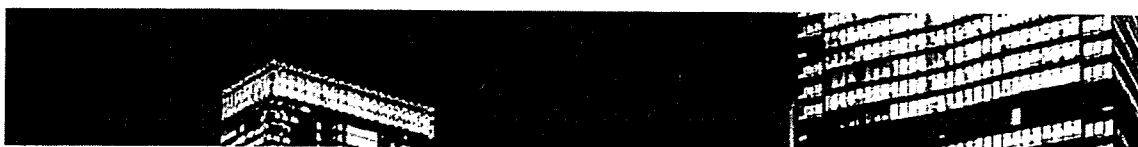
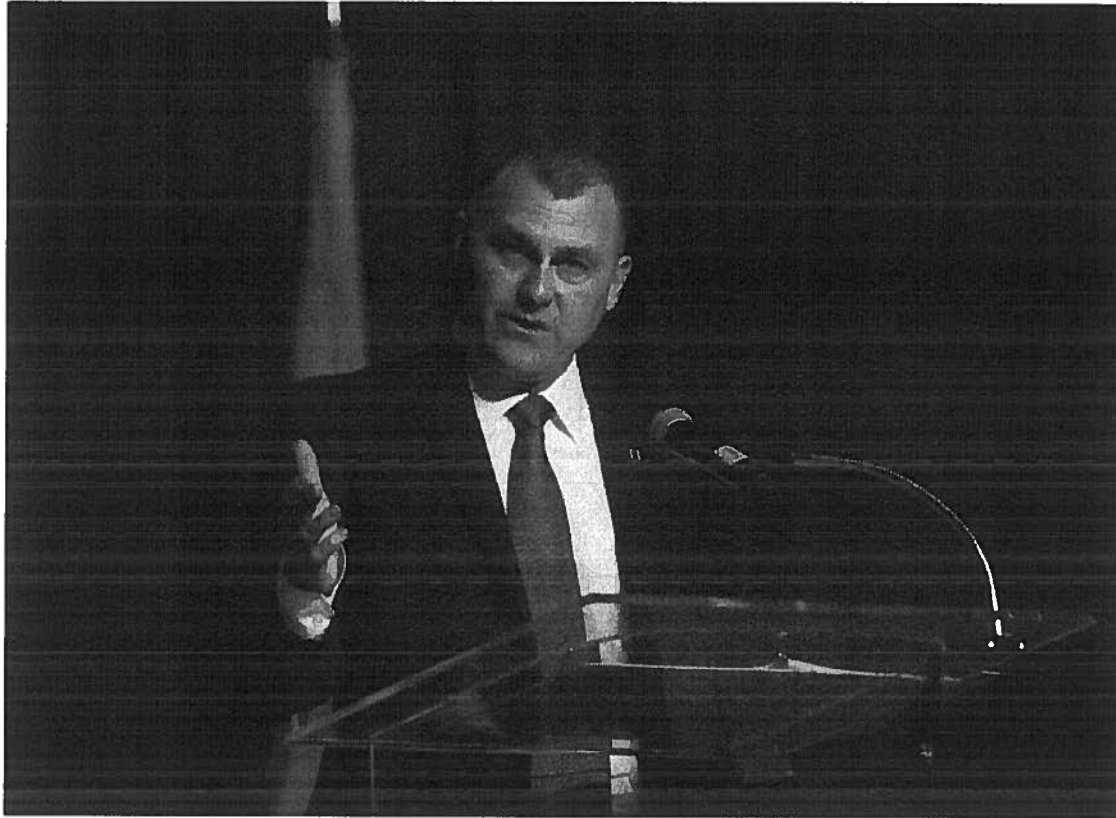


EXHIBIT 7

LOCAL NEWS

**Riverside City Council to decide if Mayor Rusty Bailey
violated attorney-client privilege**



Riverside Mayor Rusty Bailey delivers his annual state of the city address on Thursday, January 25, 2018. The speech combines a review of the past year with goals for the coming year. (Frank Perez/Correspondent)

By **RYAN HAGEN** | rhagen@scng.com | The Press-Enterprise

PUBLISHED: April 11, 2018 at 6:49 pm | UPDATED: April 11, 2018 at 6:50 pm



Did Riverside Mayor Rusty Bailey's office violate attorney-client privilege or city policy by releasing a letter from an outside attorney?

A city councilman wants his colleagues to discuss that question publicly at the Tuesday, May 1, meeting.

Councilman Andy Melendrez on Tuesday night, April 10, withdrew his earlier request for an investigation into the question. Melendrez said he now has the information he'd wanted the city to spend \$10,000 to \$25,000 probing, but wants a public discussion of the issue — and what to do about it if there were violations.

Bailey said Wednesday, April 11, that he didn't intend to divulge any legally sensitive information. He gave a reporter a folder of information Feb. 6 to explain his announcement during that day's council meeting that he was vetoing a contract for City Manager John Russo.

The folder included a letter from attorney Michael Colantuono that backs City Attorney Gary Geuss' opinion that the city charter does not give the mayor power to veto the city manager's contract. The letter was addressed to Geuss, who had sent the letter directly to Bailey. The mayor said that led him to conclude he was free to distribute it.

"I don't specifically remember including that — there was a lot of information in that packet — but looking at it now, it looks like I'm the client," Bailey said Wednesday. "I'm glad we're going to have this discussion in public."

Colantuono's email to Geuss and the letter itself contain confidentiality warnings, which Bailey said he didn't notice.

Melendrez also said it was important for all the facts to be public.



"I'm not prejudging anything, but I think this is probably the most reasonable way and the fairest way to determine whether there was a violation or not," he said. "I hate the word 'investigation' — I would much prefer 'look into' — but there were a few red flags that came up."

The report from Geuss on attorney-client privilege, as well as any other information related to violations of attorney-client privilege, will be posted online by May 19, because of the city's transparency rules.

Tags: [city-government](#), [Top Stories PE](#)



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EXHIBIT 8

February 12, 2018

CONFIDENTIAL

VIA E-MAIL AND FIRST CLASS MAIL

Mr. Gary Geuss
City Attorney
City of Riverside
Riverside City Hall
3900 Main Street
Riverside, CA 92501

Re: Charter Interpretation of Mayor's Veto Power

Dear Mr. Geuss:

Pursuant to your request in follow up to my February 9, 2018 letter with which you were copied, I am writing to provide additional information concerning the Charter interpretation work that I was asked to perform. As evident below, there were very few communications between Mayor Bailey and me from the time of the initial assignment until the completion of the work effort.

- I was first contacted by and spoke with Mayor Bailey via telephone on December 12, 2017.
- Mayor Bailey requested at that time that I research and prepare an independent, objective and impartial analysis of the provision of the Riverside City Charter empowering the Mayor to veto formal actions of the City Council.
- Mayor Bailey explained that the requested work should address whether the referenced provision of the Riverside City Charter encompasses a formal action of the City Council to renew or extend the otherwise expiring employment contract of the City Manager.
- Mayor Bailey understood that an outside attorney had concluded the veto power could not be exercised for this purpose, but he believed that the City Attorney had not as of that time rendered a formal opinion. He added he was told that the City Attorney was not in a position to directly advise the Mayor on the matter.
- Mayor Bailey expressed a desire to himself obtain an unbiased outside review of the issue with no pre-commitment to the outcome of the analysis.

Mr. Gary Geuss
February 12, 2018
Page 2

CONFIDENTIAL

- Mayor Bailey indicated that it was within the authority of his independent, separately-elected public office to make the request for the research and analysis of the issue, and that the requested services would be compensated through the approved budget for the Mayor's Office.
- I estimate the duration of the call to be approximately 5-10 minutes.
- At my requests from time to time, I was subsequently provided with provisions of the Riverside City Charter from and after the date of its original adoption and a summary of the circumstances in which the Mayor's veto power had most recently been exercised.
- At no time during the course of my research and analysis did Mayor Bailey or anyone else attempt to interfere with or influence my work or direct me to reach a particular conclusion.
- Following my initial conversation with Mayor Bailey, I did not communicate with him regarding my research results or preliminary analysis until my draft was completed in early February 2018.
- I personally performed all of the work relating to the requested assignment and did not delegate tasks to other attorneys at the firm or paralegals.

I hope that the foregoing is responsive to your request for additional information. Thank you.

Very truly yours,

RUTAN & TUCKER, LLP



Philip D. Kohn