



THE CITY OF SAN DIEGO

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## OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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Date Issued: October 30, 2015

IBA Report Number: 15-39

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Item Number: 3c

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# Comparative City Charter Information on the Responsibility of the Mayor to Report Information to Council

## OVERVIEW

On February 5, 2015, the Charter Review Committee heard the City Attorney's February 5, 2014 Report to Council, *San Diego Charter Legal Review*. The City Attorney's Office raised three issues related to Charter section 32.1, and the requirement that the Manager (now Mayor) "inform the Council of all material facts or significant developments relating to all matters under the jurisdiction of the Council." According to the City Attorney's Report:

It appears that this duty is self-executing and the Council does not have to make a request for information. However, the Charter is not explicit on this point. It also is not clear when the information must be provided to Council. Finally, there is no mechanism for enforcing the requirement to provide material facts.

As a result of the Committee's discussion of this item, the Office of the Independent Budget Analyst (IBA) was asked to return with information from other Strong Mayor-Strong Council city charters regarding the Mayor's responsibility to provide information to Council on all matters under its jurisdiction. This report responds to the request for comparative information, which is docketed to be heard at the Charter Review Committee on November 4, 2015.

## FISCAL/POLICY DISCUSSION

Charter section 32.1 currently requires the City Manager (Mayor) and all non-managerial officers to "inform the Council of all material facts or significant developments relating to all matters under the jurisdiction of the Council as provided under this Charter except as may be otherwise controlled by the laws and regulations of the United States or the State of California."

Additionally, the City Manager (Mayor) and all non-managerial officers are required to “comply promptly with all lawful requests for information by the Council.”

The Charter also includes language requiring the Mayor to comply with information requests, including Section 265(b)(13), which states that the Mayor has a duty:

To cooperate fully with the Council and the Office of Independent Budget Analyst, including but not limited to, supplying requested information concerning the budget process and fiscal condition of the City to the Council and the Office of Independent Budget Analyst.

According to Section 270(h), the Council has additional authority to summons City officials and department heads “to appear before the Council or any committee of the Council to provide information or answer any question.”

In response to the Committee’s request for information, we reviewed the Charters of Los Angeles, San Francisco, Oakland, and Fresno to determine if language exists in their Charters related to the Mayor’s duty to provide information to Council.

### ***Los Angeles***

Los Angeles includes language in both its Administrative Code and Charter that requires pertinent information to be shared with the City Council; however, we did not identify enforcement language as part of that requirement. Los Angeles’ previous Charter, which was in effect prior to the adoption of the new Charter in 1999, contained Section 64, which required every officer or board of the City government to “make and present to the Mayor and Council an annual report relating to their work, and such other reports as may be required by this Charter or by the Council, by ordinance.” However, when the new Charter was adopted, this became a requirement in the City’s Administrative Code. This provision (Section 19.74 of the Administrative Code) was adopted by ordinance, and requires each officer, board and department to “make and present to Council or any Council Committee, as and when requested, any report or other information requested.” The full text of this section can be found below.

#### **Sec. 19.74. Reports.**

(a) In addition to reports required by the Charter or otherwise by ordinance, each officer, board and department shall make and present to Council or any Council Committee, as and when requested, any report or other information requested by the Council or any of its Committees and shall provide a copy of the report or information to the Mayor.

(b) The Chief Administrative Officer of each department and bureau shall provide each member of Council with a copy of each regular report on the work of the department prepared pursuant to Charter Sections 509 or 510 at the time it is filed with the Mayor and board of the department, if any.

Additionally, Section 291 of the Los Angeles City Charter requires the Director of the Office of Administrative and Research Services (now called the City Administrative Officer) to “keep the Mayor and the Council advised of the condition, finances and future needs of the City, and make recommendations as are appropriate” as well as “furnish the Mayor or Council aid, information or recommendation as requested in writing by the Mayor, the Council, or Council Committee.”

### ***San Francisco***

Section 3.100 of San Francisco’s City Charter requires the Mayor to appear in person at least once a month at a regular meeting of the Board of Supervisors to allow for formal policy discussions with the Board. Additionally, Charter section 16.114 provides the Mayor, City Administrator, Controller, and any board or commission appointed by the Mayor the ability to “require such periodic or special reports of departmental costs, operations and expenditures, examine the books, papers, records and accounts of, and inquire into matters affecting the conduct of any department or office of the City and County.” It also allows them to “hold hearings, subpoena witnesses, administer oaths and compel the production of books, papers, testimony and other evidence.” The powers of inquiry and review are also provided to the Board of Supervisors in this section, including the power to subpoena and “compel the production of evidence, with respect to matters affecting the conduct of any department or office of the City and County.” Although there are other sections of the Charter that include enforcement language<sup>1</sup>, there does not appear to be enforcement language related to the obligation of Executive Departments to provide requested information to the Board of Supervisors.

### ***Oakland***

In Oakland, Charter section 218 allows the City Council to request information from the Mayor, City Manager, or other City officers. Moreover, Section 504 requires the City Administrator to:

- Attend all Council meetings and participate in discussions at those meetings;
- Prepare and submit to the Council the reports it requires; and
- Keep the Council fully informed about the financial condition and needs of the City.

Like San Francisco, Oakland’s Charter includes enforcement language for other issues<sup>2</sup>; however, there does not appear to be any enforcement language to ensure the Mayor and other City officers keep the City Council informed.

### ***Fresno***

In Fresno, Charter section 706 provides the Mayor and the Council with the right to inquire about City Administration matters, and section 705 requires the Chief Administrative Officer to “prepare and submit to the Mayor reports in answer to requests for information made to him or her by the mayor.” Additionally, Charter section 400 includes the duty that the Mayor “shall provide the liaison between the Administrative Service and the Council, fostering a sense of cohesion among Councilmembers and educating the public about the needs and prospects of the

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<sup>1</sup> One example is San Francisco Charter section 2.114, which prohibits the Council’s interference in the administrative service, and violations of this section “constitute official misconduct.”

<sup>2</sup> For instance, Oakland City Charter section 218 prohibits the Council’s interference in administrative affairs, and a “violation of the provisions of this section by a member of the Council shall be a misdemeanor, conviction of which shall immediately forfeit the office of the convicted member.”

City.” Although Fresno’s City Charter includes enforcement language for other issues<sup>3</sup>, there does not appear to be any enforcement language to ensure the Mayor and other City officers keep the City Council informed.

## CONCLUSION

In response to Charter Review Committee direction, the IBA reviewed the Charters of Los Angeles, San Francisco, Oakland, and Fresno to determine if they include language related to the Mayor’s duty to provide information to Council for all matters under its jurisdiction. Through our research, we found that all four of the cities give the Council (or Board of Supervisors) the right of inquiry, and Los Angeles and Oakland specifically require the Chief Administrative Officers (or City Managers) to provide pertinent city information to the City Council. However, we were not able to find language related to the enforcement of this responsibility.

It is also important to note that if the Committee modifies this Charter section as offered in the City Attorney’s February 5, 2014 Report, it may require corresponding changes in other parts of the City Charter, as well as other City documents (e.g., Municipal Code and Council Policies) to ensure consistency.



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Trisha Tacke  
Research Analyst



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Jeff Kavar  
Deputy Director



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APPROVED: Andrea Tevlin  
Independent Budget Analyst

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<sup>3</sup> Fresno’s City Charter (like that of Los Angeles and Oakland) includes enforcement language related to the Council’s power to issue subpoenas. In the case of Fresno, the “[d]isobedience of such subpoena 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.”