

MEMORANDUM

TO: File

FROM: PJD

DATE: May 13, 2016

RE: City of Portland - Personnel Matter

I. Introduction and Statement of Issue

I have analyzed below the respective powers of the Mayor and City Manager by a reviewing of the City Charter (“Charter”), Charter Commission (“Commission”) and Final Report (“Report”) and Corporation Counsel’s Memo of March 1, 2016 (“Counsel Memo”). The Report aptly previews the current challenge to find “... a balance between directly elected political leadership and the virtues of professional city management.”

Report at II.A at p. 5.

The immediate issue is to define for the Mayor and City Manager a shared understanding of their respective roles. This need has been exacerbated by the Mayor’s recent criticism of the budget submitted by the City Manager.

As noted by Corporation Counsel in her memo while the Charter attempted to characterize the respective roles between the Mayor’s office and City Manager, no Charter can fully anticipate or delineate every potential issue which might trigger a conflict between those offices. The language of the Charter presumes the Mayor and

City Manager have a shared commitment to advance the City's best interests which will require accommodations with respect to conflicts which inevitably arise. However, it is also apparent from the Report and Charter collectively there is the potential for some direction as to the confusion. The term "mayor" itself typically conjures up some expectation of executive power. That image may be enhanced by the creation of a full time mayor who is popularly elected by all the city's residents. However, the Report and Charter are also unmistakably clear that the Mayor is a *policy*, not an *executive*, position and that the administrative, implementation and enforcement powers remain with City Manager. *Article II, §5*. The Mayor is to "facilitate implementation of city policies through the office of the city manager" (emphasis added) *Article II, §5(e)* and "to consult with and provide guidance to the city manager in the preparation of all city budgets . . ." (*Article II, §5(f)*).

II. Potential Path Forward

The ambiguity on budget preparation and textual cross currents on policy implementation create the opportunity for confusion and conflict. The hope is these problems can be addressed by:

- A. Defining more specifically the acts to be coordinated between the Mayor and City Manager when the City Manager prepares his budget for presentation to the Council;
- B. Defining more specifically those acts which constitute mayoral "facilitation" of policy implementation; and

- C. Defining more specifically the acts to be coordinated between the Mayor and the City Manager when the Mayor facilitates policy implementation “through the city manager’s office.”

To lay the analytical groundwork necessary to legitimize and de-politicize the situation, it is important to recognize that it is the Mayor’s position that is new to the governance process. Accordingly, the threshold tasks are:

- A. Identify accurately the nature of the mayoral position; and
- B. Interpret the Mayor’s powers and duties within that position consistent with that identification.

Such an approach suggests at least two remedies which have the potential to be effective:

- A. Provide an outside advisory legal assessment based on the text of the Charter and manifest intent of the Report which identifies the nature of the mayoral position as well as its delegated and shared powers and duties; and
- B. Draft a Memorandum of Agreement (“MOA”) consistent with that advisory opinion and addresses with some specificity how the positions of Mayor and City Manager can exercise their overlapping “powers and duties” in areas such as budget preparation and policy implementation.

Nature of the Mayoral Position

A. Not Ceremonial

The Mayor is not a merely ceremonial position because a “largely ceremonial Mayor is not sufficient for the complexities and demands of our city.” *Report at II.A at p. 5.*

B. Not Executive

The Mayor is also not an executive position because “an executive Mayor model would be unacceptable; ... professional administration has done well by the city, and we will not abandon its ability to safeguard our fiscal health.” *Report II.A at p. 5.* The City Manager “remains the chief administrator of the City.” *Report II.A at p. 5.* Likewise, “the Council remains responsible for developing City policy,” *Report II.A at p. 6.* The Mayor’s role, accordingly, is to help advance those policies by working cooperatively with the Council and City Manager. *Report II.A at p. 6.*

C. A Policy Mayor

Between the above two rejected models, the Commission deliberately selected a “policy Mayor.” The position is to have “substantial influence over the policy direction of the City.” *Report II.A at p. 5.* It is designed to “represent the vision and direction of a majority of the electorate, speak for the people and unify the disparate views of the City Council.” *Report II.A at pp. 4 and 5.*

Mayor's Powers and Duties

The Mayor's powers and duties are set forth in Charter Article II, §5, and fall into four categories.

A. Ceremonial and Aspirational

Some mayoral powers and duties relate solely or largely to form, trending between ceremonial and aspirational. These include:

1. "Be the official head of the city [and] responsible for providing leadership," *Article II, §5*;
2. Articulate the city's vision and goals and build coalitions to further such vision and goals," *Article II, §5(a)*;
3. "Lead an annual workshop session of the City Council to discuss and identify the city's goals and priorities," *Article II §5(b)*;
4. "Represent the city with other municipalities, levels of government, community and neighborhood groups, and the business community," *Article II, §5(c)*; and
5. "Facilitate among the city manager, City Council, board of public education and the public to secure passage of the budget," *Article II, §5(h)*.

B. Functional and Unique to Mayor

Other Mayoral powers and duties are more tangible because they are functional and imbedded in the process of governing. They are powers that trend between procedural and substantive and, notably, they are powers distinct from other council members. They include:

1. Convene and lead an annual workshop session of the City Council, *Article II, §5(b)*;
2. “Preside as chair of the City Council ... and direct the City Manager in the preparation of the council meeting agendas,” *Article II, §5(d)*;
3. “Provide comment on [city] budgets at the time they are presented by the City Manager to the City Council for approval,” *Article II, §5(f)*;
4. “Consult with and provide guidance to the City Manager in the preparation of all city budgets,” *Article II, §5(f)*;
5. “Provide comments on [the annual capital improvement] program plan at the time it is presented by the City Manager to the City Council,” *Article II, §5(g)*;
6. “Consult with and provide guidance to the City Manager in the preparation of the annual capital improvement program plan,” *Article II, §5(g)*;
7. “Exercise veto power over the annual city appropriation,” *Article II, §5(i)*;
8. “Chair any subcommittee with at least two (2) other City Councilors to recommend the appointment or removal of the city manager, corporation counsel or the city clerk,” *Article II, §5(k)*; and
9. “Appoint the members and chairs of the City Council committees and various ad hoc committees,” *Article II, §5(l)*.

C. Shared with Council

Some Mayoral powers and duties are, either whole or in part, shared expressly or implicitly with other council members, such as:

1. “Vote upon all matters,” *Article II, §5(d)*;

2. “Facilitate the implementation of city policies through the office of city manager,” *Article II, §5(e)*;
3. “Six members of council can override the Mayor’s veto of the annual city appropriation,” *Article II, §5(i)*;
4. “Five members of council have the final decision in regard to appointment or removal of the city manager, corporation counsel or the city clerk,” *Article II, §5(k)*; and
5. “Six members of council can override the Mayor’s appointment of the members and chairs of the City Council committees and various ad hoc committees,” *Article II, §5(l)*.

D. Shared with the City Manager

Finally, some Mayoral powers and duties are, either whole or in part, shared expressly with the city manager, such as:

1. “Provide guidance for the City Manager on the city’s goals and priorities,” *Article II, §5(b)*;
2. “Direct the City Manager in the preparation of the council meeting agendas,” *Article II, §5(d)*;
3. “Facilitate the implementation of city policies through the office of city manager,” *Article II, §5(e)*;
4. “Consult with and provide guidance to the City Manager in the preparation of the annual capital improvement program,” *Article II, §5(g)*; and

5. “Facilitate among the city manager, City Council, board of public education and the public to secure passage by the City Council of the annual city and school budgets,” *Article II, §5(h)*.

However, the Charter also expressly provides that, “notwithstanding the foregoing, the City Manager shall be in charge of the day to day operations of the city and administration of the city budgets approved by the council.” *Article II, §5*.

City Manager’s Powers

The city manager’s powers and duties are set forth in Charter Article VI, §5. They fall into three categories:

- A. Most tasks are, as designed, clearly executive in character. In summary terms, the City Manager has the power and duty to “enforce, control, implement, coordinate, prepare, appoint, plan and perform.” See *Article VI, §§5 (a)-(g), (i) and (k)*.
- B. Other responsibilities are more supportive in character; that is, to serve the council. The City Manager is to “attend, submit, discuss, advise and furnish.” See *Article VI, §§5(g), (h) and (k)*.
- C. The remaining responsibilities are collaborative in character; that is, to work with the Mayor. See *Section IV.D* above.

Importantly, the Charter expressly protects the city manager’s executive responsibilities. There are three express limitations on intrusions into the City Manager’s powers:

- A. The City Manager “shall be in charge of the day to day operations of the city and administration of the city budgets approved by the council,” *Article II, §5*;

- B. “Neither the Mayor nor members of the City Council shall direct, request or interfere with the appointment or removal of any of the officers or employees of the city for whom the City Manager is responsible,” *Article VI, §5*; and
- C. “Nor shall [the Mayor or members of the City Council] give an order, publicly or privately, to any such city officer or employee relating to any matter in the line of the officer’s or employee’s city employment.” *Article VI, §5* (this provision is reasonably interpreted to require that all requests for information to city officials, including those from the Mayor’s office, must pass through the City Manager).

Role and Boundaries of a “Policy” Mayor

My conclusions on the intersection of the Mayor’s and City Manager’s powers and duties are these. The Mayor has:

- A. Broad ceremonial and representational duties; and
- B. Distinct procedural powers that invite and enable a voice articulating the combined view(s) of the full council; but
- C. Limited substantive powers to act independently on that voice.

In exercising these distinct procedural and limited substantive powers, the Charter expects that the Mayor will direct his voice between and work with both the Council and the City Manager.

This is because – and there is no doubt on this given the spirit of the Report and the text of the Charter – the Mayor is designed and expected to lead by collaboration. This concept pervades both the Report and the Charter. The Mayor is to help build coalitions (*Article II, §5(a)*), facilitate implementation (*Article II, §5(e)*) and help pass

budgets (*Article II, §5(h)*). This is so the aspirations of the Commission can be realized: i.e., “unify the disparate view of the City Council” (*Report at II.A at p. 4*); to unify the City’s voice to businesses and other governments (*Report at II.A at p. 5*); and to be the “unifying figure who can work with the city manager” (*Report at II.A at p. 5*). The Mayor is to meet these obligations within the clear and express limit that the City Manager remains “in charge of day to day operations” and the authority to “administer the budgets as approved.” *Article II, §6*.

Stated differently, the Mayor is an “intermediate actor” rather than an independent “free agent.” While the Mayor is intended to “represent the vision and direction of a majority of the electorate” and “speak for the people” as the voice of the full council. *Report II.A at p. 4*, his substantive powers are clearly and purposefully significantly limited by the Charter.

The Mayor’s larger role – the one that truly distinguishes his office from other councilors – is that the Mayor has the additional express duty to “unify the disparate view of the City Council.” *Report II.A at p. 4*. He has a similar duty relative to his working relationship with the City Manager. *Article II, §5*.

In short, the office of Mayor was not created to improve deficiencies in the office of the City Manager. It was created to provide the accountability for the policy direction of the City and improved functioning of the Council. It is a role of comity, not power; of collaboration, not assertion.

III. Conclusion

The Mayor's role is to develop with the council (at the annual goal setting session, etc.) and articulate their sense of the city's vision, goals and priorities, and share that with the City Manager in order to guide the City Manager's daily administrative tasks and judgments. However, the reach of his substantive powers are constrained by the Charter which leaves untouched the City Manager's traditional prerogatives with respect to daily operations and administration of city staff and the city in general.

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