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OAKLAND

2019 APR 25 PM 5:41

# CITY OF OAKLAND

## OFFICE OF THE CITY ATTORNEY

### MEMORANDUM

**TO:** President Kaplan and Members of the City Council

**FROM:** Barbara J. Parker, City Attorney

**DATE:** April 30, 2019

**SUBJECT:** A RESOLUTION REQUESTING THAT THE CITY ADMINISTRATOR EXPEDITE THE PROCESS TO OBTAIN CIVIL SERVICE BOARD APPROVAL OF AND POST THE JOB DESCRIPTION FOR THE POSITION OF INSPECTOR GENERAL TO SUPPORT THE POLICE COMMISSION AND BRING A REPORT TO THE COUNCIL REGARDING THE ANTICIPATED TIME FRAME

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Dear President Kaplan and Members of the City Council:

On April 30, 2019 the Council will consider the subject resolution. This Office could not approve the subject resolution as to form and legality. The attached public legal opinion addresses the reasons why we could not approve the subject resolution as to form and legality. The opinion is posted on our website: [oaklandcityattorney.org](http://oaklandcityattorney.org) and can be accessed by clicking on the link entitled "Public Legal Opinions." Three other public legal opinions regarding the Police Commission's powers dated March 14, 2018 and June 14, 2018 are posted on our website.

We also have attached a revised resolution that we have approved as to form and legality.

Very truly yours,



BARBARA J. PARKER  
City Attorney



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**MEMORANDUM**

**VIA EMAIL**

**To:** Barbara J. Parker  
Oakland City Attorney

**From:** Karen Getman

**Date:** April 25, 2019

**Re:** Proposed Council Resolution Regarding the Inspector General

**INTRODUCTION**

You have asked that we provide a legal opinion on the question below. In preparation we reviewed, among other things: the Oakland City Charter, including section 604, added by Measure LL; Ordinance No. 13498, adopted by the Oakland City Council on July 10, 2018 and codified at Chapter 2.45 of the Oakland Municipal Code; the March 19, 2018 public opinion of the City Attorney regarding the appointing authority over staff to the Police Commission, issued prior to adoption of the ordinance;<sup>1</sup> the June 14, 2018 opinion previously provided by this law firm and made publicly available regarding the authority of the Police Commission under the City Charter with regard to the office of the civilian Inspector General;<sup>2</sup> a proposed job description for the Inspector General adopted by the Police Commission on October 11, 2018; a proposed job description for the Inspector General prepared by the City Administrator; and a proposed “Resolution Directing the City Administrator to Release the Job Description for the Position of Inspector General, As Approved by the Police Commission,” to be presented to the Council at its April 30, 2019 meeting.

<sup>1</sup> The City Attorney’s opinion is available at [https://www.oaklandcityattorney.org/PDFS/Legal%20Opinions/Final%20Legal%20Opinion%20to%20Council%203\\_19\\_2018%20re%20Police%20Commission%20Enabling%20Ordinance%20City%20Administrator%20.PDF](https://www.oaklandcityattorney.org/PDFS/Legal%20Opinions/Final%20Legal%20Opinion%20to%20Council%203_19_2018%20re%20Police%20Commission%20Enabling%20Ordinance%20City%20Administrator%20.PDF)

<sup>2</sup> That opinion is available at [https://www.oaklandcityattorney.org/PDFS/Legal%20Opinions/Memo%20re%20Inspector%20General%20\(00346342xAEBO3\).pdf](https://www.oaklandcityattorney.org/PDFS/Legal%20Opinions/Memo%20re%20Inspector%20General%20(00346342xAEBO3).pdf)

**QUESTION PRESENTED**

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May the Council direct the City Administrator to authorize and proceed with the next steps needed to approve and post the job description approved by the Police Commission for the Inspector General, including referral for civil service approval?

**ANSWER**

No. The City Administrator has sole and exclusive authority under the Charter to develop the job description for the Inspector General and to initiate the process for securing approval of that position by the Civil Service Board. The Council is prohibited from interfering with the City Administrator's authorities and duties in that regard. City Charter §§ 207, 218, 503 & 604.

**ANALYSIS**

Measure LL, enacted by the voters at the November 2016 election, amended the City Charter to establish a Police Commission to provide civilian oversight of the Police Department. Charter § 604. To implement the measure, the Council in July 2018 enacted Ordinance No. 13498 which, among other things, added chapter 2.45 to the Oakland Municipal Code. The ordinance created a civilian "Office of the Inspector General" to, among other things, report to and perform such tasks for the Police Commission as that body may find necessary or helpful. The Inspector General position was not created by or even mentioned in Measure LL; it is solely a creature of the ordinance.

Prior to adoption of the ordinance, the Council had been advised by the City Attorney and this law firm, in the opinions cited in footnotes 1 and 2 of this memorandum, that under the Charter, only the City Administrator could appoint, discipline and remove the newly created Inspector General. The reason is that the Charter exclusively delegates to the City Administrator the authority to hire and supervise all City employees except those positions expressly called out in the Charter, and this position of Inspector General is nowhere mentioned in the Charter. *See* Charter § 600 (the Council by ordinance establishes the form of organization for City offices and departments, but "[a]ll departments or other administrative agencies so created shall be administered by the City Administrator or by a department head or other officer appointed by and responsible to him/her."); *id.*, § 503 ("the City Administrator is the hiring authority for all directors, heads of departments and employees, except as expressly specified in the Charter, and subject to the civil service system established by Article IX").

The ordinance adopted by the Council nonetheless provides that "[t]he Inspector General shall be hired and supervised by the Commission." Oakland Municipal Code § 2.45.100. Further, the ordinance states that "the Commission, with the assistance of the Human Resources Management

Department and in accordance with the City's Civil Service Rules, shall prepare a job description and list of required qualifications for the position of civilian Inspector General. After all required approvals have been obtained for adding this position to the City's Classification Plan (as defined by the City's Civil Service Rules), the Commission, with the assistance of the City Administrator shall be responsible for hiring the first and all subsequent civilian Inspectors General." Oakland Municipal Code § 2.45.110(A).

At its October 11, 2018 meeting, the Commission adopted a job description and class specification for the Inspector General within the City's Classification Plan and requested that the City Administrator forward it to the Civil Service Board for approval. That job description states that the Inspector General "may only be appointed, disciplined or removed by the City Administrator according to the City's Civil Service Rules and any applicable memorandum of understanding between the City and a union, *and after an affirmative vote of five (5) members of the Commission.*" (Emphasis added.) While such a provision is consistent with the ordinance adopted by the Council, it plainly violates the Charter provisions that make the City Administrator the sole hiring authority for this new city official. Accordingly, the City Administrator revised the job description to be consistent with the Charter by having the City Administrator hire the Inspector General, while the Police Commission prioritizes the functions and duties of the Inspector General.

In its current form, the Resolution proposed for consideration by the Council reads:

**RESOLVED:** That the Oakland City Council does hereby direct the City Administrator to authorize and proceed with the next steps needed to approve and post the job description (Attachment B) for the Inspector General (including, as needed, referral for civil service approval), as approved by the Police Commission, to report directly to the Police Commission.

This Resolution, if passed, would violate not only the Charter provisions granting the City Administrator hiring and supervision authority over the Inspector General, but also the provisions prohibiting the Council from interfering with the City Administrator in the conduct of her duties. The applicable Charter provision is as follows:

**Section 218. Non-Interference in Administrative Affairs.**

Except for the purpose of inquiry, the Council and its members shall deal with the administrative service for which the City Administrator, Mayor and other appointed or elected officers are responsible, solely through the City Administrator, Mayor or such other officers. Neither the Council nor any Council member shall give orders to any subordinate of the City under the jurisdiction of the City Administrator or such other officers, either publicly or privately; nor shall they attempt to coerce or influence the City Administrator or such other officers, in respect to any contract,

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purchase of any supplies or any other administrative action; nor in any manner direct or request the appointment of any person to or his removal from office by the City Administrator or any of his subordinates or such other officers, nor in any manner take part in the appointment or removal of officers or employees in the administrative service of the City. 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.

Note that violation of the non-interference clause was so disfavored by the City voters who adopted the Charter that it carries with it the most extreme sanctions for violation found in the Charter for Council members, namely forfeiture of office upon conviction.

Under the Charter, the City Administrator is the “chief administrative officer of the City,” Charter § 500, and Council “shall have no administrative powers,” Charter § 207. Accordingly, the City Administrator “subject to the provisions of Article IX of this Charter and except as otherwise provided in this Charter, [has] the power to appoint, assign, reassign, discipline and remove all directors or heads of departments and all employees under his jurisdiction.” Charter § 503. Under Article IX, establishing the Civil Service system, the Civil Service Board “shall be responsible for the general supervision of the personnel system, without impairment of the responsibility and duty of the City Administrator, department heads and other supervisory personnel to exercise the administrative discretion vested in them by this Charter, or by ordinance.” Charter § 901. The Oakland Municipal Code further recognizes in section 2.08.020 that “[t]he City Administrator shall be responsible for the administration of the personnel system, in accordance with Section 503 of the Charter and subject to the provisions of this chapter.” No appointment of a city employee within the civil service classification “shall be made, except according to” the rules of the Civil Service Board. Oakland Civil Service Rules § 3.01.

The proposed Resolution, if passed by the Council, would interfere with and indeed, take away administration of the personnel system from the City Administrator, by ordering her to process a job description for Inspector General that was approved by the Police Commission rather than the one she approved for submission to the Civil Service Board. Indeed, it goes so far as to order the City Administrator to process that description through the civil service system; in other words, to perform her duties administering the City’s personnel system as the Council demands, rather than as she deems appropriate. This despite the plain language of the Charter that “[n]either the Council nor any Council member shall . . . in any manner take part in the appointment or removal of officers or employees in the administrative service of the City.” Charter § 218 (emphasis added). The Council has no role whatsoever to play in the appointment process for the Inspector General, either directly by ordering that a specific job

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Barbara J. Parker  
April 25, 2019  
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description be used, or indirectly by ordering the City Administrator to move the Council's preferred description through the civil service system.

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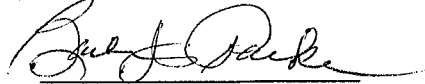
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**CONCLUSION**

If the Council passes the proposed Resolution, the Council and its members would violate the Charter's non-interference clause, section 218, by interfering with the duties exclusively delegated to the City Administrator by the Charter through sections 207 (Council shall have no administrative powers) and 503 (City Administrator shall appoint and remove City staff).

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Office of the City Attorney

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# OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C.M.S.

INTRODUCED BY COUNCIL PRESIDENT KAPLAN, COUNCILMEMBER GALLO,  
AND COUNCILMEMBER BAS

**A RESOLUTION REQUESTING THAT THE CITY ADMINISTRATOR EXPEDITE THE PROCESS TO OBTAIN CIVIL SERVICE BOARD APPROVAL OF AND POST THE JOB DESCRIPTION FOR THE POSITION OF INSPECTOR GENERAL TO SUPPORT THE POLICE COMMISSION AND BRING A REPORT TO THE COUNCIL REGARDING THE ANTICIPATED TIME FRAME**

**WHEREAS**, the voters of the City of Oakland overwhelmingly voted yes (83.19%) for Measure LL on November 8, 2016, that established a Police Commission; and

**WHEREAS**, the lack of trust and accountability between the community and the police department undermine community cohesion and weaken public safety; and

**WHEREAS**, an effective and well-functioning Police Commission is a vital tool in strengthening trust and accountability to improve community-police relations; and

**WHEREAS**, in order to be able to perform its functions, the Police Commission must have necessary key personnel, who are responsive to their requests, to fulfill their duties; and

**WHEREAS**, on July 10, 2018 the Oakland City Council adopted Ordinance No. 13498 (Attachment A), Measure LL enabling legislation, that included the addition of Sections 2.45.100, 2.45.110, 2.45.120 to the Oakland Municipal Code "to establish the Office of Inspector General and to appoint a civilian Inspector General who shall serve and report to the Commission and be hired and supervised by the Commission;" and

**WHEREAS**, Ordinance No. 13498 also states that "the Commission, with the assistance of the Human Resources Management Department and in accordance with the City's Civil Service Rules, shall prepare a job description and list of required qualifications for the position of civilian Inspector General"; and

**WHEREAS**, the Office of the City Attorney issued two public legal opinions dated March 19, 2018 and June 14, 2018, that are posted on the City Attorney's website regarding the powers of the Police Commission related to the hiring of the Inspector General; and

**WHEREAS**, the March 19, 2018 and June 14, 2018 opinions advised that the City Administrator hires, disciplines and dismisses the Inspector General because the City Charter does not provide an exception to the City Administrator's Article V power to hire and fire all personnel under her jurisdiction, and the City Charter is the supreme law of the City and cannot be altered by Ordinance; and

**WHEREAS**, the Police Commission was entrusted by the voters of Oakland to have the power, authority, and capability to ensure proper oversight of key matters regarding police conduct, which cannot be accomplished without necessary personnel; and

**WHEREAS**, at the September 27, 2018 Police Commission meeting, a first draft of the Inspector General position was made public and discussed; and

**WHEREAS**, at the October 11, 2018 Police Commission meeting, the Commission approved a job description for Inspector general by a 5-0 vote; and

**WHEREAS**, the Public Safety Committee ("PSC") of the Oakland City Council discussed and reviewed the Inspector General job description which was "Attachment A" to Item # 6 of the April 9, 2019 PSC agenda; and

**WHEREAS**, the Police Commission has publicly expressed its need for the Inspector General, to be responsive to their needs and perform their duties; now, therefore, be it

**RESOLVED:** That the Oakland City Council does hereby request that the City Administrator expeditiously proceed with the steps needed to secure the Civil Service Board's approval of the job description (referred to as job classification in the Civil Service Rules) for the Inspector General position and post the job description for the Inspector General (including, as needed, referral for civil service approval) to support the Police Commission; and be it

**FURTHER RESOLVED:** That the City Administrator is directed to provide a report to the Council explaining the status and timing of the approval of the job description by the Civil Service Board and the posting of the job announcement for the Inspector General position.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

LATONDA SIMMONS  
City Clerk and Clerk of the Council of the  
City of Oakland, California

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