



City Council Agenda Item

City Council Meeting Date: February 18, 2020

TO: Honorable Mayor and Members of the City Council

FROM: Jeff Malawy, City Attorney
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SUBJECT: Options for Conversion of City Clerk and Management Services Director/Treasurer From Positions Appointed By City Manager to Positions Appointed By City Council

Recommendation:

Staff recommends the City Council receive the staff report and provide further direction to staff, if desired.

Background:

The City Council requested staff prepare a report discussing whether the City Clerk and Management Services Director (which also includes the position of City Treasurer) can be converted from positions appointed/removed by the City Manager (as they are currently) to positions appointed/removed by the City Council. This staff report discusses the actions the City Council would need to take to complete the restructuring of those positions.

Summary of Analysis and Actions Required for Restructuring of Positions

The position of City Clerk can be converted from a position appointed/removed by the City Manager to a position appointed/removed by the City Council. This would be accomplished by adopting an ordinance amending provisions of the Lompoc Municipal Code pertaining to the City Clerk position. The City Clerk job description would also need to be updated to reflect City Council, rather than City Manager, as appointing authority. The incumbent City Clerk does not have an employment contract, so no contract amendment would be required.

- The position of Management Services Director/Finance Director/City Treasurer is more complicated. In general, state law allows the City Council to convert the position from one appointed/removed by the City Manager to one appointed/removed by the City Council. However, the incumbent currently in this position is employed pursuant to an employment contract, which states the City Manager is his appointing authority. Accordingly, the City Council cannot unilaterally become

the appointing authority without mutual amendment of the contract or termination of the contract.

- Alternatively, a separate position of City Treasurer appointed by the City Council could be created by separating City Treasurer job duties from the current Management Services Director position. (This was the City's structure prior to 2004.) The incumbent Management Services Director would continue to serve at the pleasure and under the direction of the City Manager. This option would also require a mutually-agreed amendment to the incumbent Management Services Director's employment agreement to reflect the updated job description.
- In practice, it would be very unusual for a City to have only one department head position appointed by the City Council with the remainder of the department heads appointed by the City Manager. It is most common to have all department heads appointed by the City Manager, with the City Clerk and City Treasurer either both appointed by the City Manager or both appointed by the City Council.

Discussion

State Law – City Clerk And City Treasurer

California law requires each city to have a City Clerk and City Treasurer. (Govt. Code § 36501 (b)-(c).) By default, those positions are elected directly by voters. However, with the approval of a majority of voters, those positions can instead be appointed by the City Council. (Govt. Code § 36510.) As explained in greater detail below, this approval was given by Lompoc voters in 1962.

When a majority of voters has provided the City Council with appointment authority for the positions of City Clerk and City Treasurer, the City Council may, by ordinance, delegate this authority to the City Manager. (Govt. Code § 36510.) It is in the City Council's discretion whether to appoint those positions directly or to delegate that authority to the City Manager. (Gov. Code §34856.) Just as the City Council can adopt an ordinance vesting the City Manager with the authority to make those appointments, it can also adopt an ordinance removing that authority.

City of Lompoc History

In 1962, Lompoc voters elected to have the offices of the City Clerk and Treasurer appointed rather than directly elected. (Resolution 1326.) Following that election, the offices of the City Clerk remained appointed by the City Council until January 1, 2000. Effective that date, the City Council decided to make the office of the City Clerk appointed by the City Administrator (City Manager) pursuant to Ordinance No. 1450(99).

With respect to the City Treasurer position, on May 18, 2004, the City Council directed City staff to consolidate the City's Treasury department with the City's Management Services department. That direction was provided in response to the then-City Treasurer's announcement of her upcoming retirement.

The City formally decided to consolidate the functions of the City Treasury department with the Management Services department on June 15, 2004. That consolidation merged the duties of the previously Council-appointed City Treasurer position with the City Manager-appointed Management Services Director/Finance Director position. (As the City Council is aware, the consolidated position still serves under the City Manager.) The Lompoc Municipal Code was amended several months later effective on March 18, 2005 (by Ordinance No. 1505(05)) to reflect that the City Treasurer would serve under the direction of and at the pleasure of the City Administrator (City Manager). (LMC § 2.12.030(E).)

The responsibility of a City Treasurer is to ensure the fiduciary responsibilities of the City are met. The City Treasurer ensures City funds are kept in secure deposit accounts and are invested prudently and in accordance with state law and government financial accounting practices. The City Treasurer must also, at least once each month, submit to the legislative body and City Clerk a written report and accounting of all City receipts, disbursements, and fund balances. (Government Code sections 41001 to 41007.)

City Manager Appointment/Removal Authority of City Clerk and Management Services Director/Finance Director/Treasurer Under Lompoc Municipal Code and State Law

The Lompoc Municipal Code provides the City Manager has the authority to “[a]ppoint, discipline, and remove the City Clerk, the City Treasurer, and all officers and employees of the City under the jurisdiction of the City Administrator.” (LMC § 2.12.030(E).) This is consistent with the authority traditionally provided to the position of city manager in a city manager form of government, where that position has the authority to appoint and remove city employees, including department heads.

Under the Government Code provisions defining a city manager form of government, a city council shall “define the powers and duties of the city manager.” (Govt. Code § 34852.) The city manager “may appoint and dismiss the chief of police and other subordinate appointive officers and employees except the city attorney.” (Govt. Code § 34856.) Any City adopting the city manager form of government may abolish it in the manner it was adopted. (Govt. Code § 34858.)

Taken together, this means the City Council has the authority to amend the Municipal Code to grant to the City Council the power of appointment and/or removal of department head positions, including the position of Management Services Director/ Finance Director/ City Treasurer.

As a practical note, the predominant arrangement in California is for the City Manager to have appointment authority over all department heads. A less common approach is for the appointment and removal of department heads by the City Manager subject to the approval of the City Council. We are not aware of any cities where only one department head is appointed directly by the City Council rather than the City Manager.

Fiscal Impact:

Fiscal impacts would depend upon the direction given to staff by the City Council. In the opinion of the City's auditor and the City Manager, it is not a recommended practice for a financially-related position to be appointed/removed by the elected officials, as it could lead to political influence on the safekeeping and prudent accounting of public funds.

Conclusion:

The City Council is requested to provide further direction to staff concerning this matter, if desired.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jeff Malawy", is written over a horizontal line.

Jeff Malawy
City Attorney