

**AGENDA  
REGULAR MEETING  
CITY OF BANNING  
BANNING, CALIFORNIA**

January 28, 2014  
5:00 p.m.

Banning Civic Center  
Council Chambers  
99 E. Ramsey St.

**ADDENDUM**

**VII. REPORTS OF OFFICERS**

1. Proposal to Amend Municipal Code to Vest the Power of Appointment/  
Removal of City Personnel in the City Council  
Staff Report ..... 243

Posted at 10:30 a.m approx.

Date: January 25, 2014

*Maria A. Calderon*  
*City Clerk*

*The City of Banning promotes and supports a high quality of life that ensures a safe  
and friendly environment, fosters new opportunities and provides responsive,  
fair treatment to all and is the pride of its citizens*

## CITY COUNCIL AGENDA

**Date:** January 28, 2014

**TO:** City Council

**FROM:** David J. Aleshire, Aleshire & Wynder, City Attorney

**SUBJECT:** Proposal to Amend Municipal Code to Vest The Power of Appointment/Removal of City Personnel in the City Council

### **I. INTRODUCTION.**

At the conclusion of the City's last Council meeting of 2013, on December 10, 2013, Councilmember Miller requested preparation of a report on the City Council's ability to approve the appointment of the position of Chief of Police. The Council directed that the City Attorney bring back a report on this subject.

It was not entirely clear what the scope of this proposal might include: (i) interim and permanent positions, (ii) other management positions, (iii) appointment and termination, and (iv) whether the power would merely be a veto over the City Manager's appointee?

### **II. BACKGROUND.**

#### **A. Banning Past Practice**

Since at least 1965, the City Manager has held the power to appoint and remove department heads and all city personnel. This is generally known as a council-manager form of government, where the City Manager appoints and removes city personnel and oversees day-to-day city operations, but ultimately reports to the Council.

It has been proposed that the City may wish to amend the municipal code to grant the power of appointment and/or removal of the chief of police or maybe other department heads to the City Council.

The Banning Municipal Code currently provides that the City Manager has the power to "appoint, promote, demote and remove any officers and employees of the city except the city clerk, city treasurer and city attorney." (BMC § 2.08.080(C).)

The Municipal Code also provides: "The city council and its members shall deal with the administrative services of the city only through the city manager, except for the purpose of inquiry; and neither the city council nor any member thereof shall give orders to any subordinate of the city manager." (BMC § 2.08.110.) This provision is common in municipal codes throughout the state, and is generally known as a provision against "councilmanic interference".

It has been proposed to amend the municipal code to grant the City Council the power to appoint and/or remove certain employees, presumably requiring an amendment to section 2.08.080(C) of the BMC.

B. State Law

By way of background, state law describes the procedures for a city council of a general law city to establish its form of government. (*See* Govt. Code § 36501.) One such form of government is the "council-manager" form, where the city manager is granted authority over management of the city, and the city council focuses on policy-making. (*See* Govt. Code §§ 34851-34859.) The City Council "define[s] the powers and duties of the city manager" by ordinance. (Govt. Code § 34852.) This broad authority encompasses the traditional city manager position but some cities have actually changed the title of the chief executive position of the City to City Administrator.

The government code does not use the label city administrator - rather it leaves broad flexibility for defining the authority of the City Manager. While the city manager and city administrator terms are used interchangeably at times, there has developed a difference in practice. The consensus among local government officials is that the key distinction between city manager and city administrator systems lies in the power to appoint and remove city personnel.<sup>1</sup> Generally, a council-administrator system vests the power of appointment and removal of city personnel in the City Council [normally only applies to department heads and often only a veto power]. However, the title of the position is not determinative.

Thus, depending on the type of changes made by the Council, the system could shift towards more of what is in practice, a council-administrator system whether the title is actually changed or not. Nothing in the Government Code prohibits such a system.<sup>2</sup> Under the Government Code, a city council may "define the powers and duties of the city manager" as it chooses, so presumably a council could limit the authority of its "manager" to administrative duties. (Govt. Code § 34852.)

Although the choice here is clearly a policy choice for the City Council, the City Attorney would offer two comments for the Council's consideration. First, although the title City Manager or City Administrator does not reveal the actual power of the position,<sup>3</sup> in general our experience is that the predominant arrangement in California reflects the current Banning structure: appointing power resides in the City Manager, and a non-interference clause limiting the City Council from interfering with administration. Secondly, in a recent recruiting situation in a City Administrator-City, the recruiter expressed the opinion that it would be easier to find candidates

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<sup>1</sup> *See, e.g.*, CEB, *Municipal Law Handbook*, § 1.182; *see also* Ammons, David N. "City Manager and City Administrator Role Similarities and Differences: Perception Among Person Who Have Served as Both" *The American Review of Public Administration*, vol. 38, no. 1(March 2009): pp. 24-40.

<sup>2</sup> The rule for charter cities is somewhat distinguishable. Nothing precludes a charter city from creating a city administrator position. Charter cities that have chosen such a form of government typically assign to the city administrator the day-to-day operations of the city, but retain for the council significant authority over personnel matters (e.g., hiring and firing of department heads, financial transactions, contracts, and similar matters) that would be within the purview of a manager in the traditional council-manager form of government.

<sup>3</sup> As demonstrated by the examples below, the City Manager/City Administrator dicotomy is not clear and various jurisdictions demonstrate a wide variety of legal structures.

for a City Manager position rather than City Administrator as the City Manager position has more prestige within the profession.

### III ISSUES TO REVIEW TO DEVELOP ORDINANCE

#### Information Required:

If the Council wishes to consider a change in the personnel system, the City Attorney's office could provide a draft ordinance with the Council's proposed amendments for its review. However, we need the following information to prepare the draft ordinance:

1. Chief of Police only or all Department Heads. Which positions would this ordinance apply to? Does the Council intend for this to apply only to the police chief or other department heads as well?
2. Appointment and Removal. Will the Council shift the appointment power only or does this include removal power as well? Does it apply to interim appointments to these positions?
3. Veto Power Only. Does the Council only want veto power so that City Manager will solicit and nominate appointees?
4. City Administrator. Does the Council want to change the title of the position to City Administrator? ?
5. Reporting. Who will the department heads/appointees report to on a day-to-day basis, the City Council or the City Manager?

### IV. SAMPLES OF OTHER JURISDICTIONS

To assist the Council in answering these questions, we have provided the following examples of council-administrator or hybrid systems from other cities. Notably, each of these cities have a municipal code provision prohibiting "councilmanic interference":

1. **Duarte:** The City Manager appoints and removes all city personnel (with the exception of the city attorney, city clerk and city treasurer), but the City Council must approve appointments of department heads. This essentially gives the City Council "veto power" over the appointment of department heads. (Exhibit B.)
2. **Lawndale:** The City Manager recommends to the city council the appointment, promotion, demotion or removal of department heads or other at will employees identified by resolution for the City Council's approval. But the City Manager appoints, promotes, disciplines, demotes or removes all subordinate personnel. (Exhibit C.)
3. **Huntington Beach (charter city):** The City Manager appoints and removes all city personnel, but the City Council must first approve appointment and removal of department heads. (Exhibit D.)
4. **Bell (charter):** The Chief Administrative Officer appoints and removes all personnel except as specifically provided in Charter where appointment is by the Council (this exception includes the city attorney, city clerk and city treasurer). However, the City Manager must obtain approval for appointment or removal of department heads. (Exhibit E.)

**FISCAL DATA:** Unclear. This will require further analysis once the Council decides whether and how to amend the municipal code.

**RECOMMENDED BY:**

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David J. Aleshire, City Attorney

## EXHIBIT "A"

## EXHIBIT A

### PROS AND CONS OF CITY MANAGER VS. COUNCIL AS APPOINTED AUTHORITY

While the City Attorney's office has no position on this issue, having worked with both systems, the following are arguments we have heard for and against each approach:

	<u><i>Manager Appointment</i></u>	<u><i>Council Appointment</i></u>
<u><i>Pros</i></u>	<p>(1) The City Manager's capability to execute policy is enhanced by the power to appoint or remove department heads. Employees are more responsive to City Manager, so that manager can be held responsible to implement council policies</p> <p>(2) Key personnel actions may be accomplished more quickly and easily.</p> <p>(3) The City may recruit better City Manager candidates, who are attracted to the City Manager position for the greater authority it allows.</p> <p>(4) The individual making appointment/removal decisions is more likely to be trained and have experience in human resources.</p> <p>(5) Tradition: This is the historical system implemented by the City, and widely used by the vast majority of cities.</p>	<p>(1) Council can assure that department heads responsiveness to public is of the highest importance.</p> <p>(2) Greater checks and balances over City Manager.</p> <p>(3) As elected officials, the City Council presumably has a more understanding of the qualifications the voters want to see in their department heads.</p>
<u><i>Cons</i></u>	<p>(1) Delegates appointment power to a single person, which may be less considered than the judgments of three or more.</p> <p>(2) The City Council has little input on the recruitment, appointment and dismissal process.</p> <p>(3) The City Manager has a more indirect connection to the voters and is therefore less accountable to the voters.</p>	<p>(1) Appointment/dismissal will likely require more time and documentation, and many elected officials do not have the professional background and/or perspective in human resources.</p> <p>(2) Increased risk of councilmanic interference in day-to-day operations of city and personnel actions may become politicized. Employee decisions might be driven by politics rather than employee performance.</p> <p>(3) May lose good candidates for department head positions who are</p>

	<i><b>Manager Appointment</b></i>	<i><b>Council Appointment</b></i>
		<p>concerned that their position could be compromised after each election.</p> <p>(4) Potential loss of institutional knowledge with the increased risk of turnover.</p> <p>(5) The City Administrator position may be less appealing as a career opportunity. Additionally, it can be difficult for any administrator to be effective in managing without hiring/firing authority.</p>



## EXHIBIT "B"

## 2.12.090 Powers and duties.

The city manager shall be the administrative head of the government of the city under the direction and control of the city council except as otherwise provided in this chapter. He shall be responsible for the efficient administration of all the affairs of the city which are under his control. In addition to his general powers as administrative head, and not as a limitation thereon, it shall be his duty and he shall have the powers set forth in the following subsections:

- (a) **LAW ENFORCEMENT.** It shall be the duty of the city manager to enforce all laws and ordinances of the city and to see that all franchises, contracts, permits and privileges granted by the city council are faithfully observed. For the purpose of law enforcement, the city manager is hereby designated as director of public safety of the city. As such director, and without limiting the generality of the foregoing grant of power with respect to law enforcement, the city manager shall have the authority:
  - (1) To act pursuant to sections 41601 and 38791 of the Government Code of the state;
  - (2) To establish any and all public safety functions and necessary rules and regulations;
  - (3) To appoint peace officers pursuant to the provisions of Section 830 of the Penal Code;
  - (4) To issue weapons' permits pursuant to Section 12050 of the Penal Code; provided, that the exercise of this power shall be dependent upon adoption of a resolution by the city council authorizing such exercise;
  - (5) To issue indicia of authority, such as badges, identification, uniforms, or other insignia of peace officer status; and
  - (6) To perform any other such duties as may be assigned by the city council.
- (b) **AUTHORITY OVER EMPLOYEES.** It shall be the duty of the city manager, and he shall have the authority to control, order and give directions to all heads of departments and to subordinate officers and employees of the city under his jurisdiction through their department heads.
- (c) **POWER OF APPOINTMENT AND REMOVAL.** It shall be the duty of the city manager to, and he shall appoint, remove, promote and demote any and all officers and employees of the city, except the city attorney, the city clerk, and the city treasurer, subject to all applicable personnel ordinances, rules and regulations; provided, however, that any appointment of a department head shall be subject to concurrence by a majority vote of the city council.
- (d) **ADMINISTRATIVE REORGANIZATION OF OFFICES.** It shall be the duty and responsibility of the city manager to conduct studies and effect such administrative reorganization of offices, positions or units under his direction as may be indicated in the interest of efficient, effective and economical conduct of the city's business; provided, however, that any major administrative reorganization at the department head level shall be subject to concurrence by a majority vote of the city council.
- (e) **ORDINANCES.** It shall be the duty of the city manager and he shall recommend to the city council for adoption such measures and ordinances as he deems necessary.
- (f) **ATTENDANCE AT COUNCIL MEETINGS.** It shall be the duty of the city manager to attend all meetings of the city council unless at his request he is excused therefrom by the mayor individually or the city council, except when his removal is under

consideration.

- (g) **FINANCIAL REPORTS.** It shall be the duty of the city manager to keep the city council at all times fully advised as to the financial condition and needs of the city.
- (h) **BUDGET.** It shall be the duty of the city manager to prepare and submit the proposed annual budget and the proposed annual salary plan to the city council for its approval.
- (i) **EXPENDITURE CONTROL AND PURCHASING.** It shall be the duty of the city manager to see that no expenditures shall be submitted or recommended to the city council except on approval of the city manager or his authorized representative. The city manager, or his authorized representative, shall be responsible for the purchase of all supplies for all the departments or divisions of the city.
- (j) **INVESTIGATIONS AND COMPLAINTS.** It shall be the duty of the city manager to make investigations into the affairs of the city and any department or division thereof, and any contract or the proper performance of any obligations of the city. Further, it shall be the duty of the city manager to investigate all complaints in relation to matters concerning the administration of the city government and in regard to the service maintained by public utilities in the city.
- (k) **PUBLIC BUILDINGS.** It shall be the duty of the city manager and he shall exercise general supervision over all public buildings, public parks, and all other public property which are, under the control and jurisdiction of the city council.
- (l) **ADDITIONAL DUTIES.** It shall be the duty of the city manager to perform such other duties and exercise such other powers as may be delegated to him from time to time by ordinance or resolution or other official action of the city council.

*City Manager's Office, 1415 1st St., S.W.,*

## 2.12.100 Internal relations.

- (a) **COUNCIL-MANAGER RELATIONS.** The city council and its members shall deal with the administrative services of the city only through the city manager, except for the purpose of inquiry, and neither the city council nor any member thereof shall give orders or instructions to any subordinates of the city manager. The city manager shall take his orders and instructions from the city council only when sitting in a duly convened meeting of the city council and no individual councilman shall give any orders or instructions to the city manager.
- (b) **DEPARTMENTAL COOPERATION.** It shall be the duty of all subordinate officers and the city clerk, city treasurer, and city attorney to assist the city manager in administering the affairs of the city efficiently, economically and harmoniously.
- (c) **ATTENDANCE AT COMMISSION MEET-INGS.** The city manager may attend any and all meetings of the planning commission, recreation and park commission, and any other commissions, boards or committees created by the city council upon his own volition or upon direction of the city council. At such meetings which the city manager attends he shall be heard by such commission, boards or committees as to all matters upon which he wishes to address the members thereof, and he shall inform the members as to the status of any matter being considered by the city council and he shall cooperate to the fullest extent with the members of all commissions, boards or committees appointed by the city council.

*City Manager's Office, 1415 1st St., S.W.,*

## EXHIBIT "C"

## Lawndale Municipal Code

[Up](#)[Previous](#)[Next](#)[Main](#)[Search](#)[Print](#)[No Frames](#)[Title 2 ADMINISTRATION AND PERSONNEL](#)[Chapter 2.08 CITY MANAGER](#)**2.08.090 Specific powers and duties.**

In addition to the city manager's general powers as administrative head of the city government, and not a limitation thereon, it shall be the city manager's duty and he or she shall have the power to:

- A. See that the laws of the state pertaining to the city and all laws and ordinances of the city are duly enforced;
- B. Recommend to the city council the appointment, promotion, demotion, or removal of all heads of departments or other at will employees identified in the applicable central management employee resolution; however, the city manager shall have the ability to discipline all employees identified in the central management employee resolution;
- C. Appoint, promote, discipline, demote, or remove all subordinate officers and employees, transfer employees from one department to another, and consolidate or combine offices, positions, departments, or other administrative units of the city under his or her jurisdiction;
- D. Under the direction and control of the city council, exercise control over and supervise in general all departments and divisions of the city government and all appointive officers and employees thereof, except the city clerk, city attorney and city treasurer;
- E. Attend all meetings of the council and its committees unless excused therefrom by the council;
- F. Recommend to the council for adoption such measures and ordinances as the manager deems necessary or expedient;
- G. Keep the council at all times fully advised of the financial condition and needs of the city;
- H. Prepare and submit to the council the annual budget, and administer it after adoption;
- I. Prepare and recommend to the council a salary plan;
- J. Purchase or cause to be purchased all supplies for all of the departments or divisions of the city. No expenditure shall be submitted or recommended to the council except upon report or approval of the city administrator;
- K. Make investigations into the affairs of the city and any department or division thereof, and any contract or the proper performance of any obligation running to the city;
- L. Investigate all complaints in relation to matters concerning the administration of the government of the city and in regard to the service maintained by public utilities in the city, and see that all franchises, permits and privileges granted by the city are faithfully observed;
- M. Exercise general supervision over all public buildings, public parks, streets and other public property which are under the control and jurisdiction of the council;
- N. Devote his or her entire time to the duties and interests of the city;
- O. Make reports and recommendations as may be desirable or as requested by the council;
- P. Serve in any appointed office or head of department within the city government to which he or she may be qualified when appointed thereto by the council, and hold and perform the duties thereof at the pleasure of the council;
- Q. Perform such other duties and exercise such other powers as may be delegated to him or her from time to time by ordinance or resolution of the council. (Ord. 950-05 § 1; Ord. 877-00 § 1 (part); Ord. 848-98 §§ 3—6; prior code § 2-53)



[Lawndale Municipal Code](#)[Up](#)[Previous](#)[Next](#)[Main](#)[Search](#)[Print](#)[No Frames](#)[Title 2 ADMINISTRATION AND PERSONNEL](#)[Chapter 2.08 CITY MANAGER](#)**2.08.080 General administrative duties.**

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The city manager shall be the administrative head of the city government under the direction and control of the city council. The city manager shall be responsible for the efficient administration of all the affairs of the city which are under his or her control. (Ord. 848-98 § 2; prior code § 2-52)

## Lawndale Municipal Code

[Up](#)[Previous](#)[Next](#)[Main](#)[Search](#)[Print](#)[No Frames](#)[Title 2 ADMINISTRATION AND PERSONNEL](#)[Chapter 2.04 CITY COUNCIL](#)**2.04.100 Dealing with administrative services through city manager.**

The council and its members shall deal with the administrative services of the city only through the city manager, except for the purpose of inquiry; and neither the council nor any members thereof shall give orders to any subordinates of the city manager. (Amended during 6/30/96 supplement; prior code § 2-34)



## EXHIBIT "D"

## Huntington Beach Municipal Code

[Up](#)[Previous](#)[Next](#)[Main](#)[Search](#)[Print](#)[No Frames](#)[CHARTER](#)[ARTICLE IV APPOINTIVE OFFICES AND PERSONNEL](#)**Section 401. POWERS AND DUTIES.**

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Except as otherwise provided in this Charter, the City Manager shall be responsible to the City Council for the proper administration of all affairs of the City. Without limiting this general grant of powers and responsibilities, the City Manager shall have the power and be required to:

- (a) Appoint, promote, demote, suspend or remove department heads, officers and employees of the City except elective officers and the Chief of Police. The Chief of Police shall not be appointed or removed until the City Manager shall first have reviewed such appointment or removal with the City Council and have received approval for such appointment or removal by a majority vote of the full City Council.
  - (b) Prepare the budget annually, submit it to the City Council, and be responsible for its administration upon adoption.
  - (c) Prepare and submit to the City Council as of the end of each fiscal year, a complete report on the finances of the City, and annually or more frequently, a current report of the principal administrative activities of the City.
  - (d) Keep the City Council advised of the financial condition and future needs of the City and make such recommendations as may seem desirable.
  - (e) Maintain a centralized purchasing system for all City offices, departments and agencies.
  - (f) Prepare, administer and enforce rules and regulations recommended to and adopted by the City Council governing the contracting for, purchase, inspection, storage, inventory, distribution and disposal of all supplies, materials and equipment required by any office, department or agency of the City government.
  - (g) Be responsible for the compliance by the City with the laws of the State pertaining to the City, the provisions of this Charter and the ordinances, franchises and rights of the City.
- Subject to policy established by the City Council, exercise control of all administrative offices and departments of the City and of all appointive officers and employees, and prescribe such general rules and regulations as deemed necessary or proper for the general conduct of the administrative offices and departments of the City under their jurisdiction.
- (h) Perform such other duties consistent with this Charter as may be required by the City Council.

[Huntington Beach Municipal Code](#)[Up](#)[Previous](#)[Next](#)[Main](#)[Search](#)[Print](#)[No Frames](#)[CHARTER](#)[ARTICLE III ELECTIVE OFFICES](#)**Section 307. NON-INTERFERENCE WITH ADMINISTRATION**

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Except as otherwise provided in this Charter, no member of the City Council shall order, directly or indirectly, the appointment by the City Manager, or by any of the department heads in administrative service of the City, of any person to any office or employment, or removal therefrom. Except for the purpose of investigation and inquiry, the members of the City Council shall deal with the administrative service under the jurisdiction of the City Manager solely through the City Manager, and no member of the City Council shall give orders to any subordinate of the City Manager, either publicly or privately.

No elected department head or staff of the Office of the elected department head shall be a member of the management negotiation team for the purposes of negotiations of memorandums of understanding with the employee bargaining units.

## EXHIBIT "E"

The City Council may by ordinance or resolution provide a method for the sale or exchange of real or personal property not needed in the City service or not fit for the purpose for which intended, and for the conveyance of title thereto.

Contracts for the sale of the products, commodities or services of any public utility owned, controlled or operated by the City may be made by the manager of such utility or by the head of the department or Chief Administrative Officer upon forms approved by the Chief Administrative Officer and at rates fixed by the City Council.

The provisions of this Section shall not apply to services rendered by any person in the employ of the City at a regular salary.

## **ARTICLE VI - CHIEF ADMINISTRATIVE OFFICER**

Section 600. CHIEF ADMINISTRATIVE OFFICER. There shall be a Chief Administrative Officer who shall be the chief administrative officer of the City. The Chief Administrative Officer shall be appointed by the affirmative vote of at least a majority of all members of the City Council and shall serve at the pleasure of the City Council, provided, however, that the Chief Administrative Officer shall not be removed from the office except as provided in this Charter. The Chief Administrative Officer shall be chosen on the basis of executive and administrative qualifications.

Section 601. RESIDENCE. The Chief Administrative Officer need not be a resident of the City at the time of appointment, but shall within 90 days after appointment, establish residence within such distance from the City as the City Council may establish, unless such period is extended by the City Council, and thereafter maintain residence within such distance during tenure of office.

Section 602. ELIGIBILITY. No person shall be eligible to receive appointment as Chief Administrative Officer while serving as a member of the City Council nor within one year after ceasing to be a member of the City Council.

Section 603. COMPENSATION AND BOND. The Chief Administrative Officer shall be paid a salary commensurate with the responsibilities of chief administrative officer of the City. The Chief Administrative Officer shall furnish a corporate surety bond conditioned upon the faithful performance of duties in such form and in such amount as may be determined by the City Council.

Section 604. POWERS AND DUTIES. The Chief Administrative Officer shall be the administrative head of the City Government. Except as otherwise provided in this Charter, the Chief Administrative Officer shall be responsible to the City Council for the proper administration of all affairs of the City. Without limiting the foregoing general grant of powers, responsibilities and duties, subject to the provisions of this Charter, including the personnel system provisions thereof, the Chief Administrative Officer shall have power and be required to:

(a) Appoint, and may promote, demote, suspend or remove, all department heads, officers and employees of the City except elective officers and those department heads, officers and employees the power of whose appointment is vested by this Charter in the City Council. The Chief Administrative Officer may authorize the head of any department or office to appoint or remove subordinates in such department or office. In case of the appointment or removal of any department head, the Chief Administrative Officer shall first review such appointment or removal with the City Council and obtain its approval.

(b) Prepare the budget, submit to the City Council, and be responsible for its administration after its adoption.

(c) Prepare and submit to the City Council as of the end of each fiscal year, a complete report on the finances and administrative activities to the City for the preceding fiscal year.

(d) Keep the City Council advised of the financial condition and future needs of the City and make such recommendations as may seem desirable.

(e) Establish a centralized purchasing system for all City offices, departments and agencies.

(f) Prepare rules and regulations governing the contracting for purchasing, inspection, storing, inventory, distribution and disposal of all supplies, material and equipment required by ordinance, and administer and enforce the same after adoption.

(g) See that the laws of the State pertaining to the City, the provisions of this Charter and the ordinances, franchises and rights of the City are enforced.

(h) Exercise control of all administrative offices and departments of the City and of all appointive officers and employees except those directly appointed by the City Council and prescribe such general rules and regulations as deemed necessary or proper for the general conduct of the administrative offices and departments of the City under jurisdiction of the Chief Administrative Officer.

(i) Perform such other duties consistent with this Charter as may be required by the City Council.

**Section 605. MEETINGS.** The Chief Administrative Officer shall be accorded a seat at all meetings of the City Council and of all boards and commissions and shall be entitled to participate in their deliberations, but shall not have a vote. The Chief Administrative Officer shall receive notice of all special meetings of the City Council, and of all boards and commissions.

**Section 606. ASSISTANT CHIEF ADMINISTRATIVE OFFICER.** The City Council may direct the Chief Administrative Officer to appoint an Assistant Chief Administrative Officer.

If there is no Assistant Chief Administrative Officer and the position of Chief Administrative Officer becomes vacant or the Chief Administrative Officer is absent or is incapacitated to such an extent the Chief Administrative Officer cannot perform the duties of the office, then the Mayor, or if absent or unable to act, the Vice Mayor, or if absent or unable to act, the senior member of the City Council temporarily shall act as the administrative head of the City until the City Council fills the position of Chief Administrative Officer or appoints an Assistant Chief Administrative Officer.

**Section 607. REMOVAL.** The Chief Administrative Officer may be removed at any regular meeting of the City Council upon the affirmative vote of a majority of all the members of the City Council. However, the Chief Administrative Officer may not be removed, nor shall the notice described in Subsection (a) be given for a period of 90 days before or following any municipal election in which a member of the City Council is elected.

The procedure for removal is as follows:

(a) The Chief Administrative Officer must be given a written notice stating the Council's intention to remove the Chief Administrative Officer from office. The written notice must be given at least 30 days before the effective date of removal. The notice must state the reason for the removal.

(b) The duties of the Chief Administrative Officer may be suspended immediately upon receipt of the notice described in Subsection (a). The compensation paid to the Chief Administrative Officer must continue until removal is completed as prescribed within this Section.

(c) In removing the Chief Administrative Officer, the City Council may use its sole and uncontrolled discretion, and its action shall be final.

**Section 608. NON-INTERFERENCE WITH ADMINISTRATIVE SERVICE.** Except as otherwise provided in this Charter, neither the Council nor any of its members shall interfere with the powers and duties of the Chief Administrative Officer, nor shall they directly or indirectly order the Chief Administrative Officer or subordinates to appoint or remove any person to or from any office or employment. Except for the purpose of inquiry, investigation or report, the City Council and its members shall deal with the administrative service under the jurisdiction of the Chief Administrative Officer solely through the Chief Administrative Officer, and neither the City Council nor any member thereof shall publicly or privately give orders to any subordinate of the Chief Administrative Officer.

## **ARTICLE VII - OFFICERS AND EMPLOYEES**

**Section 700. ENUMERATION.** In addition to the City Council and Chief Administrative Officer, the officers and employees of the City shall consist of a City Attorney, a City Clerk, a City Treasurer, such other officers, assistants, deputies, and employees as the City Council may provide by resolution.

When the positions are not incompatible, the City Council may combine in one person the powers and duties of two or more offices; provided, however, that the same person shall not hold the positions of City Treasurer and be responsible for the functions of finance at the same time.

**Section 701. APPOINTMENT AND REMOVAL.** The City Attorney, City Clerk, and City Treasurer shall be appointed by and may be removed by the affirmative votes of at least a majority of all the members of the City Council. All other officers, department heads and employees of the City shall be appointed and may be removed as elsewhere in this Charter provided.

**Section 702. ADMINISTRATIVE FUNCTIONS.** The City may provide through its own staff for all departments as may be determined necessary to carry out the business of the City. The City may provide the following functions and services: finance, public works, water, building & safety, public safety and city planning. The City Council may provide by ordinance or resolution not inconsistent with this Charter for the organization, conduct and operation of the functions of the City as established by this Charter, for the creation of additional functions, departments, divisions, offices and agencies and for their consolidation or alteration. It may further provide by ordinance or resolution for the assignment and reassignment of functions, duties, offices and agencies to offices and departments, and for the number, titles, qualifications, powers, duties, and compensation of all officers and employees, consistent with this Charter. Each department so created shall be headed by a department head.

**Section 703. CITY ATTORNEY. POWERS AND DUTIES.** To become and remain eligible for City Attorney the person appointed shall be an attorney at law duly licensed as such under State law and shall be chosen on the basis of legal qualifications,