

# CITY OF SAN JOSE—MEMORANDUM

TO Honorable Mayor and Councilmembers

FROM Councilwoman Lu Ryden

SUBJECT CHARTER REVIEW COMMITTEE RECOMMENDATIONS

DATE June 17, 1986

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APPROVED

DATE

6-17-86

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My thanks to the Charter Review Committee members for the many hours spent in study, discussion, and consideration of the charges requested by our City Council. The Committee has truly given of themselves on behalf of their community.

Following a careful study of the Committee report, I applaud the important recommendation to continue the City Manager/City Council form of government. I fully support the excellent recommendations for the Office of Auditor.

Regarding the remainder of the recommendations, several important criteria would logically apply:

- 1) If the City Manager form of government is to be successful, his responsibility should not be weakened.

Accordingly:

Recommendations for Sections 411.1 and 901 should not be added to the Charter.

- 2) As in any constitutional document, only necessary details should be locked in. That which can be carried out by council action (ordinance/city code) should not be written into the Charter.

Accordingly:

Recommendations for Section 407, 502, Section 700, Section 808, Section 809 and Section 1204 should not be added to the Charter.

- 3) It is extremely important to keep perception of politics or the possible future use of politics out of a Charter.

Accordingly:

Recommendations for Section 502, Section 700, Section 808, Section 901 and Section 1204 should not be added to the Charter.

Regarding Section 407 (listed under criteria #2), we currently have a Salary Setting Commission which has adequately handled salary recommendations without use of the Charter. Adding the recommended wording to the Charter not only removes current options, it may also discourage future council candidates.

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SAN JOSE CITY CLERK

Date: June 3, 1986  
To: Honorable Mayor and Members of the San Jose City Council  
From: Charter Review Committee  
Subject: Majority Report of the Charter Review Committee

6-17-86

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On February 19, 1985, the City Council formally established the Charter Review Committee, charging us with the responsibility of:

1. evaluating the existing city manager/city council form of government versus the mayor/city council form of government
2. reviewing the current powers and duties of the mayor, council, manager, auditor and finance department
3. reviewing the charter's requirements for fiscal administration
4. reviewing the charter's requirements for investment of city funds.

During the last 16 months, we met twenty-six times and undertook an extensive evaluation of the city's current form of government and the powers given to city officials under the current charter. We explored specific incidents which illustrated both the strengths and weaknesses of San Jose's current municipal operations and compared the governmental structures of similar cities. We evaluated testimony from many city officials -- including the city manager, city auditor, members of the council and former city officials -- and sought the expertise of municipal consultants and academicians. We listened to testimony from the public at three separate public hearings and tapped the libraries of national organizations dedicated to city governments. We debated our findings in subcommittees, in full committee meetings and with each other.

We now respectfully submit our findings and recommendations to you.

### Summary of Findings

We believe that the current city manager/city council form of government can be effective in providing the citizens of San Jose with a responsive and efficient government and that a major structural change such as a strong mayor form of government is not warranted at this time.

However, we have determined that several reforms to the charter are critically needed if elected officials are to fully carry out the heavy responsibilities to the people of San Jose intended by the charter. These reforms, which comprise the recommendations of the Charter Review Committee, are based on two major problems which appear to us as undeniably present in the current system of government:

1. The city administration often has significantly more influence in determining city policy than the citizen's elected representatives, despite the charter's explicit directive that the council be the policy-setting body of San Jose.

Specifically, we found that:

- a. Elected officials are forced to rely solely on the information and recommendations provided to them by the administration to govern the city, as they have little or no independent and expert sources of information. It is the city administration who evaluates and interprets proposals made by the city council, and the administration who has the staff and information to recommend support or revision. Because so few checks and balances realistically exist to assure the council of the administration's objectivity, we found that the council sometimes lacks confidence in the information provided by the administration, irrespective of its quality.

- b. The city's budget -- the most important implementor of a city's priorities and policies -- is primarily determined by the city administration. When the council disagrees with the manager's budget recommendations, it is difficult if not impossible for the council to submit alternatives, since it lacks the expert analytical staff available to the city manager.

- c. The recent \$60 million bond loss has caused some citizens to question whether or not administrative decisions, not council policy, sometimes determines the course of action for the city. Under the charter, the administration is to carry out the policies set by the city council. However, the bond loss has raised questions about the administration's commitment to follow the council's investment policies and keep the council informed of the financial status of the city.

2. The city charter does not currently provide the city council with adequate authority to assure that city department heads reflect the goals and objectives of the citizens.

The city council has limited opportunity to outline specific expectations for city departments or participate in the selection of department heads. As a result, the council does not play a direct role in shaping the goals or administration of the city departments. Because it is through the city departments and their personnel that city services are provided to the citizens, the council needs more participation shaping the direction and leadership of the city staff.

### **Recommended Charter Changes**

The Charter Review Committee believes that changes to the charter could significantly address the problems outlined above. With these needs in mind, the committee proposes reforms which center on the following three areas:

#### Greatly enhance the quality and independence of information provided to the city council and public.

1. Establish an independent Office of Policy Analysis reporting to the city council to assist the council in evaluating administrative proposals as well as formulating new city policy. The Office of Policy Analysis would be staffed with independent professionals capable of providing the council with expert evaluation of administrative recommendations as well as information needed by the council to formulate sound policy recommendations. (Section 809)
2. Establish a Public Information Office within the mayor's office to require the mayor to be the primary communicator of public policy to the news media and citizenry. (Section 808)
3. Require the council to contract with an independent audit firm to conduct a performance audit of the city auditor's office at least every two years. Since the council depends on the auditor's independent evaluations of the city's administrative performance and fiscal procedures, it is important to regularly assess the performance of the auditor's office itself. (Section 805.2)

Increase the ability of the mayor and city council to carry out their responsibility of setting budget policy and reviewing fiscal and administrative activities.

1. Assure that the city's budget priorities be set by the city council and the mayor, rather than the council simply reacting to the budget submitted by the city manager as is currently the system. Require the mayor to deliver a budget message outlining fiscal priorities and recommendations to the city council for consideration. Require all city council appointees to submit directly to the mayor and the council their budget requests for the upcoming fiscal year for every city department under his or her administration. (Section 1204)
2. Require the city manager to provide the city council with a complete report on the finances and administrative activities of the previous year in order to provide the council with a clear and complete understanding of the fiscal health of the city. (Section 701)
3. Require that when the mayor makes recommendations to increase the budget or curtail city services, he or she will provide specific recommendations to finance the increases and reasons for city service curtailment. (Section 502)

Increase the accountability of the administration and the elected officials to the citizens of San Jose.

1. Increase the scope and authority of the city auditor to undertake, at the council's direction, performance audits of the city administration. Provide the city auditor with the access and authority to examine any document, file, record, etc. within the city administration. Increase the scope of financial audits performed by the auditor to provide the council with fiscal information in a thorough and timely manner. (Section 805)
2. Enhance the participation of the city council in setting goals for city departments and hiring key personnel. Require the council to submit written statements of policy for each city department, setting the goals and objectives each department is to accomplish on behalf of the public. When candidates for a department head position are being considered, the council shall formulate questions to elicit responses from each prospective appointee to determine the compatibility of the candidate with the city's goals and objectives. No appointment of a department head will be made by the city manager without an affirmative vote of the majority of the council. (Section 411.1)

3. Charge the mayor with the responsibility of nominating the candidates for city manager when a vacancy occurs. Doing so increases the likelihood that candidates for city manager will reflect the priorities of the citizens. (Section 700)

4. Require that the city council and mayoral salaries recommended by the Salary Setting Commission reflect the full-time nature of the office, thereby helping assure that city council members can concentrate solely on their responsibilities to the citizens, rather than be forced to split their attention with other jobs. (Section 407)

5. Require the mayor to address the citizens of San Jose at least once a year, describing the current status of city affairs and articulating the policy plans which the mayor has for the ensuing year. (Section 502)

#### **Additional Charter Changes (minor)**

Other minor charter revisions were also adopted which are technically necessary to carry out the intent of the above recommendations, or are "housekeeping" revisions to the current charter.

Section 411: Modifies existing language in the charter to reflect the proposed Section 411.1, relating to changes in the city council's involvement in the manager's hiring of department heads.

Section 805.1: Provides that the City Auditor will appoint all professional and technical employees serving in the Auditor's office, and that these appointments will be unclassified positions. All clerical staff in the auditor's office will be appointed by the Auditor, subject to Civil Service provisions already present in the charter.

Section 807: Removes the Health Department and Building Department from the list of Charter departments established for the city, since both of these departments are currently divisions of Neighborhood Preservation.

Section 1101: Adds to the unclassified service the Public Information Officer and the Head of the Office of

Policy Analysis, as well as all persons employed in both offices except for clerical personnel. The professional and technical employees in the Office of the City Auditor are also to serve as unclassified employees.

## Conclusion

Reforming a city charter is a profound undertaking distinct from the mere modification of an organization chart. It is a project which goes to the heart of the nature of government.

It is our sincere hope that these charter changes will help make San Jose's city manager/city council form of government more responsive and more effective in meeting the needs of a complex, diverse and evolving city.

Respectfully submitted,

  
Frank Fiscalini, Chairman

Members of the Majority of the Charter Review Committee

CHARTER REVIEW COMMITTEE

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June 4, 1986

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Section 407. The Council; Compensation

Each member of the Council, including the Mayor, shall be paid as compensation for his or her services as a member of the Council, for each calendar month during which he or she is a member of the Council, a monthly salary which shall be established by ordinance adopted pursuant to and in accordance with the provisions hereinafter set forth in this Section. No salary shall be established for any member of the Council, including the Mayor, except as provided in this Section.

~~On or before July 30, 1981, and~~ Between March 1st and April 30th of every odd-numbered year, ~~thereafter,~~ the Council Salary Setting Commission shall recommend to the Council the amount of monthly salary which it deems appropriate for the members of the Council, including the Mayor, for the two year period commencing July 1 of that odd-numbered year. The amount recommended for each member of the Council shall be the same, except that the amount recommended for the Mayor may exceed that of the other members of the Council. The monthly salary shall be in an amount which takes into account the full time nature of the office and which is commensurate with salaries then being paid for other public or private positions having similar full time duties, responsibilities and obligations.

No recommendations shall be made except upon the affirmative vote of three (3) members of the Commission. Failure of the Commission to make a recommendation in any year within the time prescribed shall be deemed to mean a recommendation that no change be made.

Section 407 continued

Each biennial recommendation, together with the reasons therefor, shall be made in writing. Before it submits any such recommendation to the Council, the Commission shall conduct at least one public hearing on the matter. When such a recommendation has been submitted to the Council, it shall not thereafter be amended by the Commission.

The Council shall, by ordinance, which shall be subject to the referendum provisions of this Charter, adopt the salaries as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount. In adopting the Salary Setting Ordinance the Council shall set a salary which takes into account the full time nature of the office and which is commensurate with the salaries then being paid for other public and private positions having similar full time duties, responsibilities and obligations.

No more than one salary setting ordinance shall be adopted on the basis of any biennial recommendation, provided that the Council may, at any time, by ordinance, reduce the salaries of the members of the Council, including the Mayor. In any salary setting ordinance adopted hereunder, the salaries for each member of the Council shall be the same, except that the salary of the Mayor may exceed that of the other members of the Council. Salaries established by ordinance adopted pursuant to the provisions of this Section shall remain in effect until amended by a subsequent ordinance adopted pursuant to the provisions of this Section.

Section 407 continued

For each member of the Council, except the Mayor, a sum, as established by the Council Salary Setting Commission, shall be deducted from the salary of such member for each regular meeting of the Council, other than regular adjourned meetings, which he or she fails to attend in each such calendar month; provided, however, that such deduction shall not be made for his or her failure to attend any meeting during which he or she is away on authorized City business, or from which he or she is absent because of his or her own illness or the illness or death of a close family member. ~~His//spouse//parent//child//brother//or//sister/~~ No deduction shall be made from the Salary of the Mayor because of his or her failure to attend any Council meeting.

~~Until/salaries/established/pursuant/to/the/first/ordinance/adopted/pursuant to/the/provisions/of/this/section/become/effective/the/members/of/the/council,including/the/Mayor,shall/continue/to/receive/the/compensation provided/under/this/section/as/it/read/immediately/prior/to/the/effective date/of/this/section/as/it/nw/reads/~~

Section 411. The Council; Interference With Administrative Matters

Neither the Council nor any of its members nor the Mayor shall interfere with the execution by the City Manager of his or her powers and duties, nor in any manner dictate the appointment or removal of any City officers or employees whom the City Manager is empowered to appoint, ~~but~~ except as expressly provided in Section 411.1. However, the Council may express its views and fully and freely discuss with the City Manager anything pertaining to the appointment and removal of such officers and employees.

Except for the purpose of inquiries and investigations under Section 416, the Council, its members and the Mayor shall deal with City officers and employees who are subject to the direction and supervision of the City Manager, the City Attorney, City Auditor, Policy Analyst or City Clerk, solely through the City Manager, City Attorney, City Auditor, Policy Analyst or City Clerk, respectively, and neither the Council nor its members nor the Mayor shall give orders to any subordinate officer or employee, either publicly or privately.

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NEW SECTION

Section 411.1 Department Heads; Policy Objectives; Consent to Hire; Periodic Evaluation.

- (a) The Council shall adopt a written Statement of Policy for each City Department which is under the administration of the City Manager. Said Statement of Policy shall set forth the broad goals, objectives and aspirations to be accomplished by that Department.
- (b) When the position of head of such Department becomes vacant, the Council shall review and, if necessary, amend the previously approved Statement of Policy. The Council also shall adopt a set of questions which are intended to elicit responses from each prospective appointee concerning the goals, objectives and aspirations in the Statement of Policy.

For purposes of this section, the term "department" shall mean any department specified in Charter Section 807 as well as any department created by ordinance pursuant to Charter Section 800.

Prior to appointing any Department head, the City Manager shall submit to the Council, for its review, the responses to the Council's questions submitted by the proposed appointee, and shall seek the Council's advice and consent. The appointment shall be made only if the Council, by the affirmative vote of a majority of its members, advises the City Manager that it concurs with the proposed appointment. This section shall not apply to the appointment of any "acting" department head to serve in an interim capacity.

Section 502. The Mayor; Powers and Duties

The Mayor shall have the following powers and duties:

- (a) The Mayor shall have the power to make recommendations to the Council on matters of policy and program which require Council decision, provided, that if he recommends any increases in the City budget, he shall recommend the method of financing such expenditures, and provided, further, that if he proposes curtailment of service, such recommendations and his reasons therefor shall be specific. He may also, on his own accord, initiate in the community or matters of policy or program which he believes the welfare of the community makes necessary.
- (b) Not less than annually, the Mayor shall address the citizens of the City concerning the current status of City affairs and articulating the policy plans which the Mayor proposes for the City during the ensuing year.
- (c) In addition, the Mayor, at other times during the year, may inform the citizens concerning any matters of policy or program which the Mayor believes are for the welfare of the community.
- (d) If the Mayor recommends any increases in the City budget, the Mayor shall recommend the method of financing such expenditures. If the Mayor proposes the curtailment of any service, the Mayor shall provide specific recommendations and the reasons for the proposal.

Section 502 continued

- (e) ~~(b)~~ The Mayor shall preside at meetings of the Council and shall have a vote as a member of the Council. ~~He~~ The Mayor shall have no veto powers;
- (f) ~~(c)~~ The Mayor shall have authority to preserve order at all Council meetings, to remove or cause the removal of any person from any meeting of the Council for disorderly conduct, to enforce the rules of the Council and to determine the order of business under the rules of the Council;
- (g) The Mayor shall have the power to direct and supervise the Public Information Office of the City.
- (h) ~~(d)~~ The Mayor shall exercise such other powers and perform such other duties as may be prescribed by the Council, provided the same are not inconsistent with this Charter.

Nothing in this Section shall be construed in any way as an infringement or limitation on the powers and duties of the City Manager as Chief Administrative Officer and head of the administrative branch of the City government as prescribed in other sections of this Charter. Except as otherwise ~~herein~~ provided in this Charter, the Mayor shall possess only such authority over the City Manager and the administrative branch as he or she possesses as one member of the Council.

Section 700. Appointment, Term and Compensation

There shall be a City Manager. The Mayor shall nominate one or more candidates for Council consideration for appointment to the position of City Manager. ~~It~~ The City Manager shall be appointed by the Council for an indefinite term. The Council shall fix ~~its~~ the compensation of the City Manager.

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Section 701. City Manager; Powers and Duties

The City Manager shall be the chief administrative officer of the City. He or she shall be responsible to the Council for the administration of City affairs placed in his or her charge by or under this Charter. Without limiting the foregoing general grant of powers, responsibilities and duties, ~~the~~ the City Manager shall have the following powers and duties:

- (a) Subject to the Civil Service provisions of this Charter and of any Civil Service Rules adopted pursuant thereto, and except as otherwise provided elsewhere in this Charter, ~~the~~ the City Manager shall appoint all ~~City~~ officers and employees of the City; and, when he or she deems it necessary for the good of the service, ~~the~~ the City Manager may, subject to the above-mentioned limitations, suspend without pay, demote, discharge, remove or discipline any City officer or employee who under this Charter is appointed by the City Manager;
- (b) Except as otherwise provided elsewhere by this Charter, ~~the~~ the City Manager shall direct and supervise the administration of all departments, offices and agencies of the City;
- (c) ~~The~~ The City Manager shall have the right to attend all meetings of the Council, other than closed executive sessions where ~~the~~ the City Manager or another Council appointee is the subject of discussion, and to take part in its discussions, but not to vote. ~~The~~ The City Manager shall attend all regular and special meetings of the Council

Section 701 continued

unless prevented by illness or physical incapacity or unless his or her absence has been authorized by the Council;

(d) ~~He~~ The City Manager shall be responsible for the faithful execution of all laws, provisions of this Charter, and acts of the Council which are subject to enforcement by ~~him~~ the City Manager or by officers who are under ~~his~~ the City Manager's direction and supervision;

(e) ~~He~~ The City Manager shall prepare and submit the annual budget to the Council, in accordance with the provisions of Section 1204.

(f) ~~He shall submit to the Council a complete report on the finances and administrative activities of the City as of the end of each preceding fiscal year.~~

(f) The City Manager shall submit a complete report on the finances and administrative activities of the City as of the end of the preceding fiscal year to the Council at a public meeting to be held within three (3) calendar months following the close of each preceding fiscal year.

Section 701 continued

The annual report, which shall be personally certified by the City Manager to be accurate and complete shall contain a statement indicating:

- (1) Whether the revenues budgeted for the preceding fiscal year were actually received, and an explanation concerning any material differences between the total revenues budgeted and the revenues actually received;
- (2) The extent to which expenditures budgeted actually were incurred, and an explanation for any material variance between budgeted expenditures and actual expenditures;
- (3) The amount of the financial reserves of the city;
- (4) All other information which, in the opinion of the City Manager, is necessary to provide an accurate and complete picture of the fiscal status and condition of the city.

The report shall be in a form which is susceptible to confirmation by audit. It shall be made available to the public in the Office of the City Clerk.

- (g) ~~At~~ The City Manager shall make such other reports as the Council from time to time may request concerning the operations of City departments, offices and agencies subject to his or her direction and

Section 701 continued

supervision; shall keep the Council fully advised as to the financial condition and future needs of the City; and make such recommendations to the Council concerning the affairs of the City as he or she deems desirable ~~;~~ or as requested by Council.

- (h) ~~At~~ The City Manager shall exercise such other powers, and shall perform such other duties, as are specified in this Charter or may be authorized or required by the Council.
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Section 800. Administrative Organization; General Provisions

Subject to the limitations hereinafter specified in this section, the Council shall have the following powers and duties:

- (a) The Council, in its discretion, may at any time establish such City offices, departments and agencies, in addition to those established by this Charter as it may desire; and shall prescribe the respective functions, powers and duties of such additional offices, departments and agencies. The Council shall also prescribe the respective functions, powers and duties of those departments which are established by Section 807 of this Charter. The Council may at any time add to, take away, reduce or otherwise change the respective functions, powers and duties of any of the above mentioned offices, departments and agencies. The Council may at any time abolish or discontinue any office, department or agency other than those established by this Charter. The Council may also, at any time, prescribe additional functions, powers or duties for those offices and departments specified in Sections 803 to 807, inclusive, and may at any time take away, reduce or otherwise change all or any of such additional functions, powers or duties;
  
- (b) Subject to the limitations hereinafter specified in subsection (c) of this Section, the Council may:
  - (1) Contract with any "public agency" for the exercise or performance by a "public agency" for or on behalf of the City,

Section 800 continued

of any of the powers, duties or functions of any office, department or agency of the City established by or pursuant to the provisions of this article;

- (2) Contract with any "public agency" for the exercise or performance by the City, for or on behalf of any "public agency" of any of the powers, duties or functions of any "public agency";
- (3) Contract with any "public agency" for the joint exercise or performance by such "public agency" and the City, for or on behalf of any "public agency" and/or the City, of any of the powers, duties or functions of any office, department or agency of the City established by or pursuant to the provisions of this article and/or of any of the powers, duties or functions of any "public agency";
- (4) Contract with any "private agency" for the exercise or performance by a "private agency" or jointly by a "private agency" and the City for or on behalf of the City, of any of the powers, duties or functions of any office, department or agency established by or pursuant to the provisions of this article;
- (5) Contract with any "public agency" for the purchase or acquisition by a "public agency" by the City, or jointly by both, for or on behalf of the City, a "public agency" or both,

Section 800 continued

of any real or personal property, or for the construction or making by a "public agency," by the City, or jointly by both, for or on behalf of the City, a "public agency" or both, of any public works project or public improvement.

Each such contract, excepting contracts for specific improvements or projects, and also excepting contracts for specific studies or reports to be completed within five years, shall be terminable by the City at any time following the expiration of one (1) year from and after the date of such contract or at any time following the expiration of such shorter period of time as may be specified in the contract.

In case of and during the term of any such contract, any provisions of this Charter, or of any ordinance, resolution or other City regulation, providing for the exercise or performance of said powers, duties or functions by a City office, department or agency established by or pursuant to the provisions of this article, or specifying a procedure for or otherwise controlling or regulating the manner in which such powers, duties or functions may be exercised or performed by any City office, department or agency established by or pursuant to this article, shall be deemed suspended to the extent that they are inconsistent with the performance or exercise by a "public agency" or "private agency" of any such powers, duties or functions pursuant to or as provided by such contract. Also, the

Section 800 continued

provisions of Section 1217 of this Charter, and of any City ordinance, resolution or other regulation relating to the matters mentioned in said Section 1217, shall not apply to any acquisitions or purchases of property, nor to any public works projects or improvements, made, constructed or done by a "public agency" for or on behalf of the City pursuant to any contract above mentioned in sub-paragraph (5) of this subsection (b), provided that the "public agency," in doing such things for or on behalf of the City, complies with such procedural requirements as would be applicable to it if it were to do such things for or on behalf of itself.

As used in this sub-paragraph (b), "public agency" means the United States of America, the State of California, any division, department, office, agency or political or administrative subdivision of the United States or of the State of California, or any county, municipal corporation (other than the City of San Jose), district, authority or other governmental body or organization; and, as used in this sub-section (b), "private agency" means any private corporation, firm, association, organization or person.

- (c) Anything hereinabove in this section to the contrary notwithstanding, unless authorized by other sections of this Charter, no power, duty or function assigned by this Charter to the office of City Clerk, City Attorney, ~~or~~ City Auditor, or Policy Analyst or to the Finance Department, shall be discontinued or assigned or transferred



Section 800 continued

to any other office, department or agency of the City nor to any "public agency" or "private agency" as said terms are hereinabove defined; excepting, however, that the Council may provide for the furnishing or performance of special services by another office, department or agency or by a "public agency" or a "private agency" to assist the office of City Clerk, City Attorney, ~~or~~ City Auditor or Policy Analyst or the Department of Finance in the exercise or performance by them of those powers, duties and functions which are assigned to them by this Charter if and when such assistance or service is requested or recommended by the head of such office or department.

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Section 805. Office of the City Auditor

The office of City Auditor is hereby established. The first City Auditor under this Charter shall be the person last elected to the office of City Auditor under the immediately preceding Charter provided he holds such office at the time this Charter takes effect, or, if he does not hold such office at such time, a person to be appointed by the Council to such office as soon as such can reasonably be done after the expiration of the latest incumbent's term of office. He shall hold such office for a term extending to and ending on the 30th day of June, 1969. The City Auditor shall be appointed by the Council. Each such appointment shall be made as soon as such can reasonably be done after the expiration of the latest incumbent's term of office. Each such appointment shall be for a term ending four (4) years from and after the date of expiration of the immediately preceding term; provided, that if a vacancy should occur in such office before the expiration of the former incumbent's terms, the Council shall appoint a successor to serve only for the remainder of said former incumbent's term.

The office of City Auditor shall become vacant upon the happening before the expiration of his term of any of the events set forth in subsections (a), (b), (c), (d), (e), (h), (i), (j), (k) and (l) of Section 409 of this Charter. The Council, by resolution adopted by not less than six (6) members of the Council on or before December 31, 1969 or by not less than ten (10) of its members of the Council on or after January 1, 1971, may remove an incumbent

Section 805 continued

from the office of City Auditor, before the expiration of his or her term, for misconduct, inefficiency, incompetence, inability or failure to perform the duties of such office or negligence in the performance of such duties, provided it first states in writing the reasons for such removal and gives the incumbent an opportunity to be heard before the Council in his or her own defense; otherwise, the Council may not remove an incumbent from such office before the expiration of his or her term.

The City Auditor shall have the following powers and duties:

- (a) Conduct or cause to be conducted annual ~~or continuing~~ post audits of all the fiscal transactions ~~of~~ and accounts kept by or for the City. ~~including~~ Such audits shall include but not be limited to the examination and analysis of fiscal procedures and the examination, checking and verification of accounts and expenditures. The audits shall be conducted in accordance with generally accepted auditing standards and accordingly shall include tests of the accounting records and other auditing procedures as may be considered necessary under the circumstances. The audits shall include the issuance of suitable reports of examination so the Council and the public will be informed as to the adequacy of the financial statements of the City.
- (b) Conduct performance audits, as assigned by Council. A "performance audit" means a post audit which determines with regard to the

Section 805 continued

purpose, functions and duties of the audited agency all of the following:

- (1) Whether the audited Department, Office or Agency, is managing or utilizing its resources, including public funds, personnel, property, equipment and space in an economical and efficient manner.
- (2) Causes of inefficiencies or uneconomical practices, including inadequancies in management information systems, internal and administrative procedures, organizational structure, use of resources, allocation of personnel, purchasing policies and equipment.
- (3) Whether the desired results are being achieved.
- (4) Whether objectives established by the Council or other authorizing body are being met.

(c) Conduct special audits and investigations, as assigned by Council. "Special audits" and "investigations" mean assignments of limited scope, intended to determine:

- (1) The accuracy of information provided to the Council.

Section 805 continued

- (2) The costs and consequences of recommendations made to the Council.
- (3) Other information concerning the performance of city Departments, Offices or Agencies as requested by the Council.
- (d) The City Auditor shall have access to, and authority to examine any and all documents including but not limited to books, accounts, internal memoranda, writings and tapes, reports, vouchers, correspondence files and other records, bank accounts, money and other property of any City Department, Office or Agency, whether created by the Charter or otherwise, with the exception of the office of any elected official.

It is the duty of any officer, employee or agent of the City having control of such records to permit access to, and examination thereof, upon the request of the City Auditor or his or her authorized representative. It is also the duty of any such officer, employee or agent to fully cooperate with, and to make full disclosure of all pertinent information.

Section 805 continued

- (f) ~~(b)~~ Prepare and submit to the ~~City~~ Council, in each calendar month, a written report of ~~his~~ the City Auditor's activities and findings in the immediately preceding calendar month, together with ~~such~~ any recommendations ~~and~~ and ~~may~~ may ~~have~~ to improve the administration of the ~~visable~~ visable ~~of~~ of ~~the~~ City;
- (g) ~~(c)~~ Perform ~~such~~ other auditing functions, consistent with other provisions of this Charter, and prepare and submit such other reports, as may be ~~required~~ of him assigned by the Council.
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Section 805.1. City Auditor; Power of Appointment

- (a) The City Auditor may appoint and prescribe the duties of the professional and technical employees employed in the Office of the City Auditor. Such appointed professional and technical employees shall serve in unclassified positions at the pleasure of the City Auditor. The Council shall determine whether a particular employee is a "professional" or "technical" employee who may be appointed by the City Auditor pursuant to these Subsections.
- (b) In addition, subject to the Civil Service provisions of this Charter and of any Civil Service Rules adopted pursuant thereto, the City Auditor shall appoint all ~~officers/and~~ clerical employees employed in the Office of the City Auditor, and when ~~he~~ the City Auditor deems it necessary for the good of the service he or she may, subject to the above-mentioned limitations, suspend without pay, demote, discharge, remove or discipline any such ~~officer/~~ or employee whom he or she is empowered to appoint.
- (c) Neither the Council nor any of its members nor the Mayor shall in any manner dictate the appointment or removal of any such officer or employee whom the City Auditor is empowered to appoint, but the Council may express its views and fully and freely discuss with the City Auditor anything pertaining to the appointment and removal of such officers and employees.

NEW SECTION

Amendment to Section 805.2. City Auditor Performance Audit

The Council shall contract with an independent audit firm, which has no other contracts with the City, to conduct a performance audit of the City Auditor's office at least every two years. The report of the performance audit shall be available to the public.

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Section 807. Administrative Organization; Other Departments

- (a) The following Charter departments are hereby established: A Police Department, a Fire Department, a Public Works Department, a Parks and Recreation Department, a Personnel Department, a Planning Department, ~~a Health Department, a Building Department,~~ an Airport Department and a Library Department. ~~They each shall have such functions, powers and duties as the Council may from time to time prescribe.~~
- (b) Additional departments may be created by Council from time to time pursuant to Section 800.
- (c) Each department shall have such functions, powers and duties as Council may from time to time prescribe.
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NEW SECTION

Section 808. Public Information Office

A Public Information Office is hereby established.

This office shall be administered by a Public Information Officer appointed by the Mayor. The Public Information Officer shall be under the direction and supervision of the Mayor.

The functions and duties of this office shall be to gather and disseminate to the public and to the news media, in a timely manner, accurate and complete information concerning the policies of the Council and other information regarding the City and the general region in which it is located, and to perform such other duties as may be assigned by the Council.

Section 809. Office of Policy Analysis

The Office of Policy Analysis is hereby established.

The Office of Policy Analysis shall perform the following functions and duties under the direction and supervision of the Council:

- (a) To conduct an independent policy analysis of the proposed budget or other matters, and present said analysis to Council together with appropriate recommendations.
- (b) To conduct an independent review of policy and any other matters proposed by the City Manager or any City Department, Office or Agency and to present said review to Council, together with appropriate recommendations.
- (c) To assist the Council in the evaluation and formulation of proposed policies.
- (d) To provide the Council with complete and impartial information concerning any matter.

The Council shall appoint a Policy Analyst, who shall report to the Council, as the head of the Office of Policy Analysis.

The Council may retain or contract with any agency or organization or individual for performance of any powers, duties or functions of the Office of Policy Analysis.

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Section 900. Officers and Employees; Enumeration

The officers of the City shall consist of the Mayor, members of the Council, the City Manager, the City Attorney, the City Clerk, the City Auditor, the Policy Analyst, the directors or heads of the various City offices or departments, the members of various boards and commissions and such other officers as may be provided for by this Charter or by action of the Council.

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Section 901. Officers and Employees; Appointment and Removal

The City Manager, the City Attorney, ~~and~~ City Clerk, and the Policy Analyst shall be appointed and may at any time be removed by the Council. Except as otherwise provided by this Charter, all other officers, department heads and employees of the City, except members of boards and commissions, shall be appointed by the City Manager and, except as otherwise provided elsewhere in this Charter, shall serve at his or her pleasure.

The Council shall appoint, and may at any time remove, an Acting City Manager an Acting City Attorney, Acting City Clerk, ~~and~~ Acting City Auditor, and Acting Policy Analyst to perform the functions and duties of the respective offices in the case of the absence or disability of the ~~CITY/Attorney, /CITY/~~  
~~CLERK, /or/CITY/AUDITOR.~~

The City Manager shall, subject to the provisions of section 411.1, appoint a person to act as the head of a department or office, other than the office of City Clerk, City Attorney, ~~and~~ City Auditor, Policy Analyst and Public Information Officer in the case of absence or disability of the head of such department or office.

Section 1101. Civil Service System; Classified and Unclassified Service

The Civil Service of the City shall be divided into the Classified Service and the Unclassified Service, as follows:

(a) The Unclassified Service shall comprise and include all of the following officers and employees:

- (1) The Mayor and the members of the Council;
- (2) All members of boards and commissions, and if so desired by the Civil Service Commission, the Secretary of the Civil Service Commission;
- (3) The City Manager and all his assistants, deputies and secretaries; the City Attorney and one assistant; the City Clerk and one assistant; ~~the City Auditor and one assistant;~~ the head of each department and one assistant in each department;
- (4) Persons temporarily employed to make or conduct a special inquiry, investigation, examination or installation, or to render professional, scientific or technical services of an occasional or exceptional character; provided that no person employed in the Unclassified Service pursuant to this subsection for any purpose shall continue in such employment pursuant to this subsection for a period in excess of six (6) months for

Section 1101 continued

each special inquiry, investigation, examination, installation or particular service unless an extension is approved by the Civil Service Commission;

- (5) Persons employed in the event of an emergency to perform services required because of and during such emergency for a period of time not to exceed six (6) months unless an extension is approved by the Civil Service Commission;
- (6) Persons employed to temporarily fill positions in the classified service when no eligible lists of applicants for such positions exist, until such time as eligible lists are created and persons can be hired there from to fill such positions;
- (7) Volunteer members of the police, fire or civil defense departments or of any police, fire or civil defense force or organization.
- (8) The Public Information Officer, and all persons employed in the Public Information Office, exclusive of clerical.
- (9) The Head of the Office of Policy Analysis, and all persons employed in the Office of Policy Analysis, exclusive of clerical.

Section 1101 continued

(10) The City Auditor and the professional and technical employees in the Office of the City Auditor.

(b) The Classified Service shall consist of all persons employed in positions in the City Civil Service which are not in the Unclassified Service;

(c) Nothing herein shall be construed as precluding the appointing authority from filling any position in the manner in which positions in the Classified Service are filled.



Section 1204. Fiscal Administration; Submission of Budget and Budget Message

- (a) Each Council Appointee shall submit to the Mayor and the Council annually the budget request, for the ensuing fiscal year, of each City Department, Office or Agency under his or her administration.
- (b) The Mayor shall deliver a budget message which shall include:
- A statement of the fiscal priorities which the City should adopt for the ensuing year.
  - Which Departments, Offices or Agencies the Mayor proposes to be expanded or to receive reduced budgeted allocations.
  - Specific recommendations concerning any proposed additions to or deletions from the budget.
- (c) The Mayor shall deliver the Mayor's budget message during a meeting of the Council to be held following the receipt of the budget request from the City Manager.
- (d) The Council shall hold a public hearing to consider the Mayor's budget message and to make any revisions or changes in it which the Council deems advisable.

The Council shall fix a time and place for the public hearing, and shall give notice in the manner specified in Section 1206.

Section 1204 continued

Upon close of the public hearing, the Council shall approve the Mayor's budget message as presented, or as revised, by the affirmative vote of a majority of its members.

(e) None of the recommendations included within the Mayor's budget message, or as amended and approved by the Council, shall be implemented or carried out in any manner which violates the requirement for a balanced budget contained in Section 1205.

(f) At least thirty (30) days prior to the beginning of each fiscal year, or at such earlier time as the Council may specify, the City Manager shall submit to the Council a budget for the ensuing fiscal year, together with an accompanying report.

In addition to complying with the requirements of Section 1205, the budget shall contain the City Manager's financial plan for the activities of the City proposed for the ensuing fiscal year which reflects accurately the recommendations and priorities specified in the budget message as adopted by the Council.

The report of the City Manager accompanying the budget shall specify the budget allocations which implement each component included within the budget message as adopted by the Council.

Section 1704. Definitions

Unless the provisions of the context otherwise require, as used in this Charter:

- (a) "Shall" is mandatory and "may" is permissive;
- (b) "City" is the City of San Jose and "department," "board," "commission," "agency," "officer," or "employee" is a department, board, commission, agency, officer or employee, as the case may be, of the City of San Jose;
- (c) "Council" is the Council of the City of San Jose;
- (d) A "member of the Council" means any one of the members of the Council, including the Mayor;
- (e) "County" is the County of Santa Clara;
- (f) "State" is the State of California;
- (g) "Newspaper of general circulation within the City" is defined by Section 6000 of the Government Code of the State of California;
- (h) The masculine gender includes the feminine and neuter.
- (i) "Council Appointees" are the City Manager, the City Attorney, the City Clerk, the City Auditor and the Policy Analyst.

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