

San José Charter Review Commission Recommendation Memo Template

Drafted April 19th, 2021; Revised July 2nd, 2021

Instructions

1. Complete sections 1-3 below.
2. Rename document. Replace everything after the "-" in the document name with the proposal name.
 - a. Example: "SJ CRC Recommendations Memo - **Ranked Choice Voting**"
3. When ready, email to the Commission Secretary (CharterReview@sanjoseca.gov) for posting to the appropriate subcommittee or full Commission. Final deadline for submitting subcommittee recommendations is 12 noon on the following dates:
 - a. Friday, July 26 for Voting & Elections Subcommittee
 - b. Friday, August 23rd for Governance Structure Subcommittee
 - c. Friday, September 3rd for Policing & Municipal Law, Accountability & Inclusion Subcommittee

1) Proposal Name

Proposal Name:	EMERGENCY POWERS OF THE MAYOR
Submitted by:	Commissioner Linda J. LeZotte
Date submitted:	September 8, 2021
Draft Version:	Click here for Original Version 1 Draft: V.2 V.3, V.4.1 V4.2 (new discussion under Proposed Research & Citations.) Added Sec. 411 exception to proposed Charter change)

2) Proposal Details

Questions	Recommending Person Response to Questions	Subcommittee/General Notes (i.e. Agreements, questions, additions, concerns, next step, etc.)

<p>1) What problem(s) are you trying to address?</p> <p><i>Before suggesting a solution, it is important to be clear about the problem you aim to solve.</i></p>	<p>San Jose Municipal Code Sec. 8.08.200 vests in the City Manager, or her or his designee, as Director of the Office of Emergency Services emergency power to enact rules and regulations subject to later ratification by the City Council. Over the years, the Director, because the Council was not in session, issued proclamations declaring the existence of a local emergency. During both instances the Mayor was available but did not have the power to declare the local emergency and implement the powers delineated in Sec. 8.08.250. For 7 days thereafter, the powers of the City Manager to wit: "to make and issue rules and regulations on matters reasonably related to the protection of life and property", were not ratified by the City Council. This Proposal #3 substitutes the Mayor (or Vice-Mayor in his or her absence) for the City Manager as the person authorized to declare a local emergency. Furthermore, said declaration expires if it is not ratified by the City Council within 72 hours.</p>	
<p>2) How has this problem possibly benefited or burdened people, especially BIPOC, low-income, undocumented and immigrant, those experiencing houselessness, etc.?</p> <p><i>Is there data that speaks to the impact of this problem?</i></p>	<p>The Mayor is the very visible leader of the City. During a crisis or emergency the public looks to the Mayor for leadership and resolutions.</p> <p>During the flooding in 2017 many individuals and businesses were unaware of the imminent flooding. The disconnect and lack of timely information between the OES, the Mayor and other outside agencies contributed to the neighborhood impacts.</p>	

<p>What does the disaggregated data tell us?</p>	
<p>3) What change are you proposing? <i>Describe the revision to San José's Charter that you are proposing. Include relevant Charter section numbers.</i></p>	<p>PROPOSAL DETAILS: *Changes, additions in BOLD</p> <p>ADD: to City Charter Section 502 the following:</p> <p>**502 I – Proclamation of civil emergency:</p> <p>Whenever a civil emergency, or the imminent threat thereof, occurs, in the city and results in, or threatens to result in, the death or injury of persons or the destruction of or damage to property to such extent as to require, in the judgment of the mayor, after consultation with the City Manager and appropriate staff, extraordinary measures to protect the public peace, safety and welfare, the Mayor shall forthwith proclaim in writing the existence of a civil emergency. In the absence or unavailability of the Mayor, such a civil emergency may be declared by the following in line of succession: Vice-Mayor, City Manager.</p> <p>A. During the existence of a local emergency the Mayor shall serve as the director of emergency services and head the office of emergency services. All powers and duties otherwise conferred upon the city manager or department head related to a local emergency declaration shall be exercised subject to the direction and approval of the Mayor.</p> <p>B. Whenever a local emergency is proclaimed by the Mayor, the city council shall take action to ratify the proclamation within 72 hours, or the proclamation shall have no further force or effect.</p> <p>C. The Mayor shall cause any proclamation issued pursuant to the authority of this Section, to be delivered to all news media within the city and</p>

shall utilize such other available means, including social media, and public postings on the City website.

D. The mayor shall have those powers enumerated in Municipal Code Section 8.08.250 (A-D) .

E. Nothing herein shall expand the powers and duties of the Mayor beyond those set forth above. Said exercise of powers set forth above shall be deemed to not violate Charter Section 411 - Interference with Administrative Matters.

****ADD TO SECTION 411 an exception to the prohibition against interference with Administrative Matters. Suggested Language:**

SECTION 411; the Council: Interference with Administrative Matters.

(ADD)

Except as provided in Section 502 I, neither the Council nor any of its members nor the Mayor shall interfere with the execution by the City Manager...

<p>4) Is this change feasible?</p> <p>Yes</p> <p><i>Think through the revision you are proposing. Is it legally possible? Is it practical? If there are questions you cannot answer, list them here.</i></p>	
<p>5) Who might benefit from or be burdened by this change?</p> <p><i>Is there data that speaks to the potential impact of this change? What are the potential unintended consequences of this change?</i></p>	<p>Benefit: The people of San Jose; City Administration</p> <p>Burden: Training would be required for the Mayor, Vice Mayor and/or staff in line with that required of the Office of Emergency Services Director/Head.</p> <p>and/or</p> <p>There would be the potential need for additional staff for the Mayor to have persons trained or familiar with Emergency Services and assets available throughout the City</p>

6) What are the arguments against this proposal?

Summarize the arguments you expect or data you have found in opposition to this recommendation.

The Mayor, Vice Mayor and/or staff could be required to obtain training commensurate with the training provided to the City Manager (or her/his designee) as Director/Head of Emergency Services.

On-going training required by the Director/Head of the Emergency Services.

The City Manager/Designee are long time public employees while the Mayor, Vice Mayor serve for limited (8 year) terms. Potential for additional staff required in the Mayor's office.

Can an Emergency Declaration become a political decision?

7) Must this be a Charter revision?

Yes

Can this problem be addressed without changing the charter (e.g., Council action, cultural change)? If not, should this be a policy recommendation to be included in the Commission's report?

<p>8) Are there other examples of this change?</p> <p><i>If you have found other examples of this change, please share them and any outcomes that have been observed.</i></p>	<p>Yes, New York City, Los Angeles, San Francisco, Seattle, WA, City of Laurel, Maryland, and City of Toppenish, Washington to name a few give this power to the Mayor.</p> <p>Los Angeles and San Francisco Mayor's offices have their own Emergency Management team in the Mayor's office.</p>	
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3) Proposal Research & Citations

List below the results of any research conducted to inform this memo.

<p>List of citations</p> <p><i>All data must be cited so that Commissioners who are not part of the Subcommittee in question may locate the source of information as needed.</i></p>	<p>San Jose City Charter Sec. 502: Municipal Code Title 18, Part 2, Sec. 8.08.210; 8.08.250 SEE BELOW</p> <p><i>The powers that the Mayor (Vice -Mayor) would have if this Charter change was made are the same as currently exist in the Municipal Code for the City Manager, except for subsection E (deleted from the Section) which is specifically directed at the City Manager's general powers irrespective of an emergency declaration. No other changes to the Office of Emergency Services or the Office of Emergency Management are suggested by this proposal.</i></p> <p>8.08.250 - Powers during local emergency or state of emergency.</p>	
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In the event of a proclamation of a local emergency, or the proclamation of a state of emergency by the governor or the director of the state office of emergency services, or the existence of a state of war emergency, the director is hereby empowered:

A. To make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided, however, such rules and regulations must be confirmed at the earliest practicable time by the city council.

B To obtain vital supplies, equipment and such other properties needed for the protection of life and property, and to obligate the city for the fair value thereof and, if required immediately, to commandeer for public use.

C To require emergency services of any city officer or employee and, in the event of the proclamation of a state of emergency in Santa Clara County or the existence of a state of war emergency, to command the aid of as many citizens of this community as he or she deems necessary. Such persons shall be entitled to all privileges, benefits, and immunities as are provided by state law for registered disaster service workers.

D.

To requisition necessary personnel or material of any city department or agency.

ADDITIONALLY, the membership and function of the Emergency Services Council remains the same, see below:

- **8.08.020 - Membership.**
- The council shall consist of the following members:
 - A.
 - The city manager shall be the director of emergency services, and shall be chair;
 - B.

- The assistant director of emergency services, who shall be vice chair;
- C.
- The mayor;
- D.
- The emergency services coordinator;
- E.
- Such chiefs of emergency services as are provided for in the current emergency plan of San José, adopted pursuant to resolution; and
- F.
- Representatives of other organizations having an official emergency responsibility, as may be appointed by the director of emergency services with the advice and consent of the city council.
- (Ord. 25213.)
- **8.08.030 - Functions, powers and duties.**
- A.
- The emergency services council shall recommend to the city council emergency and mutual-aid plans and agreements, resolutions, ordinances, and rules and regulations as are necessary to implement the plans and agreements.
- B.
- The emergency services council shall meet upon call of the chair or, in his or her absence from the city or inability to call such meeting, upon call of the vice chair.

Additional Citations

New York Executive Law 24, Ch. 18, Art. 2-B, Sect. 24

City of Los Angeles Municipal Code Sec. 8.27, et. Seq.

San Francisco Administrative Code Sec. 7.6

Seattle Municipal Code Chapter 10.02

City of Toppenish, Washington Code Sec. 2.95.010-050

City of Laurel, Maryland, Laurel City Code Article, VIII,

<p>Sec. 2-176</p>	
<p> Any speakers who presented to the subcommittee must be listed. </p> <p>NO</p> <p> <i>Include name, title, affiliations, etc., along with a brief summary of the information presented by them.</i> </p>	
<p> Relevant Links </p> <p>See above citations</p> <p> <i>Provide links or locations of the information in this research as much as possible, otherwise provide attachments.</i> </p>	