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ATTORNEYS AT LAW

Memorandum

To: Mayor Tran and Honorable City Council **File No.:** 38077.00100
From: City Attorney's Office
Meeting Date: January 7, 2020
Re: Establishment and Powers of an Elective Mayor

I. Introduction

The purpose of this memorandum is to detail, for a general law city, the establishment, term, powers and other aspects of a directly elected mayor relative to that of a non-directly elected mayor as set out in State law.

This memo further details the minimal guidance in state law with regard to the Vice-Mayor role.

II. Issues

1. With regard to a directly elected Mayor in a general law city:
 - How is the office of an elective mayor established?
 - What is the term of office of an elective mayor?
 - What are the powers of an elective mayor?
 - How is an elective mayor compensated?

2. What is the role of the Vice-Mayor under state law?

III. Discussion

1. *Mayoral Provisions*

A. Establishment

The office of an elective mayor is established by a majority vote of the electorate. (Gov. Code, §§ 34900; 34902(a).) The government of a general law city is vested in a city council of at least five members. (Gov. Code, § 36501(a).) In a city with a non-directly elected mayor, following a city council election, the members of the city council vote to designate one of its members as the mayor and one of its members as the vice-mayor. (Gov. Code, § 36801.) To establish the mayor as an elective office, the city council must submit the question to voters at a general or special election. (Gov. Code, § 34900.) The voters then decide whether the mayor should be directly elected and whether the mayor should serve a two-year or four-year term. (Gov. Code, § 34901.)



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The voters of the City of Milpitas established an elective mayor at the ballot box on November 2, 1976. To change back to a non-directly elected mayor, the voters would need to vote to change direction. Either the City Council or the residents can propose a ballot measure.

B. Term

As stated above, the term of an elective mayor is either two years or four years, as determined by a majority of the voters when voting on the question of whether to create a directly elected mayor. (Gov. Code, § 34901.)

On November 2, 1976, the term of a directly elected mayor in Milpitas was set at 2 years.

C. Powers

For a general law city, the mayor has both legislative and executive powers. An elective mayor and non-elective mayor have the same legislative and executive powers, except that an elective mayor also has the executive power to appoint members to boards, commissions, and committees.

1. Legislative Powers

An elective mayor retains all the legislative powers and responsibilities as a non-elective mayor. The mayor is a member of the city council, with all powers of a city council member. (Gov. Code, § 34903.) The mayor presides over all meetings of the city council. (Gov. Code, § 36802.) If the city clerk and the deputy city clerk are absent, then the mayor appoints a member of the city council clerk pro tempore. (Gov. Code, § 36804.)

2. Executive Powers

Like a non-elective mayor, an elective mayor has powers which concern execution of certain agreements and transactions. Unless the city council provides otherwise by ordinance or council direction, the mayor signs all warrants drawn by the city treasurer, all contracts and conveyances made and entered into by the city, and all instruments requiring a city seal. (Gov. Code, § 40602.) The mayor may also administer oaths. (Gov. Code, § 40603.)

Unlike an non-elective mayor, an elective mayor makes all appointments to city boards, commissions, and committees, subject to the approval of the city council. (Gov. Code, § 40605.)

D. Compensation

Unlike a non-elective mayor, an elective mayor may receive additional compensation beyond the compensation he or she receives as a member of the city council. (Gov. Code, § 36516.1; 89 Ops.Cal.Atty.Gen. 159, *4 (2006).)



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2. Vice-Mayoral Provisions

When the mayor is absent, the mayor pro tempore exercises the powers of the mayor. The mayor pro tempore is selected by the city council. (Gov. Code, §§34905, 36801; see also, (“mayor pro tem of general law city chosen pursuant to this section has no fixed term but serves at the pleasure of the city council which selects them”); (67 Ops.Cal.Atty.Gen. 405, 9-13-84). In the absence of the mayor, the mayor pro tempore must exercise certain powers granted to the mayor as noted under Section “C” above. (Gov. Code, §40601). Absence under state law is limited to the actual physical absence of the mayor, not refusal to act. *Torres v City of Montebello* (2015) 234 Cal.App.4th 382, 397.

IV. Conclusion

For a general law city, the voters approve the establishment of the office of the elective mayor and set the office’s term at either two or four years. An elective mayor has the same legislative and executive powers as a non-elective mayor, except that an elective mayor appoints members to boards, commissions, and committees and may receive additional compensation as compared to other city council members. Finally, when the mayor is absent, the mayor pro tempore or Vice-Mayor exercises the powers of the mayor.