

JULY 9, 2019

ITEM #8



**City of  
Santa Clara**  
The Center of What's Possible

City Attorney's Office  
**Memorandum**

**Date:** July 3, 2019  
**To:** Honorable Mayor and City Council Members  
**From:** Brian Doyle, City Attorney  
**Subject:** Elective Office of Chief of Police

### BACKGROUND

In an Agenda Report dated January 6, 2011, then Interim City Attorney Elizabeth Silver advised the City Council:

If the Council fails to appoint prior to February 10, 2011 or "cause an election to be held" within a reasonable period of time after February 10, 2011, the City Manager could appoint an Acting Chief of Police to act until a Chief of Police is elected. Nothing in the Charter or state law prohibits such an appointment. There is no authority in the Charter for the Council, however, to appoint an "acting" Chief of Police.

Based upon this advice, City Manager Jennifer Sparacino appointed Kevin Kyle as "acting" Chief of Police.

### ANALYSIS

Ms. Silver's advice that the City Manager could appoint an acting Chief of Police was wrong. The office of Chief of Police is governed exclusively by the City Charter which designates the office as an elective office.<sup>1</sup> Section 802 of the Charter specifically provides that the City Manager has the power to:

- a) Appoint and remove, subject to the Civil Service provisions of this Charter, all officers and employees of the City, *except as otherwise provided by this Charter ...*

The Charter specifically designates the Police Chief as an office filled by an election of the people and only grants to the City Council the ability to fill a vacancy by appointment.

<sup>1</sup> Santa Clara City Charter Section 600.

**POST MEETING MATERIAL**

Ms. Silver's conclusion that the City Manager had authority to make an appointment to an elective office because the City Charter did not contain a specific prohibition on such an appointment was in error in two regards. First, the Charter specifically excludes from the Manager's appointment authority offices where the Charter otherwise provides. Second, the idea that the Manager would have the power to do something simply because that power was not specifically prohibited in the Charter is without legal authority.

While the City Manager has no authority to appoint an acting Police Chief, the day-to-day operations of the Police Department will continue to be under the supervision of the Assistant Police Chief. The approved job description of the Assistant Chief provides as follows:

Under DESCRIPTION:

*The Assistant Police Chief is responsible for the overall daily operation of the Police Department...*

Under TYPICAL DUTIES:

*Takes over responsible charge of the personnel, activities and equipment of the Police Department in the absence of the Chief of Police.*

Under SUPPLEMENTAL INFORMATION:

*SUPERVISION RECEIVED*

*Works under the general direction of the Chief of Police and City Manager.*

*SUPERVISION EXERCISED*

*Directly supervises the work of the Police Captains and other persons as required, and, in the absence of the Chief of Police, of the entire Police Department.*

Based upon the existing duties and job description of the Assistant Police Chief, upon the elected Chief vacating the office, the Assistant Police Chief automatically supervises the PD. There is no basis to name an "acting" police chief.<sup>2</sup>

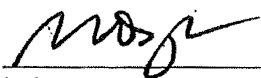
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<sup>2</sup> There has been some discussion of how the City Council was able to appoint an "acting City Clerk." The basis for the Council action was Charter Section 903 which provides in part: "The City Council may, in its discretion, appoint any other officer or employee of the City as City Clerk and grant such person additional compensation for the performance of such duties." There is no such provision of the Charter with respect to the Chief of Police.

## CONCLUSION

The City Manager has no authority to appoint an acting Chief of Police. In the event that the Council does not appoint a qualified person to the elective office of Chief of Police, the Assistant Chief will continue to supervise the Department under the supervision of the City Manager.

Please contact me with any questions or concerns.



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Brian Doyle  
City Attorney

cc: Deanna Santana, City Manager  
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**City Council**

**19-813 Charter Requirements Upon Vacancy in the Elective Office of Chief of Police**

**July 9, 2019**



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## Key Dates for March 3, 2020 Election

Effective Date of Resignation	September 1, 2019
Council Declares Vacancy	September 3 or 4, 2019 (Special Meeting)
Vacancy Filled by Appointment	October 3 or 4, 2019
If Not Filled by Appointment, Call Special Election	October 14, 2019, but the last <u>regular Council meeting</u> for Council to adopt resolutions for election and consolidating with County is October 8
Publish Notice of Election	October 28 - November 11, 2019
Filing Period for Nomination Papers and Candidate Statements	November 11 – December 6, 2019
Write-in Candidacy Period	January 6 – February 18, 2020
Last Day to Register to Vote for March Election	February 17, 2020
Last Day to Publish Notice of Nominees	February 25, 2020

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## Key Dates

- If the Council does not meet the key dates for the March 3, 2020 presidential primary election, the next possible election date is April 14, 2020
- If the effective date of the vacancy falls on or after October 16, 2019, the next possible election date is the general municipal election on November 3, 2020