

ALAMEDA CITY COUNCIL INTERFERENCE

EXECUTIVE SUMMARY

In 2017 the city of Alameda faced a vacancy at the department head level, a common occurrence for most organizations. Few could have predicted the pandemonium that would unfold after Alameda's city manager at the time started a recruitment to replace the retiring fire chief. What should have been an internal, administrative decision by the city manager based on a professional recruitment and interview process turned into a full-scale political battle. Unrelenting pressure by the city's firefighter labor organization in support of its internal candidate resulted in pressure on the city council to inappropriately intervene in the process.

The Alameda City Charter is filled with rules and principles to help ensure the effective and honest administration of government. This document plainly prohibits the city council from interfering in the hiring process or trying to influence the city manager. The prohibition, common in municipal charters throughout the nation, is intended to combat cronyism and corrupt government decisions.

In the case of Alameda, two members of the city council violated the city charter. They took steps at the behest of a labor organization to push for its candidate by privately meeting with the city

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manager and pressing the issue. They also appeared to use the city manager's performance review as leverage in the matter. One councilmember went further by making an indirect threat to the city manager's job to a member of the city manager's leadership team. This same councilmember also wrote a letter using city

letterhead openly advocating for the labor-backed candidate. These actions put the city manager in a very awkward position, creating a reasonable belief that her job was on the line if the labor-backed candidate was not selected. As a result, she took steps to publicly protest the inappropriate interference in the process. The city manager also surreptitiously recorded a conversation she had with the two councilmembers out of fear of additional threats.

The interference in the Alameda fire chief hiring process ultimately cost the city over a million dollars in investigations, legal fees and an employee separation settlement. While stability and continuity in leadership are often keys to success of a government, this malfeasance cost Alameda a city manager, a city attorney, and contributed to several other senior staff leaving the city for new opportunities. Finally, this interference damaged public trust in government at a time when such trust is so important.

BACKGROUND

The city of Alameda is an island community of approximately 79,000 residents within Alameda County. Alameda was incorporated in 1854 and became a charter city in 1916 with a council-manager form of government.

Council-Manager Governance

The council-manager form of government is the most popular structure of government in the United States among municipalities with populations over 2500. In California, 97% of cities operate using a council-manager governance system. Under this form, voters of a city elect a governing body (including a chief elected official, such as a mayor) to adopt legislation and set policy. Power is centralized in this body, which is responsible for approving the budget and adopting local laws and regulations. This governing body then hires a city manager, who has broad executive authority to carry out policies and oversee the day-to-day operations. The city manager should be hired based on education, experience, skills and abilities, with little concern for political viewpoints. The elected governing body supervises the manager's performance and has the authority to remove him or her at any time. The council-manager government is similar to the structure used by many corporations.

This form of local governance began to thrive after the good government movement in the 1920's. At that time, corruption and cronyism were rampant throughout the nation. It was common for dishonest elected officials and party bosses to pass out key jobs to family and friends. This structure of government helped to prevent cronyism and political favoritism by giving the responsibility of hiring and firing to a nonpolitical city manager. The movement stressed transparent, responsive and accountable management of administrative affairs.

Alameda Government

The city of Alameda employs approximately 518 full-time employees who serve the city's residents. The city is governed by a city council made up of the mayor and four councilmembers who are elected at large for staggered four-year terms. The city council is responsible for setting policy, adopting a budget and hiring the city manager, city attorney and city clerk. The city manager is responsible for implementing city council policy decisions and overseeing the day-to-day management and operations of the city. By a majority vote, the five members of the city council have the authority to remove the city manager from office, should he or she not be responsive or effective in the role.

The Alameda City Charter - Article VII - City Manager

A municipal charter is the legal document establishing a city or town. It often describes the role and responsibilities of the organization's elected officials along with key managers.

The Alameda City Charter section 7-2 (C) reads as follows:

*The City Manager shall have the power and it shall be his or her duty:
(C) To appoint, discipline and remove all officers and employees of the City under his or her jurisdiction, subject to Civil Service requirements.*

The Alameda City Charter Section 7-3 also reads as follows:

Neither the Council nor any of the members thereof shall interfere with the execution by the City Manager of his or her powers and duties. Except for purposes of inquiry, the Council and its members shall deal with that portion of the administrative service for which the City Manager is responsible solely through him or her. An attempt by a Councilmember to influence the City Manager in the making of any appointment or the purchase of any materials or supplies shall subject such Councilmember to removal from office for malfeasance.

The charter expressly gives the city manager the authority and responsibility to manage the hiring of administrative staff. It also prohibits elected officials from interfering in that process and threatens removal of the elected official from office as a remedy for such inappropriate conduct. While the charter describes the roles, responsibilities and limits on the power of its elected officials, it provides neither a procedure for investigating violations of the charter based on official misconduct nor a method for enforcement of the charter.

Complaint

The Grand Jury received over forty complaints that two Alameda councilmembers had wrongfully interfered with the duties of the city manager in 2017; specifically, that these two councilmembers had inappropriately attempted to influence the city manager to hire their desired candidate for the position of the city's fire chief.

INVESTIGATION

The focus of the Grand Jury's inquiry was to examine the role that elected councilmembers play in Alameda's system of government and, in these specific circumstances, determine whether any councilmembers violated the city charter by interfering and attempting to influence the Alameda city manager during the fire chief hiring process in 2017. If violations of the charter occurred, the Grand Jury was interested in determining if such conduct caused any damage to city

operations. If so, are there any solutions or recommendations for structural change that would help prevent such conduct in the future?

During the investigation, the Grand Jury heard testimony from a number of current and former city of Alameda staff, elected officials and statewide governance experts. The Grand Jury also reviewed city council agendas, minutes and meeting videos. The Jury examined city emails, calendars and other documents related to the fire chief hiring process, including the investigative reports prepared by the legal consultant hired by the city council to independently look into the matter. The Jury also listened to the recorded conversation between the city manager and two councilmembers. Finally, in addition to examining the Alameda City Charter, the Jury examined charters and policies from other California cities and training materials produced by the California League of Cities, Institute for Local Government, International City/County Management Association and documents from other professional organizations that focus on local public agency governance.

Fire Chief Recruitment

In March of 2017 the Alameda fire chief informed the city manager that he would be retiring in September of that year. Per the city's charter, it is the city manager's responsibility to fill the position.

The city manager chose to conduct an open recruitment and hired an outside consulting firm to aid in the process. The consulting firm projected that the recruitment process would start in June and a final selection would be made in early September. The process included advertising, recruitment, resume reviews, initial screening and panel interviews comprised of internal and external experts. A short-list of candidates would move on to interviews with the city manager and finally a new fire chief would be selected by the city manager.

The process leading up to the hire was rocky, rife with uncomfortable and unhealthy interactions between all parties. It culminated in the city manager publicly calling out the conduct of two councilmembers, among others, in a letter addressed to the whole council, accusing them of interfering with the hiring process in violation of the city charter.

The city's firefighters union, a powerhouse in city of Alameda politics, weighed in on both the process and the candidates. In fact, the president of the local firefighters' organization let the city manager know in April that his organization would be backing a specific internal candidate. Their lobbying efforts continued throughout the entire hiring process.

The recruitment process closed in late September of 2017. Forty-two candidates sought the position, three of whom came from inside the fire department. Ultimately, the city manager selected a new fire chief from outside Alameda, contrary to the firefighter union's recommendation. The hiring process was rocky, rife with uncomfortable and unhealthy interactions between all parties. It culminated in the city manager publicly calling out the

conduct of two councilmembers, among others, in a letter addressed to the whole council, accusing them of interfering with the hiring process in violation of the city charter.

In part, the city manager's letter to the council dated October 2, 2017 stated:

"...I have just appointed an exceptional Fire Chief to be the next Fire Chief for the City of Alameda. Attached is his resume and a press release highlighting the extraordinary set of public safety skills and leadership he will bring to our residents and the department...My job as City Manager is to make decisions that I believe are in the best interests of the City of Alameda - both in terms of good governance and mindful of the needs of our community. Hiring decisions, including the selection of key leadership personnel, are part of my job. Over the past 18 months, I have tried to continue my two-decade practice of hiring the best candidates for positions after a fair and open selection process. And, until recently, I have received the unqualified support of the City Council in achieving this objective.

The selection of the next Fire Chief for the City of Alameda is the exception. Over the several months, I have been approached by elected and appointed officials in Alameda and even at the State level, requesting that I put aside the best interests of the City and select the Fire Chief that has been handpicked by the local IAFF union. I have been asked to cast aside the requirement of a fair and transparent process and give no consideration to other candidates who present superior qualifications and experience, the capacity to work collaboratively and respectfully with members of the fire department as well as other City departments, and the ability to provide enhanced public safety service to our residents. I trust that as elected officials you take this last value as what public service is all about: providing the best possible service to all of our residents. The selection of our new Fire Chief should not be driven by unseemly political pressure. This pressure is explicitly prohibited by Alameda's Charter Section 7-3, as ... pointed out by the City Attorney. Our focus should be on the qualifications, interview and test results, and abilities of the candidate to do the best job for the City of Alameda."

The city manager then outlined a number of allegations that she felt damaged the selection process. As stated previously, the Grand Jury chose to focus on the allegations involving the city charter's prohibition of councilmember interference and undue influence.

The Grand Jury's investigation revealed a pattern of conduct by two councilmembers that, taken together, amounted to inappropriate interference in the fire chief hiring process and resulted in lasting damage to the city. Highlighted below are key events leading the Grand Jury to such conclusions.

Alleged Threat to Fire City Manager

Two months into the fire chief recruitment, tensions were high throughout City Hall because the fire labor organization was making a very strong push for its internal candidate. The relationship between the city manager and fire labor leader was strained because of rumors that the city manager was recruiting an outside candidate, and the labor-backed candidate might not be chosen. Union representatives began recruiting current and former city officials to reach out to the city manager in a show of support for its candidate. This put the city manager in a difficult position, and, in her opinion, threatened any chance for a fair and transparent recruitment process for a department head position which controlled a \$33 million annual budget and managed 90 firefighters.

On August 1, 2017 one Alameda councilmember (CM1) accompanied the Alameda police chief to a number of neighborhood gatherings on National Night Out. The nationwide event is intended

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to strengthen community-police partnerships and bring neighborhoods together to make them safer. The police chief and CM1 had worked with each other for years, and it was common for the chief to partner up with someone on the city council for such events. At the end of the night, CM1 brought up with the police chief the issue of the fire chief hiring process.

The conversation led the police chief to acknowledge that the labor candidate had a steep hill to climb, because he lacked a college degree and command experience. CM1 responded that the city manager better “do the right thing”; if not, there were already two councilmembers ready to fire her. The police chief knew the city manager was frustrated with the outside interference but thought her concerns that her job might be in jeopardy were overblown. That was certainly no longer the case after this conversation. Had this statement been made directly to the city manager, it would be difficult to interpret it as anything other than a threat to the city manager’s job and as pressure to select CM1’s candidate, who also happened to be the labor union’s choice. Such pressure would be a direct violation of the city charter’s provision preventing councilmembers from trying to influence the city manager during the hiring process.

It is impractical to have expected the police chief to keep these provocative comments private. The police chief reports directly to the city manager and, just like the fire chief, is hired and could be fired by the city manager. By all accounts, the city manager and police chief had a very positive working relationship and city business oftentimes required them to speak several times a day. Everyone on the council knew this. It would also be in the police chief’s best interests to give his boss a heads up that one councilmember appeared to be lobbying other members of the council to fire her if they did not get their way on the fire chief hire. Ultimately, there is evidence that the police chief did report this conversation to the city manager.

CM1 has repeatedly denied making such statements. After thorough investigation, the Grand Jury does not find these denials credible. The police chief immediately reported the conversation to the city manager and later recounted the same story to a local newspaper. His story was also consistent throughout multiple investigatory interviews. The police chief had no apparent motive to fabricate this story. He had been working for the city for 26 years and had been chief for the last four. It appears the police chief had no interest in supporting any specific fire chief candidate, and that he had no specific problems working with CM1. Considering CM1's strong preference for the labor-backed candidate, close relationship with the Alameda fire labor leader, and the fact that CM1 was supported in reelection efforts by the labor group, the police chief's version of the conversation is more credible.

An elected official operating in a council-manager form of government should not be criticizing his or her city manager about internal governmental operations to one of the manager's subordinates.

If the allegation were true, it is unclear whether CM1 made the statement expecting that it would be passed on to the city manager as a threat or he just did not have the capacity or good judgement to withhold his opinion to someone so close to the city manager. If intended to pressure the city manager in the hiring process, it was unethical. If just a spontaneous declaration of CM1's feelings, it displayed bad judgement and a poor understanding of good governance. An elected official operating in a council-manager form of government should not be criticizing his or her city manager about internal government operations to one of the manager's subordinates. Criticisms should be made directly to the city manager. Relaying a threat to fire the city manager to one of her subordinates is absolutely inexcusable.

Meeting Between Two Councilmembers and City Manager

On August 16th, CM1 and a second councilmember (CM2), who were the closest allies of the fire labor leader, made an appointment and met privately with the city manager. The city manager was already aware of CM1's statement to the police chief claiming the city manager's job was in jeopardy. While not informed about the reason for the meeting, the city manager assumed that the two councilmembers were interested in lobbying for the labor-backed candidate and that they may also directly confront the city manager with CM1's warning. The city manager was so concerned about the ongoing pressure regarding the hiring process and threats to her employment that she decided to covertly record the conversation. The Grand Jury listened to the recording during its investigation.

CM2 had sought advice from a consultant hired by the council to aid in the city manager's performance review about how to provide input to the city manager about the fire chief hiring process. The consultant advised that a city manager would appreciate constructive input during a face-to-face conversation but the city council should avoid interfering in the process and that formalizing their opinions in a letter of recommendation would be inappropriate.

The meeting lasted approximately 55 minutes and focused on the city manager's relationship with the labor leader and why CM1 and CM2 preferred the labor-backed candidate.

During the meeting, the city manager made it clear she felt like there was significant inappropriate interference in the recruiting and hiring process. The city manager stated, "...and I am a little disappointed in we agreed initially that this would be an open and fair process without any pressure. And it's been the opposite. From the fire side, and including this meeting, that's not what we agreed to, with [the fire labor leader] and I." While the councilmembers were careful not to make any direct threats, their message was clear. They supported the labor-

They [CM1 and CM2] appeared to be demanding that the city manager give the labor leader daily access and input into the hiring process.

backed candidate and pressed the city manager on that point. They appeared to be doing the labor leader's bidding although they claimed the meeting was their idea. CM1 parroted the labor leader's claims against the city manager and her staff. Those concerns included: 1) a perception by the labor group that the labor candidate was not being given a fair shot at the job, 2) a comment by a

senior staff person that the city is run by the city manager, not by the fire labor leader, and 3) a rumor that the city manager was actively recruiting a candidate from a fire department outside of Alameda and had lied about that when speaking to the fire labor leader (that candidate did not ultimately even apply for the position). Both CM1 and CM2 pressed the city manager over and over to build a closer relationship with the labor leader even though they acknowledged that the leader was difficult to work with. At one point, CM1 said, "You don't have to do everything he says, but he needs to be able to trust you and at this point he doesn't. And that bothers me. So I want you guys to try to fix that." They appeared to be demanding that the city manager give the labor leader daily access and input into the hiring process.

CM2 stated that the labor-backed candidate understood the budget process, would be good to work with during difficult financial times, and could convince the firefighters to come along on important issues. CM2 felt one other internal candidate would be a total disaster and another internal candidate might be a short timer who was "gonna spike his pension...." When speaking about the poor relationship between the labor leader and the city manager, CM2 stated at one point, "But whatever happened, we need to be on the same page now about what the expectations are, and what's gonna happen and how we're gonna move forward and what the process is gonna look like..." The city manager responded by saying that she hoped the labor candidate did well and that would be the easiest solution. CM1 chimed in, "And if he does and you pick him, I mean, you'll have to be able to tell the folks that think you were pressured that you weren't."

Both councilmembers also acknowledged that they were very close personal friends with the labor leader. In fact, they drove together to the labor leader's wedding the weekend before and apparently discussed how they would approach the city manager at the meeting. The councilmembers again hounded the city manager to be in constant contact with the labor leader

and repair any trust issues. In fact, CM2 suggested that the city manager “build in an automatic email to him that just says there has been no change today, or whatever.”

At the end of the meeting, CM1 stated, “And just to be clear...I know I didn’t tell you who to hire, and I don’t think [CM2] did either, so just to be clear [laughs loudly].” These joking words were intended to erase 55 minutes of pressure to hire the labor candidate and appease the labor leader. It should be noted that the city manager protested several times during the meeting that she did not appreciate the pressure, yet CM1 and CM2 did not even acknowledge these comments in a meaningful way. The city manager felt the meeting and lobbying efforts destroyed the transparency of the hiring process. If the charter section is intended to prevent back room discussions and give the public confidence that the hiring process was fair and open, these discussions seemed to violate that intention.

The Grand Jury concluded that CM1 and CM2’s complaints about the city manager’s handling of the process were either inaccurate or irrelevant. Except for interference by the councilmembers and the firefighter labor organization, Grand Jury witnesses were generally complimentary of the professionalism and thoroughness of the fire chief hiring process. The labor-backed candidate actually advanced to the final round of interviews, in part, because the fire labor leader participated on the interview panel and was the only panel member who ranked him as a first choice. The real issue for CM1 and CM2 appears to be the city manager’s unwillingness to select the labor-backed candidate outright.

CM1 wrote a letter to the city manager offering strong support for the labor-backed candidate. CM1 did so using city letterhead and signed it in an official capacity as a member of the Alameda City Council.

Letter of Recommendation by Councilmember on City Letterhead

On July 31, 2017 CM1 wrote a letter to the city manager offering strong support for the labor candidate. CM1 did so using city letterhead and signed it in an official capacity as a member of the Alameda City Council. It was a clear attempt to influence the city manager in the hiring process. The letter speaks to the candidate’s strengths and qualifications and stressed that the city had historically benefitted when individuals are promoted from within the department to leadership positions. The outside investigator’s report concluded that the letter went beyond a typical character reference.

During the meeting between CM1, CM2 and the city manager, CM1 acknowledged being asked to write the letter in support of the labor-backed candidate and was provided with “talking points” by an executive board member of the firefighter’s labor group.

The letter was one of many and part of an organized effort by some within the fire labor organization to support their candidate. The labor organization was certainly within its right to lobby for its candidate. Part of its lobbying effort included approaching councilmembers,

community leaders and other elected officials to request recommendation letters in support of its candidate. At least two councilmembers (including CM2) refused to do so, in part, because it was not appropriate. CM1's letter was a direct and very public violation of the charter provision prohibiting councilmembers from attempting to influence the city manager in making an appointment.

Performance Review

Amid the tumultuous fire chief hiring process, the council sought to complete performance reviews of their direct reports. In May of 2017 the city council directed the city attorney to hire a governance expert to help the council with performance evaluations of top city management, including the city manager. The consultant had extensive experience serving as a city manager for five California cities and had also served in leadership roles, taught, and published articles for several city management professional organizations. Hiring a consultant to facilitate management evaluations allows for independent collection of information from the governing body with the promise of constructive discussion leading to a consensus by elected officials on the review in a timely manner.

The process started slowly due to scheduling conflicts and disagreements among councilmembers about how to do the evaluations. Once consensus was obtained, the consultant began to move through the evaluation of the city manager by individually interviewing councilmembers and having the manager prepare a self-evaluation. In July the councilmember interviews were completed and summaries along with the city manager's self-evaluation were distributed to all parties. All that was left was a closed session discussion between council and the city manager. During that closed session, the council could follow-up with questions on the self-assessments and presentation of goals and priorities to staff.

During the interviews, it became evident to the consultant that selection of the fire chief was an issue of interest for CM1 and CM2. It was clear that CM1 supported a specific candidate and tried to connect the issue to the city manager's evaluation. CM2 also brought up the fire chief selection process and inquired about how to communicate with the city manager.

While city leaders were still trying to agree on a date when the council could meet to present the finalized performance review and discuss them with the city manager, the issue of the fire chief

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hiring process again became an issue. On August 24, 2017 the city attorney sent an email to the entire city council, including the mayor and copying the city manager, the assistant city manager and the performance review consultant. The email reminded the elected leaders about the city manager's role in the hiring process and included the wording of Charter section 7-3 (council may not interfere in the

process). The email made no accusations but merely advised the council of their legal obligations. It was sent, in part, because the performance review consultant expressed his concern that some on the council were particularly interested in the fire chief selection and two councilmembers had already communicated with the city manager about the selection.

It was reported that one councilmember thought the email was helpful and that it was the first time they had even heard about the charter provision. CM1 had a very different reaction. CM1 responded to the city attorney, describing the city attorney's message as "disturbing and inappropriate." Because the consultant was copied on the original memo, CM1 accused the city attorney of participating in interference and intimidation of the council regarding the city manager's review.

It appears CM1 understood that the consultant was uncomfortable with councilmember involvement in the fire chief hiring process. His response struck a tone of outrage and was certainly defensive. CM1 felt strongly that he had a right to bring up what he described as a "legitimate performance-related matter" which included the city manager. In short, it appeared he was openly disregarding the city charter and using the performance review process as leverage.

The consultant saw it as an effort by at least two councilmembers to hold the evaluation over the city manager until the fire chief position was filled. Because of this behavior, the consultant terminated his firm's contract with the city prior to completion of any of the reviews.

Rather than using the evaluation process as a tool to communicate expectations, goals and priorities, it appeared that the process was being hijacked to accomplish individual councilmembers' goals of installing their preferred candidate for fire chief. It is ironic that CM1 described the city attorney's informative, non-threatening email reminding council about their roles during the hiring process as interference and intimidation while denying that any of his conduct rose to the level of trying to influence the city manager.

Consultant's Resignation

After significant consternation and attempts by CM1 to delay scheduling the council's closed session meeting to present the city manager's evaluation, the meeting was finally set for

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September 19. While all participants were present and prepared, the meeting did not go as the consultant had planned. The Grand Jury heard testimony that CM1 and CM2 raised issues about the evaluation process prior to the city manager being invited into the closed session meeting even though the procedure had been thoroughly described to the whole council on previous occasions. Disagreements ensued even though it appears the city and consultant followed industry best practices. The Grand

Jury also heard testimony that at least one other elected official was unhappy with the

summaries of the council interviews although no specifics were provided to the Grand Jury. Ultimately, the city manager’s review was put off for ambiguous reasons. The consultant saw it as an effort by at least two councilmembers to hold the evaluation over the city manager until the fire chief position was filled. Because of this behavior, the consultant terminated his firm’s contract with the city prior to completion of any of the reviews.

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Fire Chief Selection

By the beginning of October, the city manager had completed interviewing the fire chief finalists, and, resisting the intense pressure, selected a qualified candidate. By all accounts, the new fire chief is performing quite well and has a positive working relationship with council, the current city manager and the fire labor organization.

City Manager letter to Council

In conjunction with the selection of the new fire chief, the city manager chose to report in a letter

The city manager chose to report on the problems she encountered during the process and accused unnamed councilmembers of “intense and unrelenting” pressure to hire the labor supported candidate. The city manager claimed that such conduct directly violated the Alameda City Charter which prohibited councilmembers from attempting “to influence the city manager in the making of any appointment.”

to the Alameda City Council dated October 2, 2017 the problems she encountered during the process and accused unnamed councilmembers of “intense and unrelenting” pressure to hire the labor-backed candidate. The city manager claimed that such conduct directly violated the Alameda City Charter section 7-3, which prohibited councilmembers from attempting “to influence the city manager in the making of any appointment.” Notwithstanding this claim, the city manager looked towards the next department head appointment – the public works

director position had to be filled. The city manager hoped to choose the most experienced and qualified person for the position without going through the same intense scrutiny. The letter outlined a number of events and specific claims, as described in this report. Ultimately, the city manager would not fill the public works position. The interaction with council during the fire chief hiring process and the decision to choose a candidate not supported by the firefighter’s labor leader were attempts to stand on principle. The decision to make the October 2nd letter public raised the stakes even further.

While the letter did not name the councilmembers in question, it described CM1’s letter of recommendation and the meeting between CM1, CM2 and the city manager as inappropriate attempts to influence the hiring process. The local newspaper followed up with an article and

Op-Ed piece identifying both councilmembers by name. Any intention by the city manager for the letter to merely serve as a reminder to avoid such interference in the future was quickly disappearing. During public comment at the next city council meeting, a number of speakers, including the fire labor leader's wife, either attacked the city manager, her job performance both in Alameda and at her prior job in another county or commended CM1 and CM2 for all their good work in the community. The battle intensified.

Department Head Letter in Support of City Manager

Following the attacks on the city manager during the council meeting, many of the department heads who reported to the city manager felt it was important to stand up together in support of the city manager. At the next council meeting, the police chief, with department heads standing behind him, read a letter outlining the accomplishments of the city manager and her team. While they did not attack CM1 or CM2 in any way, CM2 felt it was inappropriate for the management team to defend the city manager and step into the controversy.

Hiring Outside Counsel to Investigate City Manager's Allegations

As a result of the accusations laid out in the city manager's October 2nd letter and the resulting public outcry, the city council hired an outside law firm to provide an independent legal analysis of alleged violations of Alameda City Charter section 7-3. The firm conducted a thorough investigation and asked the council to schedule a closed session meeting to address potential litigation based on the facts and circumstances contained within the report. It was certainly a legitimate concern, and closed session is the normal forum for discussion about potential litigation.

CM1 and CM2, who were the subjects of the investigation, participated in the closed session meetings regarding the independent investigator's report. Not only were they present in the meeting to accept the report, but the councilmembers and city attorney participated in editing facts leading to conclusions. This included clarifications, corrections and even deletions. After the closed session discussions, the independent investigator prepared a second report (13 pages) which told a shortened version of the story for distribution to the public, much shorter than the original 70 page report.

The Grand Jury is concerned that the report's "independence" was damaged after the subjects of the investigation participated with the rest of the council in modifying or editing the final report in closed session. The report was described to the public as an independent investigation to determine whether councilmembers violated the city charter, whether members of the council committed malfeasance and

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finally whether there should be a recommendation that the councilmembers in question should be removed from office. The subjects of the investigation should never have participated in helping to edit the report before it was released to the public. The former city manager certainly did not get to participate in editing the report. “[T]he common law doctrine against conflicts of interest ... prohibits public officials from placing themselves in a position where their private, personal interests may conflict with their official duties.” (64 Ops.Cal.Atty.Gen. 795, 797 (1981); accord, 70 Ops.Cal.Atty.Gen. 45, 47 (1987). Surely, CM1 and CM2’s personal interests were at stake when providing edits to the report and deciding what gets released to the public. Why was a second, much shortened report prepared? Why were both reports ultimately released? Were there efforts to release only the shortened report?

The Grand Jury was provided an explanation by two witnesses who stated that because CM1 and CM2 were not named in the city manager’s letter, the whole council could participate. This argument falls short. It took reporters little to no time to figure out who the city manager was referring to. CM1 was the only councilmember who wrote a letter of recommendation and CM1 and CM2 were the only members of the council who met with the city manager about the process. These were the only council-related complaints in the letter. Further, most of the report that was related to elected officials was focused on CM1 and CM2 and called them out by name.

The Grand Jury also heard testimony that there was direction by some on the council for the independent investigator to prepare the second shorter report, which would be the document released to the public. The second report comes to similar conclusions but appears to be much less critical of the two councilmembers. The Grand Jury also heard testimony that plans to release only the shortened document were leaked to the public. In part, as a result of public outcry, the council ultimately released redacted versions of both reports along with a summary of the changes. The Grand Jury believes that the two councilmembers who were subjects of the accusations should not have participated in the acceptance and editing of the report.

Costs to the City of Alameda

The fallout from the 2017 Alameda Fire Chief hiring process and surrounding events has been significant.

One elected official’s disrespectful treatment toward staff or willingness to side with special interests over the common good of the community can poison the halls of government and damage reputations.

The Grand Jury heard testimony from multiple witnesses that morale within City Hall was already eroding when some councilmembers and staff began to take sides in this matter. There were claims of retaliation. A number of senior staff left the city, some of whom were standing behind the police chief at the council meeting along with their colleagues. Witnesses said that many of the people who left did so at least in part because of the fire chief recruitment incident. Scandals such

as these can discourage talented public servants from taking jobs with a city government in

turmoil. One elected official's disrespectful treatment toward staff or willingness to side with special interests over the common good of the community can poison the halls of government and damage reputations.

Turnover is expensive for the city, both financially and in terms of intellectual property, institutional knowledge, experience, and continuity of projects. In approximately one year, the city lost the following staff:

- City Manager
- Assistant City Manager
- City Attorney
- Assistant City Attorney
- Alameda's Base Reuse and Transportation Planning Director

The city council agreed to separate from the former city manager in May 2018. The former city manager received \$257,400 in severance payments paid over one year, along with health benefits for 18 months. The city paid an additional \$519,709 separation payment in the form of an annuity to be split over two installments in August 2018 and February 2019. Furthermore, the city was responsible for paying the former city manager's \$125,000 attorney's fees. This agreement was approved by the council with a 3-2 vote with CM1 and CM2 dissenting.

The city also paid for outside counsel to investigate these matters and prepare the two reports. In addition, the city hired outside counsel to represent the city's interests after the independent investigator's work was completed. CM1 and CM2 also hired personal attorneys to represent them and have started the process to obtain reimbursement from the city for those fees. They contend their legal counsel was required to defend their actions which took place in the scope of their roles as councilmembers so taxpayers should be responsible for those costs.

All of this may have been prevented if the city provided the council with more training relating to governance and their ethical obligations. New councilmembers are provided a cursory orientation, a copy of the city charter and are usually invited to attend an annual conference hosted by the California League of Cities. They also complete online ethics training every two years as required by California law, although this training does not in a meaningful way cover the topics that Alameda faced during this controversy.

Many municipalities rely on their mayors or presidents of their governing bodies to provide leadership and guidance when other councilmembers overstep their authority. This certainly was not the case in Alameda. Other government agencies adopt a code of conduct or council handbook to document accepted practices and expectations of elected leaders and staff. A unified effort to follow basic principles of good governance often results in an effective government. While a councilmember handbook can help orient new electeds, a strong document outlining roles and responsibilities defined by state law, the organization's charter and municipal codes

can also be an essential resource and training guide to experienced electeds and city staff. Cities like Walnut Creek and Yuba City have developed robust council handbooks that describe rules surrounding conflicts of interest, detail meeting procedures and speak to proper interactions between elected officials and staff. Alameda could benefit from such guidance.

First Amendment vs. Good Governance

Woven through the discussion of the city charter's limits on council interference is the argument that the First Amendment rights of individual councilmembers could supersede the city charter.

Legal counsel representing the elected officials accused of interfering with the fire chief's hiring process cite a whole host of court opinions supporting open and free expression by public officials. Many cases stand for the proposition that the First Amendment provides important protections to legislators ensuring that they may take positions on controversial political issues with minimal limits on their speech and without the fear of being removed from office for being outspoken. Yet, much of the same case law acknowledges that legitimate limits on speech can exist.

Many of these limits on speech and expression were built into the law through legislative action and the initiative process to combat corruption and protect the integrity of governmental process. The Political Reform Act of 1974 was adopted by California voters after the Watergate scandal. Among other things, it regulates campaign finance and conflicts of interest. Elected officials may not participate in certain governmental decisions when they have personal financial interests at stake. The Brown Act also places limits on free and unfettered speech of elected officials. It places strict limits on electeds meeting behind closed doors to discuss the public's business. It helps ensure that deliberations and actions of public bodies are conducted openly and subject to public scrutiny.

The firm hired by the city to investigate the Alameda councilmembers thoroughly and thoughtfully examined these free speech issues within its final report. Ultimately, the report validated the Alameda charter provision limiting council interference in the city manager's hiring authority. The investigator relied on case law which supported the position that speech related to internal power struggles within the workplace is not a public concern. Speech involving the internal workings of a public agency which is not a matter of public concern does not have unlimited constitutional protection. The investigator concluded that "[s]peech by a councilmember that directly interferes with the authority vested in the city manager is well within this category of unprotected expression." The Grand Jury agrees with such reasoning.

Charter provisions which prohibit council interference in the administrative responsibilities of the city manager are quite common. The city of Oakland's charter section 218 makes it a misdemeanor for council to interfere in the administrative affairs of the city administrator. The city of Mountain View's charter also includes a council non-interference section which ultimately

led to a councilmember's removal from office in 2002. Both San Francisco and Hayward also have non-interference policies. This report should serve as an object lesson to all local public agencies within Alameda County to review their charters and codes of conduct.

The ability to run for and hold elective office is a valuable right of citizenship. The voters are given the power to evaluate and choose candidates who meet basic prescribed qualifications. Those officeholders are bestowed with great powers to govern, set community policy and spend public funds. Understandably, removing an elected official from office for misconduct is difficult. Before overruling the will of the voters, the law requires that it is shown that the official has committed willful or corrupt misconduct.

The Grand Jury has the authority to issue a formal Accusation to start the process to remove someone from office. Such authority comes with great responsibility. Ultimately, the Grand Jury would be usurping the will of the voters because a public official has committed such malfeasance in office that they must be removed before voters have a chance to make their judgement at the ballot box. Here, in the Grand Jury's opinion, CM1 committed more significant violations of the charter. We also acknowledge that most of the facts laid out in this report were available to the voters last November when CM1 was on the ballot for reelection. Voters did not reelect CM1 to a new four-year term on the council. However, CM1, as the runner-up, was awarded a term-shortened spot due to another councilmember's election as mayor, which created a vacancy on the council. While the Grand Jury believes that the conduct described in this report did, in fact, violate the city charter, it also believes it does not warrant moving forward with formal Accusation proceedings.

CONCLUSION

This story began with the then-fire chief announcing his retirement in March of 2017. What resulted was a fiasco that cost the city well over a million dollars, the loss of multiple talented and hard to replace senior staff, and a government body with a very damaged reputation.

The Alameda City Charter clearly bestows the power to hire administrative staff on the city manager. At the same time, it makes clear that city councilmembers must not attempt to influence the city manager during this process. While these governing documents are important, a well-functioning municipality relies on the strength and fortitude of its leaders, both elected and appointed, to stand up against external pressures to skirt the tenants of good government.

The external pressure exerted during the fire chief hiring process and the resulting actions by two councilmembers represented the very conduct that good government advocates were trying to eliminate when city charter amendments preventing council interference began to pop up throughout the nation. Cronyism and back room deals are corrosive and can destroy the public's trust in the fair administration of government. While the fire labor organization had every right to lobby for their candidate, it was unethical to lobby councilmembers to intervene and influence

the city manager when the city's governing document expressly prohibited such council interference.

The resulting damage caused by the actions of elected officials and staff that followed is undeniable.

FINDINGS

Finding 19-1:

The city of Alameda's failure to provide councilmembers with adequate training upon first being elected to council as well as annual training on governance helped contribute to inappropriate interference in the fire chief hiring process.

Finding 19-2:

The city of Alameda's charter fails to provide enforcement mechanisms when councilmembers and staff violate provisions of the charter, creating uncertainty when such violations occur.

Finding 19-3:

Councilmembers who were the obvious subjects of the independent investigation were allowed to participate in the editing of the outside investigator's report, damaging the "independence" of the analysis.

Finding 19-4:

In violation of the city's charter they had sworn to uphold, two councilmembers did interfere with the city manager's ability to conduct an open and transparent recruitment for a new fire chief.

RECOMMENDATIONS

Recommendation 19-1:

The Alameda City Council must establish policies mandating initial training and orientation and ongoing annual training for elected officials and senior staff related to ethics and governance.

Recommendation 19-2:

The Alameda City Council must investigate possible charter or municipal code amendments to clarify and strengthen provisions relating to city governance. The charter should delineate the specific types of conduct that constitute a violation of section 7-3, as well as outline an enforcement process.

Recommendation 19-3:

The Alameda City Council should adopt a policy stating that councilmembers who knowingly violate ethical codes of conduct or charter provisions may not seek reimbursement for related legal representation.

Recommendation 19-4:

The Alameda City Council working with the city attorney, city manager and city clerk must develop and implement a code of conduct and councilmember handbook.

RESPONSES REQUIRED

Alameda City Council

Findings 19-1 through 19-4
Recommendations 19-1 through 19-4

REQUEST FOR RESPONSES

Pursuant to California Penal Code sections 933 and 933.05, the Grand Jury requests each entity or individual named below to respond to the enumerated Findings and Recommendations within specific statutory guidelines:

Responses to Findings shall be either:

- Agree
- Disagree Wholly, with an explanation
- Disagree Partially, with an explanation

Responses to Recommendations shall be one the following:

- Has been implemented, with a brief summary of the implementation actions
- Will be implemented, with an implementation schedule
- Requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a completion date that is not more than 6 months after the issuance of this report
- Will not be implemented because it is not warranted or is not reasonable, with an explanation

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