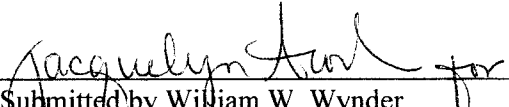


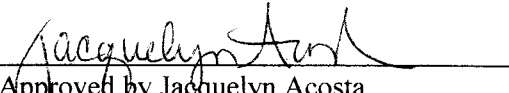


# City of Carson Report to Mayor and City Council

November 6, 2013  
New Business Discussion

**SUBJECT: CONSIDER ORDINANCE NO. 13-1529 REPEALING, IN PART, MUNICIPAL CODE SECTION 2104 REGARDING REMOVAL OF THE CITY MANAGER**

  
Submitted by William W. Wynder  
City Attorney

  
Approved by Jacquelyn Acosta  
Acting City Manager

## **I. SUMMARY**

On October 15, 2013 this matter was continued indefinitely. Mayor Dear and Councilwoman Davis-Holmes have requested the City Council discuss this matter tonight.

This item seeks to bring the Carson Municipal Code into compliance with existing case law by repealing portions of Municipal Code section 2104.

## **II. RECOMMENDATION**

WAIVE further reading and INTRODUCE Ordinance No. 13-1529, "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, REPEALING, IN PART, SECTION 2104 OF THE CARSON MUNICIPAL CODE REGARDING REMOVAL OF THE CITY MANAGER."

## **III. ALTERNATIVES**

TAKE no action on this agenda item.

## **IV. BACKGROUND**

Carson Municipal Code section 2104 currently provides as follows:

"The City Council shall appoint the City Manager, and may remove him, subject to his contractual rights, if any, by a three (3) member vote. At least thirty (30) days before such removal shall become effective, the City Council shall by a three (3) member vote of its members adopt a preliminary resolution stating the reasons for his removal. By the preliminary resolution, the Council may suspend the Administrator from duty, but shall in any case cause to be paid to him forthwith any unpaid balance of his monthly salary and his monthly salary shall continue to be paid for the next one (1) calendar month following adoption of the preliminary resolution."

It is the considered opinion of the Office of the City Attorney that, with the exception of the first sentence of this section, the remainder of section 2104 should be repealed, and the attached ordinance does such.

*First*, most city manager contracts already provide some severance benefits in the

event that the City Council elects to release a city manager for its convenience. The third sentence of section 2104 has the effect of adding up to 60 additional days of severance (depending on the date of a city manager's release) beyond those which are typically provided by contract.

**Second**, the requirement that the City Council adopt a "resolution stating the reasons for [the city manager's] removal" is inconsistent with the requirements of law and could expose the city to liability claims regarding the "reasons" for its actions.

Under the law, a hiring authority need not give a reason for its release of an "at will" employee, and to do so creates an unnecessary exposure to claims from the released employee.

**Finally**, Gov't Code section 54957.1(a)(5) provides that a report on the dismissal must be deferred until administrative remedies, if any, are exhausted. "[L]ocal legislation that conflicts with state law is void. . . . A conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication." (*City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.* (2013) 56 Cal.4th 729, 743, citing *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897.)

The Brown Act addresses the reporting requirements regarding the release of an employee and, together with the terms and conditions of any employment contract, preempts the Municipal Code provision requiring a resolution detailing the reasons for such action.

V. **FISCAL IMPACT**

NONE is anticipated.

VI. **EXHIBITS**

1. Ordinance No. 13-1529. (pgs. 4-5)

Prepared by: William W. Wynder, City Attorney

TO: Rev09-05-2013

Reviewed by:

City Clerk	City Treasurer
Administrative Services	Public Works
Community Development	Community Services

**Action taken by City Council**

Date \_\_\_\_\_ Action \_\_\_\_\_

ORDINANCE NO. 13-1529

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, REPEALING, IN PART, SECTION 2104 OF THE CARSON MUNICIPAL CODE REGARDING REMOVAL OF THE CITY MANAGER.

NOW, THEREFORE, the City Council of the CITY OF CARSON DOES ORDAIN as follows:

SECTION 1. Section 2014 of the Carson Municipal Code is hereby repealed, in part, to read, in its entirety, as follows (new text, if any, in ***bold & italics***; deleted text, if any, in ~~strikethrough~~):

“The City Council shall appoint the City Manager, and may remove him/*her*, subject to his/*her* contractual rights, if any, by a three (3) ~~member~~ ***affirmative votes of the entire City Council***. At least thirty (30) ~~days before such removal shall become effective, the City Council shall by a three (3) member vote of its members adopt a preliminary resolution stating the reasons for his removal. By the preliminary resolution, the Council may suspend the Administrator from duty, but shall in any case cause to be paid to him forthwith any unpaid balance of his monthly salary and his monthly salary shall continue to be paid for the next one (1) calendar month following adoption of the preliminary resolution.~~”

SECTION 2. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the city of Carson hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 3. The City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of this Ordinance may have a significant effect on the environment. This ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

SECTION 4. This Ordinance shall be in full force and effect thirty (30) days after its second reading and adoption.

SECTION 5. The City Clerk shall certify to the passage and adoption of this Ordinance by the City Council of the city of Carson and shall cause a summary of this ordinance to be published in accordance with Government Code § 36933.

**PASSED, APPROVED and ADOPTED** at a regular meeting of the City Council  
on this \_\_\_\_ day of November, 2013.

\_\_\_\_\_  
Mayor Jim Dear

ATTEST:

\_\_\_\_\_  
Donesia L. Gause, CMC, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

