

# San José Charter Review Commission

## Emergency Powers of the Mayor Recommendation Memo

### 1) Proposal Name

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| <b>Proposal Name:</b>  | <i>EMERGENCY POWERS OF THE MAYOR</i>                                   |
| <b>Submitted by:</b>   | <i>Commissioner Linda J. LeZotte</i>                                   |
| <b>Date submitted:</b> | <i>September 8, 2021</i>   |
| <b>Draft Version:</b>  | <a href="#">Click here for Original Version 1 Draft</a> ; V.2 V.3, V.4 |
| <b>Powerpoint:</b>     | <a href="#">Click here for Powerpoint</a>                              |

### 2) Proposal Details

| Questions  | Recommending Person Response to Questions  |
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| <b>1) What problem(s) are you trying to address?</b><br><i>Before suggesting a solution, it is important to be clear about the problem you aim to solve.</i> | <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. On two occasions in the last 3 ½ years, February 21, 2017 flooding and May 31, 2020 protests following the death of George Floyd, 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 during the height of the flooding in 2017, 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.</p> |

**2) How has this problem possibly benefited or burdened people, especially BIPOC, low-income, undocumented and immigrant, those experiencing houselessness, etc.?**

*Is there data that speaks to the impact of this problem? What does the disaggregated data tell us?*

The Mayor is the very visible leader of the City. During both the floods and the protests, the public looked to the Mayor for leadership and resolutions.

During the flooding 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.

During the protests, tensions in the community were related to responsibility and accountability by City government.

**3) What change are you proposing?**

*Describe the revision to [San José's Charter](#) that you are proposing. Include relevant Charter section numbers.*

**PROPOSAL DETAILS: \*Changes, additions in BOLD**

**ADD:** to City Charter Section 502 the following:

**502 I – Proclamation of civil emergency:**

**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, 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.**

**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 herein conferred upon the city manager or department head shall be exercised subject to the direction and approval of the Mayor.**

**B. Whenever a local emergency is proclaimed by the Mayor, the city council shall take action to ratify the proclamation within 72 hours or as soon as practicable thereafter, or the proclamation shall have no further force or effect.**

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|  | <p><b>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 shall utilize such other available means, including social media, and public postings on the City website.</b></p> <p><b>D. The mayor shall have those powers enumerated in Section 8.08.250.</b></p> <p><b>CHANGE</b> 8.08.210 Duties</p> <p>The office of emergency services shall have the following powers:</p> <p><b>A. In the absence of the mayor or vice-mayor</b>, request the city council ...<br/><i>(continue with the remainder of section as is.)</i></p> |
| <p><b>4) Is this change feasible?</b><br/><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>Yes</p>  |
| <p><b>5) Who might benefit from or be burdened by this change?</b><br/><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><b>Benefit:</b> The people of San Jose; City Administration</p> <p><b>Burden:</b> 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>   |

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| <p><b>6) What are the arguments against this proposal?</b></p> <p><i>Summarize the arguments you expect or data you have found in opposition to this recommendation.</i></p>  | <p>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.</p> <p>On-going training required by the Director/Head of the Emergency Services.</p> <p>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.</p> <p>Can an Emergency Declaration become a political decision?</p> |
| <p><b>7) Must this be a Charter revision?</b></p> <p><i>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?</i></p> | <p>Yes</p>   |
| <p><b>8) Are there other examples of this change?</b></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>   |

### 3) Proposal Research & Citations

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

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| <p><b>List of citations</b><br/><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; 8.06.250</p> <p>New York Executive Law 24, Ch. 18, Art. 2-B, Sect. 24</p> <p>City of Los Angeles Municipal Code Sec. 8.27, et. Seq.</p> <p>San Francisco Administrative Code Sec. 7.6</p> <p>Seattle Municipal Code Chapter 10.02</p> <p>City of Toppenish, Washington Code Sec. 2.95.010-050</p> <p>City of Laurel, Maryland, Laurel City Code Article, VIII, Sec. 2-176</p> |
| <p><b>Any speakers who presented to the subcommittee must be listed.</b><br/><i>Include name, title, affiliations, etc., along with a brief summary of the information presented by them.</i></p> | <p>NO</p>  |
| <p><b>Relevant Links</b><br/><i>Provide links or locations of the information in this research as much as possible, otherwise provide attachments.</i></p>  | <p>See above citations</p>   |