

**M O T I O N**

Moved by Council Member Yousefian, seconded by Council Member Najarian, that with regard to the process for consideration and appointment of a Council member as Mayor, the council hereby directs staff to note and file the July 15, 2008 report from the City Attorney.

Ayes: Najarian, Quintero, Weaver, Yousefian, Drayman

Noes: None

Absent: None

Abstain: None

THE MOTION WAS ADOPTED AT THE REGULAR MEETING OF THE GLENDALE CITY COUNCIL HELD ON: Tuesday, July 15, 2008.

**APPROVED AS TO FORM**



CITY ATTORNEY

DATE 7-16-08



## CITY OF GLENDALE CALIFORNIA REPORT TO CITY COUNCIL

July 15, 2008

### AGENDA ITEM

Discussion of process for annual appointment of the Mayor  
(1) Motion directing staff

### COUNCIL ACTION

Public Hearing [ ] Ordinance [ ] Consent Calendar [ ] Action Item [ X ] Report Only [ ]

Approved for July 15, 2008 calendar

### ADMINISTRATIVE ACTION

Signature

**Submitted**

Scott H. Howard, City Attorney .....

**Prepared**

Scott H. Howard, City Attorney .....

**Approved**

James E. Starbird, City Manager .....

### RECOMMENDATION

Staff has no recommendation. This matter has been placed on the agenda at the request of council members for discussion .

### REPORT

The city council annually appoints one of their own to act as Mayor for the following year. Under the Charter, the council shall choose one of its members as presiding officer, to be called Mayor (Glendale Charter Art. VI Sec. 5 sub'd 4). The Municipal Code provides that the selection of mayor shall be the second Monday of April in each year in which a general Municipal election is held; and in other years at the regular meeting of council following the first Monday of April. *In the selection, preference is to be given members of council who have had the benefit of experience as council members prior to the time of selection* (GMC 2.04.020- emphasis added). While the code does not define "experience", in the context of the language of the section the word is commonly understood to mean "the process or fact of personally observing,

encountering, or undergoing something”(American College Dictionary) or “a state, extent or duration of being engaged in a particular study or work. A word implying skill, facility, or practical wisdom gained by personal knowledge, feeling, and action, and also the course or process by which one attains knowledge or wisdom” (Black’s Law Dictionary -5<sup>th</sup> Ed). In addition, the section uses the phrase “preference should be given”. Again in context, this phrase appears to suggest that a person of experience is to be considered before or above other persons (see American College Dictionary - definition of prefer or preference). The phrase includes the word “should” which, as the past tense of shall generally implies a duty or obligation, although usually no more than an obligation of propriety or expediency (Black’s Law Dictionary).

Courts will normally give words of a statute a plain and common sense meaning unless specifically defined (*MacIsaac v. Waste Mgmt. Collection & Recycling Inc.* (05) 134 C.A. 4<sup>th</sup> 1076). Ultimately the question is whether the operative sentence creates a mandatory obligation on the council to select an individual with council experience or is it merely directory, ie: suggestive of appointing someone with experience, but not obligatory. The lack of a penalty provision suggests that the provision is directory. Where, as here, there is no penalty attached for failure to appoint a council member with experience, such a provision would auger in favor of a construction which is directory, not mandatory (*Thomas v. Driscoll* (40) 42 C.A. 2d 23).

Given the common ordinary understanding of the terms and phrases as well as the lack of a penalty provision, and historical understanding of the provision over the past 30 or more years, we construe the section to be permissive, not mandatory albeit strongly suggestive that someone with experience on the council prior to appointment is preferred as mayor.

A review of other cities has been conducted and it reveals that with two exceptions, there is no “ascent order” for appointing a Mayor <sup>1</sup> (See EXHIBIT A). The first exception, Hermosa Beach appears to use a 9 month rotation to ensure that every one of the five elected council members is able to serve as Mayor during a four year term. A copy of the memorandum reflecting the practice is attached as EXHIBIT B . Huntington Beach appoints a Mayor and Mayor Pro Tem, with the Mayor Pro Tem becoming Mayor at the conclusion of the Mayor’s term. The member of council having the longest consecutive city council service then becomes Mayor Pro Tem. There is a tie breaking procedure if two council members have the same length of service. A copy of the Huntington Beach resolution is attached as EXHIBIT C .

The city clerk has reviewed the appointments to Mayor over the past 20 years and it appears therefrom that for at least that period of time, a custom or practice has, with four exceptions <sup>2</sup> been for the Chair of the Redevelopment Agency to ascend to the position of Mayor. A copy of the spreadsheet showing the appointments is attached as EXHIBIT D .

As noted above, nothing currently in the Charter or Code mandates that the council select any particular council member as Mayor, and whether an unwritten or un-codified custom or practice exists, it exists so long as the majority of the council desires to follow same on an ad hoc basis. This council is free to utilize any procedure (other than a process or procedure which would offend the Constitution) to select a Mayor so long as the council is cognizant of the strong suggestion that a council member with experience is to be given preference.

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<sup>1</sup> Out of the 16 cities surveyed, 5 had appointed Mayors and the remainder had directly elected Mayors.

<sup>2</sup> One exception occurred when GRA chair Gomez was elected to another public office prior to the time for appointment of the Mayor in 2005.

Staff is seeking direction whether to have the current language remain as set forth in the Municipal Code, return with an amendment thereto, including deleting the language altogether, or codify a different procedure. .

**FISCAL IMPACT**

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None.

**EXHIBITS**

Survey of cities

Hermosa Beach administrative process

Huntington Beach resolution - procedure for selection of Mayor

City Clerk spreadsheet on Mayoral appointments in Glendale