



**CITY OF PACIFIC GROVE**  
300 Forest Avenue, Pacific Grove, California 93950

**AGENDA REPORT**

**TO:** HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL  
**FROM:** Council Member Daniel Davis  
**MEETING DATE:** February 20, 2008  
**SUBJECT:** **CONSIDER THE CREATION OF A COUNCIL  
SUBCOMMITTEE TO DEVELOP MODIFICATIONS TO  
THE CITY'S PERSONNEL ORDINANCE**

**RECOMMENDATION:**

Select up to three Council Members for appointment to a Personnel Ordinance subcommittee.

**DISCUSSION:**

On September 6, 2000, the City Council adopted an ordinance rescinding Chapter 4.20 ("Personnel Plan") of the Pacific Grove Municipal Code and adopted a new Chapter 4.20 ("Personnel System, Rules and Regulations") to establish new personnel rules for city employees.

Subsequently in 2001, it was discovered that a number of provisions of the revised ordinances were in conflict with the City Charter. In particular, among the provisions of the pre-existing chapter of the code was section 4.20.360, which stated:

*"4.20.360 Removal of officers and employees*

*a) Intent. In enacting this section, the city council acknowledges the provisions in the city charter investing in the city manager the power to select and remove at will most of the city's appointed officers and employees. However, the city council wishes to afford to the city manager, under this section, authorization to employ certain procedures and to incur expense in connection therewith, so as to avoid possible conflict with rules recently enacted by the California Supreme Court and the state legislature. **Nothing contained in this section is intended to create vested rights to employment or to curtail in any way the city manager's ultimate prerogative to discharge an employee with or without cause, as specified in the city charter.**" (my bold italics)*

The wording in bold italics in this section affirming a policy of 'at will employment' in the city does not appear in the new Chapter adopted on September 6, 2000. However, in

Article IX. Discipline, Section 4.20.410, subsection a) of the new Chapter appears the wording:

*“(a) Intent and applicability*

***(1) The charter invests in the city manager the power to select and remove most of the city’s appointed officers and employees. The provisions of this article afford the city manager and others authorization to employ certain procedures with respect to all forms of discipline, so as to act in accordance with court decisions and statutory provisions.”***

As shown above, the previous wording clearly affirmed that, consistent with Article 6 of the City Charter, ‘at will employment’ is a general management policy in the City of Pacific Grove. The new wording is somewhat ambiguous on this issue, even though the intent of the City Charter is clear.

Secondly, in Section 4.20.420 of the revised ordinance a Personnel Hearing Board is established. Paragraph (b) establishes that the members of this Board are appointed by the Mayor with the consent of the Council. Also in Section 4.20.410, Discipline of officers and employees, at paragraph (k) there is the statement:

*“(k) Action Following Hearing.*

***(1) In cases where the personnel hearing board has determined that the city has not demonstrated the truth of the facts upon which discipline is based, the city manager shall immediately rescind the disciplinary action in the notice of discipline, and steps necessary to adjust the employee's records to reflect such rescission shall be taken.”***

Before the revisions in September, 2000, the personnel hearing board acted only in an *advisory capacity* to the City Manager. In May of 2001, this section as revised was determined to be in conflict with Articles 19 and 21 of the City Charter, in that a Council appointed body cannot interfere with or dictate to the City Manager decisions that relate to the appointment or removal of any City employee. In fact it is somewhat unclear how the Personnel Hearing Board serves any useful purpose, since by the Charter ultimate authority for all employee discipline lies with the City Manager.

Subsequently in 2001 it was realized that a number of other provisions and wording in Chapter 4.20 were misleading or in conflict with the City Charter and the then City Attorney was directed to prepare revisions to correct the above problems and other issues in the personnel ordinances. These proposed revisions were subsequently brought to the Council in October, 2001, but were never enacted. That is where matters have stood since that time.

As I was a member of the City Council during that time I have remained concerned about the unsatisfactory situation involving Chapter 4.20 of the Code. I am now requesting that the Council consider this matter and take appropriate actions to correct it. In particular I would like to recommend that a set of revisions of the ordinances of Chapter 4.20 be

developed to correct the problems cited above, somewhat along the lines of the revisions previously developed, but not adopted, in 2001, and that these revisions be brought back to the City Council for consideration. I realize that these revisions may be subject to “meet and confer” requirements as they may affect city employment. Since the City is undergoing a significant restructuring, this seems an appropriate time to make these corrections and bring this chapter into full consistency with the City Charter.

**FISCAL IMPACT:**

None.

RESPECTFULLY SUBMITTED:

---

Daniel Davis  
Council Member