



CITY OF POMONA COUNCIL REPORT

June 19, 2017

To: Honorable Mayor and Members of the City Council

From: Linda Lowry, City Manager

Submitted By: Arnold M. Alvarez-Glasman, City Attorney

Subject: **Introduction and First Reading of an Ordinance Repealing Pomona City Code Section 2-522 Pertaining to Vote Requirements for Removal of Commissioners**

OVERVIEW

Recommendation – That the City Council introduce for first reading the attached ordinance repealing Pomona City Code Section 2-522, which requires a 4/5 vote of the Council to remove a commissioner and conflicts with City Charter Section 801. Charter Section 801 is the controlling authority and provides that a commissioner may be removed by a majority vote of the Council.

Fiscal Impact – There is no fiscal impact associated with this action.

Previous Council Action – During its meeting on May 6, 2017, the Council directed staff to prepare an ordinance that resolves the discrepancy between the Pomona City Code and City Charter pertaining to the Council vote required for removal of Commissioners.

Public Noticing Requirements – There is no public notice is required for this Council action.

EXECUTIVE SUMMARY

The proposed ordinance will correct the discrepancy between the City Code provision, which allows the City Council to remove a commissioner by a 4/5 vote, and the City Charter provision, which allows the City Council to remove a commissioner by a majority vote. The ordinance will repeal the conflicting City Code language, as the City Charter is the controlling authority.

DISCUSSION

Prior to 1991, there was no procedure adopted for removal of commissioners by the City Council. In 1991, the Council adopted Ordinance No. 3608, which established that the City Council may remove a commissioner upon a 4/5 vote. This language is now codified as City Code Section 2-522. In 1998, the voters approved a new City Charter, which included Charter Section 801—providing that the City Council may remove a commissioner upon a majority vote. The City Charter has not been amended since 1998.

The 1998 adopted City Charter provision, establishing a majority vote of the Council to remove a commissioner, prevails over the 1991 ordinance provision. In the same way that the State Constitution—the controlling legislative authority at the State level—prevails in the event of a conflict between the State Constitution and State law, by analogy, the City Charter—the City’s controlling legislative authority—supersedes the City Code in the event of a conflict between the Charter and City Code.¹

When the 1998 City Charter was adopted, the language of the 1991 Ordinance (which was then codified in the City Code) was inadvertently left in the City Code, rather than stricken to reconcile the Charter’s and Code’s conflicting provisions regarding the procedure for removing commissioners. Although the City recodified the City Code in 2004, and the recodified version of the Code further retained the conflicting provision, the recodification of the City Code does not affect the enactment and prevalence of the 1998 adopted City Charter.

The proposed ordinance will repeal Section 2-522. Action on all ordinances requires a majority vote of the City Council at a regular meeting (Government Code § 36936). If introduced for first reading, the ordinance will be brought for second reading at the next regular Council meeting. In the interim, if Council action is required to remove an appointed Commissioner, the City Council shall remove the commissioner by a majority vote, pursuant to Pomona City Charter Section 801.

Attachment: Proposed Ordinance

¹ In some cases, the City’s Charter even supersedes conflicting State law. The California Constitution provides cities with the power to “make and enforce all ordinances and regulations in respect to its municipal affairs.” Cal. Const. Art. XI, § 5(a).