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## LEGAL OPINION

**Subject: Calculation of Seniority for Councilmembers**

Dear President Brunner:

### Introduction

You contacted our Office regarding the procedure to determine seniority among Councilmembers. You stated that both Councilmembers Brooks and Quan advised you that they want the parking space that former Councilmember-At-Large Henry Chang used. According to the information we have, in 2002 Councilmembers Brooks and Quan were elected for the first time as Councilmembers to serve full-four-year terms. They were sworn into office at the same time in January 2003. Each of them was reelected to a second full four-year term of office in 2006 and they were sworn in at the same time in January 2007.

You are considering allocating parking spaces based on seniority. You asked whether seniority in office is based on the date a Councilmember is elected or the date a Councilmember is sworn into office.

### Question

Is seniority based on the date a Councilmember is elected or the date the Councilmember is sworn into office?

### Brief Answer

This opinion takes no position on the question whether the Council has used or should use seniority to assign parking spaces, or for any other purpose, or what definition of seniority the Council should use. These are policy questions that the Council is free to decide.

If Councilmembers' seniority is defined as the length of their continuous service as a Councilmember, then their seniority is not based on the date they were elected

because their terms of office/service do not begin when they are elected. Rather, the City Charter specifies the date and time that Councilmembers' terms of office begin and end as well as when they assume the duties of their office and requires that Councilmembers take the oath of office before they begin their duties. Length of service as a Councilmember can be based on the date that a Councilmember was sworn into office or the date and time that their term of office began.

A Councilmember who is elected to a full-four-year term begins his/her term at 11:00 a.m. on the Monday after the January 1 that follows their election to office.<sup>1</sup> Newly elected and re-elected Councilmembers assume the duties of their office at a Council meeting that the Charter requires the Council to schedule on the date and time that their terms begin. A Councilmember's four-year term ends at 11:00 a.m. on the Monday after the January 1 that follows a Councilmember's re-election or the election of his/her successor.

### Analysis

#### 1. The Definition of Seniority

To answer your question, we turn first to the definitions of "seniority" and "senior" in Webster's Dictionary.

**seniority 1:** the quality or state of being senior : priority **2:** a privileged status attained by length of continuous service (as in a company). Webster's Ninth New Collegiate Dictionary (9<sup>th</sup> ed. 1990, p. 1071).

**senior 1:** a person older than another **2 a:** a person with higher standing or rank **b:** a senior fellow of a college at an English university **c:** a student in the year preceding graduation from a school of secondary or higher level **3:** senior citizen. Webster's Ninth New Collegiate Dictionary (9<sup>th</sup> ed. 1990, p. 1071).

As is evident from Webster's dictionary, seniority has a number of definitions. Of the definitions that appear for "seniority", the most apposite to your question is: "a privileged status attained by the length of continuous service (as in a company)." (Webster's Ninth New Collegiate Dictionary (9<sup>th</sup> ed. 1990, p. 1071.) Thus, the precise

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<sup>1</sup>For Councilmembers who are elected to fill a vacancy, the elected Councilmember's time in office commences after he/she is sworn into office and ends when the term of his/her predecessor ends. (City Charter section 205.) This provision is not relevant to the question presented because Councilmembers Brooks and Quan have been elected to full four-year terms.

question we must answer is whether Councilmember Brooks or Quan has the greater length of continuous service as a Councilmember.

**2. The City Charter Specifies the Date and Time When A Councilmember's Term of Office Begins**

As we explain below, a Councilmember's service or term of office does not begin when he/she is elected. Rather, the term of office for a Councilmember who is elected to a full four-year term begins on the Monday after the January 1 that follows their election. (City Charter section 204.)

The City Charter unequivocally specifies the date and time when a Councilmember's service, i.e., term of office begins and ends. The Charter also specifies that a Councilmember assumes the duties of the office when his/her term of office begins and requires that a council member take the oath of office before beginning the duties of the office.

City Charter section 204, entitled "Term of Office, Council" provides:

**The Councilmembers shall be elected to a term of four years beginning at 11:00 a.m. on the Monday following January 1 following their election.** The Councilmembers elected or appointed to office to serve terms beginning in 1985 shall serve in office until 11:00 a.m. on the Monday following January 1 in 1991. The Councilmembers elected or appointed to office to serve terms beginning in 1987 shall serve in office until 11:00 a.m. on the Monday following January 1, 1993. In 1990 Municipal Elections will be held to select City officers for four year terms for the following offices: Councilmember, District #2, Councilmember, District #4, and, Councilmember District #6. In 1992 Municipal Elections will be held to select City Councilmembers for four year terms for the following offices: Councilmember, District #1; Councilmember, District #3, Councilmember, District #5; Councilmember, District #7; and Councilmember-At-Large. (Emphasis added.)

We construe the Charter in the same manner we construe a statute. "Our sole objective is to ascertain and effectuate legislative intent. [Citation.] We look first to the language of the charter, giving effect to its plain meaning. [Citation.] Where the words of the charter are clear, we may not add to or alter them to accomplish a purpose that does not appear on the face of the charter or from its legislative history." (*Domar Electric, Inc. v. City of Los Angeles*, 9 Cal.4<sup>th</sup> 161, 171-172 (1994); *First Street Plaza Partners v. City of Los Angeles*, 65 Cal.App.4<sup>th</sup> 650, 663 (1998).) Based on the clear and unambiguous Charter language, the term of office for a Councilmember who is elected to a full four-year term begins in January of the year following the date a Councilmember is elected, not on the election date.

Therefore, to calculate seniority, i.e., which Councilmember has the greater length of continuous service in office, we count from the date and time that the Councilmember's term of office begins, not the date he/she was elected. Alternatively, since Councilmembers cannot begin their duties until they take the oath of office, length of service could be calculated from the date and time that the Councilmember took the oath of office. Because Councilmembers Quan and Brook were sworn into office at the same time and their terms of office commenced on the same date and time, they have the same seniority regardless of which of these standards is used to calculate their relative seniority.

**3. Councilmembers Assume The Duties of Their Office on the Date and Time that Their Terms of Office Begin and They must Take the Oath of Office Before They Enter Upon Their Duties**

The date and time that a Councilmember takes the oath of office does not change the Councilmember's term of office; but the date and time of the oath does determine when the Councilmember can begin to perform the duties of the office.

The Charter provides that Councilmembers shall assume the duties of their office at a meeting that the Council is required to schedule on the date and at the time that the newly elected and re-elected Councilmembers terms begin. At that meeting Councilmembers routinely take the oath of office that is required before they commence their duties.

**Section 208. Meetings of the Council.** At 11:00 a.m. on the first Monday following January 1 following each General Municipal Election, the Council shall meet at the established Council meeting place, at which time and place the newly elected members of the Council shall assume the duties of their office; . . .

**Section 1206. Oath of Office. Every officer of the City before entering upon his duties, shall take the following oath and file the same with the City Clerk:** "I solemnly swear or affirm that I will support the constitution of the United States, the constitution of the State of California, and the Charter of the City of Oakland, and will truly and to the best of my abilities perform the duties of the office of \_\_\_\_\_. (Emphasis added.)

**Conclusion**

The City Charter is clear that Councilmembers' terms of office do not begin when they are elected, but rather on the date and time specified in the City Charter. Prior to commencing their duties, Councilmembers must be sworn into office.

Based on the information we have, both Councilmembers have the same seniority in terms of the length of their continuous service in office. They both completed a full-four year term of office and were re-elected in 2006 to a second four-year term. They both were sworn into office at the same time and therefore were able to enter upon their duties at the same time.

The City Council is free to base its parking assignments on any criteria that it chooses, including District numbers, drawing lots or straws, seniority defined as the length of a Councilmember's continuous service in the office (e.g. seniority based on terms in office or seniority based on the date and time that a Councilmember took the oath of office) or any other guidelines/rules that do not violate applicable laws.

Very truly yours,

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Attorney Assigned:  
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