



CITY OF OAKLAND

ADMINISTRATIVE INSTRUCTION

SUBJECT/AGENCY	City Charter Non-Interference Clause - Prohibits City Council and Councilmember Interference in Administrative Affairs and Services for which City Administrator, Mayor and other Appointed or Elected Officers are Responsible	NUMBER	597
REFERENCE	City Charter Section 218, "Non-Interference in Administrative Affairs" and AI 596 Citywide Code of Conduct	EFFECTIVE	July 14, 2014
SUPERSEDES	None		

I. PURPOSE

The purpose of this Administrative Instruction is to assure compliance with City Charter Section 218 by advising employees under the City Administrator's jurisdiction of the procedure to respond to calls, inquiries and/or other oral or written communications from individual City Councilmembers and/or members of their staff.

II. THE PROHIBITION

The Oakland City Charter is the supreme law of the City of Oakland and defines the roles of the City Council, Mayor, City Administrator, City Attorney and City Auditor. The City Charter grants the Council all powers of legislation. The City Council has no administrative powers (City Charter § 207.) The City Administrator and other elected/appointed officials have exclusive responsibility for administrative services and affairs.

The Charter mandates that "except for the purposes of inquiry," the Councilmembers and their staff shall deal with the administrative service solely through the City Administrator, Mayor or other officers responsible for the City's administrative affairs.

The City Charter's "non-interference clause" expressly prohibits the City Council and City Council members from taking the following actions:

1. Dealing with employees other than the City Administrator, Mayor or other officers responsible for the administrative service, except for the purposes of inquiry
2. Publicly or privately giving orders to any subordinate of the City under the jurisdiction of the City Administrator;

3. Attempting to coerce or influence the City Administrator or Mayor with respect to any contract or any purchase of any supplies, or any other administrative action¹;
4. Directing or requesting in any manner the appointment of any person to or his removal from office by the City Administrator or any of his/her subordinates or such other officers; and
5. Taking part in any manner in the appointment or removal of officers or employees in the administrative service of the City.

City Charter § 218 provides:

Section 218. Non-Interference in Administrative Affairs. *Except for the purpose of inquiry,* the Council and its members shall deal with the administrative service for which the City Administrator, Mayor and other appointed or elected officers are responsible, solely through the City Administrator, Mayor or such other officers. Neither the Council nor any Council member shall give orders to any subordinate of the City under the jurisdiction of the City Administrator or such other officers, either publicly or privately; nor shall they attempt to coerce or influence the City Administrator or such other officers, in respect to any contract, purchase of any supplies or any other administrative action; nor in any manner direct or request the appointment of any person to or his removal from office by the City Administrator or any of his subordinates or such other officers, nor in any manner take part in the appointment or removal of officers or employees in the administrative service of the City. Violation of the provisions of this section by a member of the Council shall be a misdemeanor, conviction of which shall immediately forfeit the office of the convicted member. (Emphasis added.)

III. DEFINITIONS

Term	Definition
Inquiry	<p>Any request for information or question that is not a direction to provide the information or respond to the request and which does not require any of the following:</p> <ol style="list-style-type: none"> (1) that the employee take a position or action that is contrary to or that prevents the employee from complying with departmental direction on a matter or departmental deadline for completing other matters (2) re-ordering of priorities established by the budget (3) preparation of new documents or reports (4) expenditure of unbudgeted funds

¹ Note that the Council as the City's legislative body has the authority, at an open meeting to give direction regarding contract terms and conditions and to set contracting policies and, in closed session to give direction to its negotiators regarding labor and real property contracts. But Council cannot direct, coerce or influence City Administrator as to how s/he performs administrative duties, e.g., Council can direct City Administrator to investigate whether a contractor should be subject to debarment proceedings but it cannot direct City Administrator to a particular employee to conduct the investigation.

Term	Definition
Direction	<p>Any order or other directive to provide information, respond to a request, take or refrain from taking an action on a request, any attempt to change or influence a recommendation OR a question that requires any of the following:</p> <ul style="list-style-type: none"> (1) that the employee take a position or action that is contrary to or that prevents the employee from complying with departmental direction on a matter or departmental deadline for completing other matters (2) re-ordering of priorities established by the budget (3) preparation of new documents or reports (4) expenditure of unbudgeted funds

Term	Definition
Councilmember	Councilmembers and their staff/aides

IV. GENERAL RESTRICTIONS ON CONTACT WITH COUNCILMEMBERS AND STAFF

A. Agency Directors and Department Heads

1. Procedure When Agency Director or Department Head Receives an Inquiry

Agency Directors and Department Heads *may* answer or authorize a staff member to answer individual Councilmember's and Council staff members' inquiries, as defined in this Administrative Instruction, about (1) agenda items and agenda-related materials for City Council, City Council Committees, City Boards and/or Commissions; (2) City laws, regulations, legislation, procedures; and/or (3) City projects, programs, matters. The authorization for a staff member to answer individual Councilmembers or Council staff member's inquiries must be in writing except for an ordinary request that might be made by a member of the general public or routine inquiry.

2. Initiating Contact with Councilmembers

Agency and department heads may initiate contact with Councilmembers regarding City business. Agency Directors should consult the City Administrator, Assistant City Administrators or Deputy City Administrator prior to initiating contact with Council members or their staff, if the issue involves anything other than routine business transactions or requires special handling. Non-routine business transactions or activities requiring special handling include activities that go beyond the level of an ordinary request that might be made by a member of the general public or routine inquiry.

3. Notification Required When Councilmember or Council Staff Member Gives Direction to Agency Director or Department Head

If a Councilmember or Council staff member gives direction to an Agency Director or Department Head regarding any matter, including but not limited to directing him/her to prepare a report or legislation, directing him/her to change a report, decision or recommendation, directing him/her to make a recommendation, finding, or ruling, directing him/her to assign a particular employee to or remove a particular employee from a project or matter, and/or directing the appointment, discipline or removal of an employee, the Agency Director or Department Head shall (1) advise the Councilmember or Council staff member to contact the City Administrator or Assistant City Administrator to obtain authorization and (2) advise the Mayor, City Administrator, Assistant City Administrator and Deputy City Administrator immediately by email, or other writing and by telephone.

B. Employees other than Agency Directors and Department Heads

1. Initiating Contact with Councilmembers or their Staff

In the course of conducting City business, City employees, who are not Agency Directors or Department heads, shall not initiate contact with Council members or their staff without consulting with their department director or supervisor and receiving written authorization.

2. City Councilmembers and Staff Contacting Employees

City employees who are contacted by Councilmembers or their staff regarding City business shall consult with their Agency or Department Director before they respond.

V. SPECIFIC RESTRICTIONS ON CONTACT WITH COUNCILMEMBERS AND STAFF

A. City employees, including Agency and Department Directors are specifically prohibited from the following types of contact:

- a. Following directives of Councilmembers or their staff in the course of conducting City business.
- b. Attending or participating in negotiations regarding any contract (including but not limited to labor or real property negotiations, information technology-related agreements, franchises, public works contracts, purchasing or services contracts, litigation settlements or any other agreement) at which Councilmembers or their staff are present, except with the approval of the City Administrator, Assistant City Administrators or Deputy City Administrator.
- c. Talking or discussing with City Councilmembers or their staff the appointment, removal or discipline of employees of the City Administration unless the contact/discussion is in the capacity of a representative of a bargaining unit. The City Administrator may, however, elect to share information concerning the status of City recruitment, hiring, or contracting.
- d. Developing policy proposals for individual City Councilmembers without the approval of the City Administrator. However, City employees may provide

Councilmembers with factual information and analysis, such as that relied on by professionals in the field, and shall disseminate such information to all Councilmembers.

- e. Sharing draft reports with a Councilmember.
 - f. Reprioritizing Administration work or projects, unless as an action by the full City Council and with direction from the City Administrator or Department/Agency Director as to how the reprioritized work should be carried out.
- B. City employees may participate in meetings where Councilmembers and their staff are present and expected, for example, as part of a department's routine process or as part of a collaborative effort in which Councilmember input was purposely sought. If a City employee is participating in a meeting and a City Council member's inquiry rises to the level of direction, the City employee shall refrain from responding and shall take the Councilmember's question back to his or her department's "chain of command" for review and response according to these guidelines, and the employee or Department Director must advise the City Administrator, Assistant City Administrators or Deputy City Administrator.

VI. TRANSMISSION OF INFORMATION TO CITY COUNCILMEMBERS

- A. City employees who have Department Directors approval, may respond to inquiries, as defined in this Administrative Instruction, that have been approved for response in the manner set out above provided that such requests do not require more than a reasonable amount of work time. Reasonableness may be determined by the Department, taking into account its workload, current priorities and cost-benefit to responding to the request. If there is disagreement between the Councilmember and the Department, the Department should seek resolution by the City Administrator.
- B. Department directors shall use the following procedures to expedite the provision of information and facilitate effective and appropriate support to Councilmembers. The procedures shall include the following:
- a. Authorize a staff member to respond to routine Council inquiries about agenda items and agenda-related materials that have been submitted to the Council or its committees, boards or commissions so long as no individual Councilmember receives preferential treatment and all Councilmembers enjoy equal access to information.
 - b. Authorize a staff member to work with Councilmembers on scheduling community meetings, so long as they are not political in nature.
 - c. Authorize a staff member to provide Councilmembers with information that has previously been publicly disseminated, and/or that is purely factual, such as facts essential to Council consideration of the budget and/or facts essential to Councilmember development of policy proposals.

Department Directors who designate staff members for these purposes must inform the City Administrator's Office and all Council members of the employee designated to serve as the Department's liaison or point of contact for these functions.

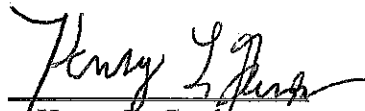
- C. Employees shall inform the Councilmember or their staff that the Administration will provide to all Councilmembers the information they provided in response to the Councilmember's inquiry to assure that the full Council will be fully apprised of the matter in considering/making legislative decisions. (In communicating information to Councilmembers, staff will not advise Councilmembers of other Councilmember's positions/input/inquiry regarding the matter.) Employees also shall inform the Councilmember or their staff that the information may be provided to the public if the information may be of broader interest to others in addition to the inquiring Councilmember. If multiple Councilmembers make similar inquiries, the City Administrator may determine to provide a uniform response that satisfies the inquiry in an efficient manner.
- D. City employees shall encourage Councilmembers and their staff to use existing hotlines and reporting mechanisms to address service issues they identify rather than contact City employees concerning such issues, although they may forward constituent complaints to staff members who have been designated to receive such complaints. Constituent complaints that require an urgent or multi-departmental response or raise highly significant service issues shall be directed to the City Administrator, the Assistant or Deputy City Administrator, or Department Directors, in addition to staff.

VII. REPORTING AND QUESTIONS

- A. Any employee or manager who believes he or she has been given direction by a Council member or Council staff member shall immediately report the contact to the Department Director. The Department Director shall forward the reported contact to the City Administrator, Assistant City Administrators or Deputy City Administrator.
- B. Employees who have questions or concerns regarding contacts by or with Council members or their staff should contact the Department Directors, City Administrator, Assistant City Administrators or Deputy City Administrator. Employees also may contact the City Attorney.
- C. Employees also may call the City Auditor's whistleblower hotline at (888) 329-6390 or contact the Public Ethics Commission at (510) 238-6620 for assistance.

VIII. PENALTIES FOR VIOLATION OF SECTION 218

A City Councilmember who engages in prohibited contact with City employees will be subject to criminal prosecution for a misdemeanor, and must immediately forfeit his or her office if convicted.



Henry L. Gardner
Interim City Administrator