

**FULL TEXT OF MEASURE M
CITY OF MODESTO**

The Increase Accountability in City Hall Measure of 2008

REVISED SECTIONS 601, 703, 800, 801, 900, 903, 1201, 1303 AND 1304

NEW SECTION 725, 902.1, 1302.1 AND 1302.2

REVOKED SECTION 1302

SECTION 601. POWERS AND DUTIES OF MAYOR.

The Mayor shall have the following powers and duties:

(a) The Mayor shall be recognized as the official head of the City for all political, representative and ceremonial purposes and by the Governor for military purposes;

(b) The Mayor may review with the City Manager, City Attorney and City Clerk prior to each Council meeting the items on the Council's agenda and to add matters thereto;

(c) The Mayor may make recommendations to the City Manager on matters of policy and programs;

(d) The Mayor may direct the Charter Officers to prepare and provide information to the Council on matters of policy and programs which require Council decision;

(e) The Mayor may request budgetary and any other information from the Charter Officers that the Mayor determines is necessary for the conduct of the Mayor's duties;

(f) The Mayor, together with the Council, annually shall conduct a written performance evaluation of each Charter Officer which shall include, without limitation, an evaluation of the Charter Officer's performance in implementing the Council's Statement of Policy for that Charter Officer developed pursuant to Section 725 of this Charter.

(g) The Mayor may appoint, with the advice and consent of the Council, a Chairman, a Vice-Chairman, one regular member and one alternate member to each standing, special and ad hoc committee of the Council;

(h) The Mayor may appoint, with the advice and consent of the Council, such advisory boards, commissions and ad hoc committees as may be necessary or desirable to advise and assist in the work of the Council;

(i) The Mayor may appoint such other advisory boards and ad hoc committees as may be necessary or desirable to advise and assist in the work of the Mayor; provided, however, that the members of such advisory boards or ad hoc committees shall not receive any compensation;

(j) The Mayor may recommend adjustments to the City budget and to propose the modification or curtailment of any city service. If the Mayor recommends any increases in the City budget, the Mayor shall recommend the method of financing such expenditures. If the Mayor proposes the modification or curtailment of any city service, the Mayor shall provide specific recommendations and the reasons for such proposal;

(k) The Mayor shall prepare and deliver the Mayor's Proposed Budget Priorities and Direction and the Mayor's Budget Message pursuant to Section 1302A of the Charter and the Mayor's Final Budget Modifications pursuant to Section 1303 of the Charter;

(l) The Mayor may select and hire staff to the office of Mayor and the City Council as may be necessary or desirable to advise and assist in the work of the Mayor and City Council; provided, however, that the Mayor shall not appoint to any position any business associate or any person related to him or her or to the City Manager or to any member of the Council by blood or marriage within the second degree. If staff is provided to the Council under this section, such staff shall be provided on an equal basis to each member of the Council. All such appointees shall serve at the pleasure of the Mayor in the Unclassified Service; and shall serve under such terms and conditions, salaries and benefits as are similar to other employees in Modesto's service. In the event an employee of the City who holds a Classified Service position is appointed to a position in the Unclassified Service under this Section, he or she may return to a position in the Classified Service in accordance with the provisions in the City Charter and City Code. Such return to the Classified Service shall be without loss of any rights or privileges that currently pertain to the Classified Service;

(m) When a vacancy occurs, the Mayor shall nominate at least two (2) candidates for Council consideration for appointment to the position of City Manager. The Mayor may express to the Council a preference among final candidates;

(n) After consultation with the Council, the Mayor may comment in writing upon the independent, written performance evaluation conducted annually by the City Manager of each head of a city department which is under the administration of the City Manager;

(o) The Mayor may attend and participate in executive meetings of the City Manager and heads of City departments which are under the administration of the City Manager;

~~The Mayor shall be recognized as the official head of the City for all political, representative and ceremonial purposes, and by the Governor for military purposes.~~(p) In time of public danger or emergency, the Mayor may, with the consent of the Council, or pending a meeting of the Council, direct the administration of the City Government through the City Manager;

(q) The Mayor shall be charged with the duty of making recommendations to the Council on all major matters of policy and program which require Council decision. The Mayor shall have the primary, but not exclusive, responsibility for interpreting the policies, programs and needs of the City government to the community. ~~The Mayor may also, on the Mayor's own account, as may each individual Councilmember, inform the community on any matters of policy or program which the Mayor believes the welfare of the community makes necessary;~~

(r) The Mayor may also, on the Mayor's own account, as may each individual Councilmember, inform the community on any matters of policy or program which the Mayor believes the welfare of the community makes necessary;

(s) It shall be the duty of the Mayor to represent the Council in its relationships with civic groups within the City, and by direction of the Council, the Mayor shall represent the City in its relationships with other governmental agencies on matters of policy and program.

(t) The Mayor shall preside at meetings of the Council and shall have a vote as a member of the Council. The Mayor shall have no power to veto any ordinance or resolution adopted by the Council;

(u) The Mayor shall have authority to preserve order at all Council meetings and to remove or cause the removal of any person from any meeting of the Council for disorderly conduct, to enforce the rules of the Council, and to determine the order of business under the rules of the Council. ~~The Mayor shall exercise such other powers and perform such other duties as may be consistent with the Mayor's office or as may be granted to the Mayor by the Council not inconsistent with this Charter;~~

(v) The Mayor shall exercise such other powers and perform such other duties as may be consistent with the Mayor's office or as may be

granted to the Mayor by the Council not inconsistent with this Charter.

Nothing in this section shall be construed in any way as an infringement or limitation on the powers and duties of the City Manager as chief administrative officer and head of the administrative branch of the City government as prescribed in other sections of this Charter. (As amended April 16, 1963, and November 7, 1989)

SECTION 703. COMPENSATION FOR ELECTED OFFICIALS.

(a) Compensation and Reimbursement. The Mayor and each member of the Council shall be paid as compensation for his or her services as a member of the Council for each calendar month during which he or she is a member of the Council a monthly salary together with appropriate benefits which shall be established by ordinance only after the Citizen's Salary Setting Commission has made a written recommendation for compensation pursuant to the strict limits of the section, such written recommendation has been published for review pursuant to the requirements of this section, and the mandated public hearings required by this section have been held on the recommendation.

The Mayor and members of the Council shall also receive reimbursement for expenses incurred while performing official duties of their office only so long as evidence of such expenses incurred is presented to the City in the manner prescribed for all other employees of the City.

No compensation or reimbursement shall be established for any member of the Council, including the Mayor, except as provided in this Section.

(b) Citizen's Salary Setting Commission. There shall be established a Citizen's Salary Setting Commission, hereinafter "Commission," whose function shall be to recommend the compensation it deems appropriate for the Mayor and members of the Council. This Commission shall meet between March 1st and April 30th of every even-numbered year.

The Citizen's Salary Setting Commission shall consist of five (5) qualified electors residing within the City and shall be appointed by the City Council pursuant to the provisions below:

(A) Strong consideration shall be given to composing the Commission of:

- (i) a retired Stanislaus County judge as chairperson;
- (ii) one (1) member from a bona fide local Taxpayer's association with tax exempt status under the relevant provisions of the Internal Revenue Code;
- (iii) one (1) member from a bona fide local nonpartisan political organization, with tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, dedicated to encouraging informed and active participation in government;
- (iv) one (1) member from, a former Civil Grand Jury who has served in that role within in the previous five (5) years;
- (v) additional members who have demonstrated civic involvement and a capacity to serve in an honest, independent, and impartial fashion.

(B) No member of the Commission shall be a relative by blood or marriage within the third degree of the Mayor, a member of the Council, any Charter officer, or any department head or deputy department head.

(C) No member of the Commission shall be an employee of the City nor any bargaining unit for employees of the City, nor be a person who receives compensation from the City or from bargaining units of the City in any manner, including retirement benefits.

(D) No member of the Commission shall be a lobbyist or other person with business before the City that represents an economic interest in excess of the limit for material financial effect as established by local ordinance for the time periods established by local ordinance.

(E) In all other respects, the members of the Commission shall be chosen pursuant to the provisions of this Charter.

(F) Members of the Commission shall serve without compensation.

Except as provided herein below, the regular term of office of each member of the Commission shall be four (4) years. The initial five (5) members of the Commission shall be appointed during the month of March 2008. Two of the members so appointed shall be appointed for a term expiring on December 31, 2010. Three (3) of the members, including the initial chairperson, so appointed shall be appointed for a term expiring on December 31, 2012. Commencing in December 2010, new appointments shall be made during the month of December of each even-numbered year to fill the offices of the members whose terms are expiring at the end of such even-numbered years. Such appointments shall be for regular terms of four (4) years commencing on the first day of January of the following odd-numbered year and expiring on the thirty-first day of December of the second even-numbered year thereafter.

No Commission member may serve for more than two (2) terms. A Commission member may be removed from office at any time for misconduct, inefficiency or willful neglect in the performance of the duties of his or her office providing the Council first states in writing the reasons for such removal and gives such member an opportunity to be heard before the Council in his or her own defense. No tax dollars shall be expended on behalf of a Commission member for such defense. If a vacancy occurs before the expiration of a member's term, the Council shall appoint a qualified person to fill such vacancy for the remainder of the unexpired term of such member.

(c) Salary Limitations and Penalties. The salary of the Mayor shall not be more than fifty percent (50%) of the amount of the salary of a Judge of the Superior Court of Stanislaus County.

The salary of a Councilmember shall not be more than fifty percent (50%) of the median family income for the Modesto Metropolitan Statistical Area as reported by the United States Census Bureau. The salary of each Councilmember shall be the same.

Any appropriate benefits established under this provision may not include retirement or pension benefits of any sort.

No recommendation shall be made by the Commission except upon the affirmative vote of three (3) members of the Commission.

No recommendations may be made in odd-numbered years. The recommendation of the Commission will be made to the Council by April 30th of every even-numbered year to be effective for a two-year period commencing not before July 1 of that even numbered year. Failure of the Commission to make a recommendation in any even numbered year within the prescribed time shall be deemed to be a recommendation that no changes be made to existing compensation levels.

The Mayor and members of the Council shall each receive Any monthly compensation in accordance with the schedule of compensation set forth in Section 36516 of the Government Code of the State of California, as the same now exists or may hereafter be amended, and without adoption of an ordinance; provided, however, that said monthly compensationsalary shall be reduced by one-sixthfourth for each regular meeting of the Council, other than adjourned regular and special meetings; not attended by a councilmember each month, unless absent on official duty with the consent of the Council. Said monthly compensation shall be paid commencing at the time this amendment to the Charter takes effect; thereafter, changes in said monthly compensation shall be governed by Section 36516.5 of the Government Code of the State of California.

~~The Mayor and members of the Council shall also receive reimbursement for expenses incurred while performing official duties of their office.~~

(d) Process to Set Compensation. Each recommendation by the Commission, together with the reasons for the recommendation, shall be made in writing by the Commission.

Before any such recommendation is provided to the Council, a draft recommendation shall be made available to the public and the Commission shall hold at least two public hearings on the matter before it adopts its final recommendation.

~~(As amended April 29, 1971, and November 4, 1980)~~

When such final recommendation has been submitted to the Council, it shall not thereafter be amended by the Commission.

Upon receiving the final recommendation from the Commission, the Council may adopt the compensation as recommended by the Commission or may adopt compensation in some lower amount, but in no case may adopt compensation in some higher amount. The Council may only adopt all such compensation by ordinance and after a public hearing of which legal notice is published in a newspaper of general circulation within the City at least twenty (20) days prior to said hearing. Salaries established by ordinance adopted pursuant to the provisions of this Section shall remain in effect until amended by a subsequent ordinance adopted pursuant to the provisions of this Section. The compensation being paid to Councilmembers as of the effective date of this Section shall continue until any subsequent compensation is established pursuant to the requirements of this Section.

(e) Subject to Referendum.

Any final decision by the Council on compensation under this Section shall be subject to the referendum provisions of the Charter.

SECTION 725. STATEMENT OF POLICY FOR CHARTER OFFICERS AND CITY DEPARTMENTS; COUNCIL REVIEW OF ANNUAL EVALUATIONS.

The Council shall adopt a written Statement of Policy for each Charter Officer and for each City department which is under the administration of the City Manager. Said Statement of Policy shall set forth the broad goals, objectives and aspirations to be accomplished by that department.

For Charter Officers, each Charter Officer shall provide to the Council a draft written Statement of Policy for his or her office for consideration, and, if deemed necessary by the Council, revision and amendment, prior to adoption by the Council. For each City department which is under the administration of the City Manager, the City Manager shall designate one or more persons in each such department to provide to the City Manager, for transmittal to the Council, a draft written Statement of Policy for each department for consideration, and, if deemed necessary by the Council, revision and amendment, prior to adoption by the Council.

Such Statements of Policy shall be reviewed and, if necessary, amended, in the first quarter of every even-numbered calendar year and when the position of a Charter Officer or the head of a City department which is under the administration of the City Manager becomes vacant.

When such review and amendment is conducted due to a vacancy in position, the Mayor and Councilmembers shall adopt a set of questions which are intended to elicit responses from each prospective appointee concerning the goals, objectives and aspirations in the Statement of Policy.

Prior to appointing any head of a City department, the City Manager shall submit to the Mayor and Councilmembers, for their review, the responses to the Mayor and Councilmembers' questions submitted by the finalists for appointment to the vacant position. This section shall not apply to the appointment of any "acting" department head to serve in an interim capacity.

The City Manager shall share and review with the Council the annual independent, written performance evaluations of each head of a city department which is under the administration of the City Manager.

Nothing in this section shall be construed in any way as an infringement or limitation on the powers and duties of the City Manager as chief administrative officer and head of the administrative branch of the City government as prescribed in other sections of this Charter.

SECTION 800. CITY MANAGER.

There shall be a City Manager who shall be the chief executive officer and head of the Administrative Branch of the City government. The City Manager shall be chosen on the basis of the person's executive and administrative qualifications with special reference to the person's actual experience in, or the person's knowledge of accepted practices with respect to the duties of the office as hereinafter set forth. No member of the Council shall be eligible for appointment to the office of City Manager during the term for which the member shall have been elected or appointed, nor within one (1) year thereafter. The City Manager need not be a resident of the City or State at the time of appointment, but during the City Manager's tenure of office, the City Manager shall reside within the City. When a vacancy occurs, the Mayor shall nominate at least two (2) candidates for Council consideration for appointment to the position of City Manager. The Mayor may express to the Council a preference among final candidates. The Council shall appoint the City Manager for an indefinite term and may remove the City Manager by a majority vote of its members; provided, however, that the City Manager shall not be removed from office during or within a period of ninety (90) days next succeeding the election of a member of the Council. The purpose of this provision is to allow any newly elected member of the Council to observe the actions and ability of the City Manager in the performance of powers and duties of this office.

~~(As amended November 7, 1989)~~

SECTION 801. POWERS AND DUTIES.

The City Manager shall be the chief administrative officer and head of the Administrative Branch administrative branch of the City government. The City Manager shall be responsible to the Council for the proper administration of all affairs of the City and to that end, subject to the personnel provisions of this Charter, the City Manager shall have power and shall be required to:

(a) Appoint and, when necessary for the good of the service, discipline and remove all officers and employees of the City except as otherwise provided by this Charter, and except as the City Manager may authorize the head of any department or office to appoint or remove subordinates in such department or office. The City Manager may also authorize the head of any department, including deputy directors, police captains and fire division chiefs, or other city employees as designated by ordinance, to recommend and impose discipline in accordance with this Charter.

(b) Prepare the draft budget annually and submit it to the Mayor and Council, prepare the proposed budget annually and submit it to the Mayor and Council and be responsible for its administration after its adoption by the Council, prepare all other necessary budget documents, and prepare and submit to the Mayor and Council the Capital and Operating Mid-Year Budget Report.

(c) Prepare and submit to the Council within ninety (90) days of the end of the fiscal year, a complete report on the finances and administrative

activities of the City for the preceding year.

- (d) Review procedures relating to the assessment, levy and collection of ad valorem property taxes and make recommendations regarding the same to the Council if deemed appropriate.
- (e) Establish a centralized purchasing system for all City offices, departments and agencies.
- (f) Establish and enforce specifications for supplies, materials and equipment required by the City.
- (g) Cause all supplies purchased by the City to be inspected and a determination made that the same comply with specifications.
- (h) Prepare rules and regulations governing the contracting for, purchasing, storing, inventory, distribution or disposal of all supplies, materials and equipment required by any office, department or agency of the City government and recommend them to the Council for its adoption by ordinance. Preference shall be given to the purchase of supplies, materials and equipment from local merchants, quality and price being equal.
- (i) Enforce the laws of the State pertaining to the City, the provisions of this Charter and the ordinances, franchises and rights of the City.
- (j) Keep the Council advised of the financial conditions and future needs of the City and make such recommendations on any matter as the City Manager may deem desirable.
- (k) Make and execute contracts on behalf of the City involving budgeted or appropriated expenditures which do not exceed the amount specified by ordinance of the City Council.
- (l) Appoint advisory boards, without compensation, to assist the City Manager in the performance of the City Manager's duty, if the City Manager deems it necessary.
- (m) Interchange employees between or among departments if the City Manager deems it proper so to do.
- (n) Immediately upon taking office, and annually thereafter, inventory and place a value on all real estate, buildings, furniture and fixtures, supplies and movable property of every kind and nature belonging to the City; and to require each officer or department head to inventory the same or any portion thereof. One (1) copy of such inventory shall be filed with the Council and one (1) with the auditor.
- (o) Be responsible for the custody and control of all City property, the custody and control of which has not otherwise been provided for by this Charter.
- (p) Perform such other duties as may be prescribed by this Charter or required of the City Manager by the Council not inconsistent with this Charter.
- (q) Sign all contracts, deeds and other documents on behalf of the City when authorized to do so by the Council or by this Charter.
- (r) The City Manager shall have the authority to transfer equipment and supplies between departments, and with the approval of the Council, sell obsolete, and unused or surplus personal property of the City.
- (s) The City Manager shall be accorded a seat at the Council table and shall be entitled to participate in the deliberations of the Council, but shall not have a vote.
- (t) The Council shall have the right to instruct the City Manager in matters of policy and anythe City Manager shall be responsible for implementing such Council policy. Any action, determination or omission of the City Manager shall be subject to review by the Council, but no such action, determination or omission shall be overruled or modified by a vote of less than four-sevenths of the members of such Council. ~~(As amended April 20, 1971, November 4, 1980, and November 7, 1989)~~
- (u) The City Manager, pursuant to Section 725 of the Charter, shall direct creation of draft written statements of Policy for each City department which is under the administration of the City Manager.
- (v) The City Manager annually shall conduct an independent, written performance evaluation of each head of a city department which is under the administration of the City Manager. Such performance evaluation shall include, without limitation, an evaluation of the department head's performance in implementing the Council's Statement of Policy for that department. The City Manager shall provide such performance evaluations to the Council for their review pursuant to Section 725 of the Charter. After such Council review, the Mayor may comment on the performance evaluation pursuant to Section 601(m) of the Charter.

SECTION 900. OFFICERS AND EMPLOYEES. GENERAL.

The officers of the City of Modesto shall consist of a Mayor, the Council, a City Manager, a City Attorney, a City Clerk, a City Auditor and such other or subordinate officers, assistants, deputies and employees as the Council may deem necessary to provide by ordinance or resolution. The City Attorney, the City Clerk and the City Auditor shall be appointed by and may be removed by the affirmative votes of four (4) members of the Council; provided, however, that neither the City Attorney, the City Clerk nor the City Auditor shall be removed from office during or within a period of ninety (90) days next succeeding the election of a member of the Council. The purpose of this provision is to allow any newly elected member of the Council to observe the actions and abilities of these officers in the performance of the powers and duties of the respective offices.

The City Manager shall be appointed and removed as provided by Section 800 of this Charter. Except as otherwise provided in this section, all other officers and department heads of the City shall be appointed by the City Manager and shall serve at the pleasure of the City Manager. The City Auditor shall have such powers and be required to perform such duties, consistent with the provisions of this Charter, as may be required by the Council.

The City Manager, the City Attorney, the City Clerk, and the City Auditor may be referred to collectively in this Charter as "Charter Officers."

SECTION 902.1. OFFICE OF THE CITY AUDITOR

The Office of the City Auditor is hereby established. The City Council shall appoint the City Auditor who shall serve at its pleasure. The City Auditor shall be certified according to standards comparable to a Certified Public Accountant or a Certified Internal Auditor at time of appointment.

The City Auditor shall have the following powers and duties: ~~(As amended November 4, 1980)~~

- (a) Conduct or cause to be conducted annual post audits of all the fiscal transactions and accounts kept by or for the City. Such audits shall include but not be limited to the examination and analysis of fiscal procedures and the examination, checking and verification of accounts and expenditures. The audits shall be conducted in accordance with generally accepted auditing standards and accordingly shall include tests of the accounting records and other auditing procedures as may be considered necessary under the circumstances. The audits shall include the issuance of suitable reports of examination so the Council and the public will be informed as to the adequacy of the financial statements of the City.
- (b) Conduct performance audits, as assigned by Council. A "performance audit" means a post audit which determines with regard to the purpose, functions and duties of the audited agency all of the following:

- (1) Whether the audited department, office or agency, is managing or utilizing its resources, including public funds, personnel, property, equipment and space in an economical and efficient manner.
- (2) Causes of inefficiencies or uneconomical practices, including inadequacies in management information systems, internal and administrative procedures, organizational structure, use of resources, allocation of personnel, purchasing policies and equipment.
- (3) Whether the desired results are being achieved.
- (4) Whether objectives established by the Council or other authorizing body are being met.

(c) Conduct special audits and investigations, as assigned by Council. "Special audits and investigations" mean assignments of limited scope, intended to determine:

- (1) The accuracy of information provided to the Council.
- (2) The costs and consequences of recommendations made to the Council.
- (3) Other information concerning the performance of City Departments, Offices or Agencies as requested by the Council.

(d) The City Auditor shall have access to, and authority to examine any and all documents including but not limited to books, accounts, internal memoranda, writings and tapes, reports, vouchers, correspondence files and other records, bank accounts, money and other property of any City department, office or agency, whether created by the Charter or otherwise, with the exception of the office of any elected official.

It is the duty of any officer, employee or agent of the City having control of such records to permit access to, and examination thereof, upon the request of the City Auditor or his or her authorized representative. It is also the duty of any such officer, employee or agent to fully cooperate with, and to make full disclosure of all pertinent information.

(e) Prepare and submit to the Council quarterly reports of the City Auditor's activities and findings in the immediately preceding three calendar months, together with any recommendations to improve the administration of the City.

(f) Perform other auditing functions, consistent with other provisions of this Charter, and prepare and submit such other reports, as may be assigned by the Council.

The City Auditor may appoint and prescribe the duties of the professional, technical and clerical employees employed in the Office of the City Auditor; provided, however, that the City Auditor shall not appoint to any position any business associate or any person related to him or her or to the City Manager or to any member of the Council by blood or marriage within the second degree. All such appointees shall serve at the pleasure of the City Auditor in the Unclassified Service; and shall serve under such terms and conditions, salaries and benefits as are similar to other employees in Modesto's service. In the event an employee of the City who holds a Classified Service position is appointed to a position in the Unclassified Service under this Section, he or she may return to a position in the Classified Service. Such return to the Classified Service shall be without loss of any rights or privileges that currently pertain to the Classified Service.

Neither the Council nor any of its members shall in any manner dictate the appointment or removal of any such officer or employee whom the City Auditor is empowered to appoint, but the Council may express its views and fully and freely discuss with the City Auditor anything pertaining to the appointment and removal of such officers and employees.

SECTION 903. DUTIES OF OFFICERS AND EMPLOYEES.

After obtaining and considering the recommendations of the City Manager, the Council shall provide by ordinance or resolution, not inconsistent with this Charter, for the powers and duties of all officers and employees of the City. Where the positions are not incompatible, the Council may combine in one (1) person the powers and duties of two (2) or more offices created or provided for in the Charter. ~~No office provided herein to be filled by appointment by~~ Notwithstanding this provision, the offices of the City Manager may, City Clerk, City Attorney and City Auditor shall not be combined with an office provided herein to be filled by appointment by the Council except in cases of emergency, and in no event shall such combination exceed a period of three months. ~~No office provided herein to be filled by appointment by the City Manager may be combined with an office provided herein to be filled by appointment by the Council.~~ Notwithstanding the foregoing, the Council may transfer or consolidate functions of the City government to or with appropriate functions of the State or County government or may make use of such functions of the State or County government, and in case of any such transfer or consolidation, the provisions of this Charter providing for the function of the City government so transferred or consolidated shall be deemed suspended during the continuance of such transfer or consolidation, to the extent that such suspension is made necessary or convenient and is set forth in the ordinance or resolution establishing such transfer or consolidation. Any such transfer or consolidation may be repealed in like manner.

SECTION 1201. UNCLASSIFIED AND CLASSIFIED SERVICE.

The administrative service of the City shall be divided into Unclassified and Classified Service.

(a) The Unclassified Service shall comprise the following officers and positions:

- (1) All elected officers.
- (2) City Manager, any Deputy City Manager, City Attorney, any Assistant City Attorney, any Deputy City Attorneys, City Clerk, City Auditor, and all heads of departments and deputy directors.
- (3) All members of boards and commissions.
- (4) Persons employed as unskilled laborers.
- (5) Positions in any class or grade created for a special or temporary purpose for a period of not longer than ninety (90) days in any one (1) fiscal year.
- (6) Persons employed to render professional, scientific, technical or expert services of any occasional or exceptional character.
- (7) Part Temporary and part-time employees paid on an hourly or per diem basis.
- (7) Persons employed under Section 601(l) of this Charter.

(b) The Classified Service shall comprise all positions not specifically included by this section in the Unclassified Service.

SECTION 1302.1. SUBMISSION OF ECONOMIC FORECASTS; MAYOR'S BUDGET MESSAGE.

The City Manager shall, on or before December 15 of each year, submit to the Mayor and to the Council a five (5) year economic forecast of expenditures and revenues for each City department, office or agency.

The Mayor shall, on or before January 15 of each year, prepare and deliver to the Council the Mayor's Proposed Budget Priorities and Direction for both the City's Capital Budget and for the City's Operating Budget.

The City Manager shall, on or before February 1 of each year, prepare and deliver to the Mayor and to the Council a Capital and Operating

Mid-Year Budget Report for each City department, office or agency.

The Mayor shall, on or before February 15 of each year prepare and deliver to the Council the Mayor's Budget Message which shall include:

- (a) A statement of the fiscal priorities which the City should adopt for the ensuing fiscal year; and
- (b) Which City services, departments, offices or agencies the Mayor proposes to be expanded or reduced.

The Council shall hold a public hearing to consider the Final Mayor's Budget Message and to make any additions or revisions the Council deems advisable.

Upon close of the public hearing, the Council shall approve the Mayor's Budget Message as presented, or as revised.

SECTION 1302.1302.2. ANNUAL BUDGET.

On such date in ~~By April 30~~ of each year as shall be fixed by the Council, the City Manager shall send to the Council a draft budget consisting of a careful estimate, in writing, of the amounts of expenditures required for the business and proper conduct of the various departments, offices, boards and commissions of the City, over which the City Manager has control during the next ensuing year. Said estimate shall be in such detail as the Council shall specify. The City Manager shall also include in the draft budget at said time and submit to the Council an estimate of the amount of income from fines, licenses and other sources of revenue, exclusive of taxes upon property, and the probable amount required to be levied and raised by taxation. (As amended November 4, 1980, and November 7, 1989)

In addition to complying with the requirements of this section, The draft budget shall accurately reflect the recommendations and priorities specified in the Final Mayor's Budget Message as adopted by the Council.

The report of the City Manager accompanying the draft budget shall specify the budget allocations which implement each component included within the Final Mayor's Budget Message as adopted by the Council.

SECTION 1303. MAYOR'S FINAL BUDGET MODIFICATIONS; PUBLIC HEARING ON THE PROPOSED BUDGET.

At least thirty (30) days prior to the new fiscal year, the Mayor shall prepare and deliver to the Council the Mayor's Final Budget Modifications on the draft budget.

Following the receipt of the Mayor's Final Budget Modifications, the Council shall consider and review the draft budget as submitted by the City Manager together with the Mayor's Final Budget Modifications and may make such revisions as the Council may deem advisable. The document resulting from this process shall be deemed the "Proposed Budget."

After reviewing the proposed budget as submitted by the City Manager and making such revisions as it may deem advisable ~~Thereafter~~, the Council shall determine the time for holding of a public hearing upon the "Proposed Budget", and shall cause a notice thereof to be published not less than ten (10) days prior to said hearing by at least one (1) insertion in the ~~official~~ newspaper of general circulation within the City. Copies of the ~~proposed budget~~ Proposed Budget to be considered at the public hearing shall be available for inspection by the public at the office of the City Clerk at least ten (10) days prior to said hearing.

At the time so advertised or at any time such public hearing from time to time be adjourned, the Council shall hold a public hearing on the proposed budget at which interested persons desiring to be heard shall be given such opportunity.

SECTION 1304. ADOPTION OF THE BUDGET.

After the conclusion of the public hearing, the Council shall further consider the proposed budget and make any revisions thereof that it may deem advisable; and thereafter it shall adopt the budget with revisions, if any. ~~Upon final adoption~~ Such revisions may add or increase programs or amounts or may delete or decrease programs or amounts except expenditures required by law or for debt service, provided that no revision to the budget shall be in effect for ~~increase proposed expenditures to an amount greater than the ensuing total estimated income plus unencumbered available reserves and estimated unencumbered balances of funds carried over from the preceding fiscal year.~~ Upon final adoption, the budget shall be in effect for the ensuing fiscal year.

From the effective date of the budget, the several amounts stated therein as proposed expenditures shall be and become appropriated to the various departments or activities therein described. All appropriations shall lapse at the end of the fiscal year to the extent that they shall not have been expended or lawfully encumbered unless they shall have been designated in the budget as continuing appropriations. At any meeting after the adoption of the budget, the Council may amend or supplement the budget by resolution.

(As amended November 4, 1980)

**SPECIAL COUNSEL'S IMPARTIAL ANALYSIS OF MEASURE M
"THE ACCOUNTABILITY IN CITY HALL MEASURE OF 2008"**

Modesto City Council directed the City Clerk to submit to voters a measure seeking approval of legislation entitled "The Accountability in City Hall Measure of 2008" which would amend City Charter to increase accountability of City Staff to City elected officials, electors and tax payers and accountability of City elected officials to City electors and tax payers. The Charter would be amended to:

Create a Citizen's Salary Setting Commission of five unpaid City voters with restrictions on membership to prevent conflicts of interest. Specified criteria are to be considered by Council when selecting members of Commission. Commission shall make salary and benefit recommendations to Council as to Mayor and Council Members' compensation within strict limits (for salaries: 50% or less of Stanislaus County Superior Court Judge salary for Mayor; 50% or less of Modesto median family income for Council Members). Said salaries shall be subject to reduction for non-attendance at Council meetings. Council's decisions on recommendations shall be subject to referendum. Compensation revisions would only be considered in odd-numbered years. Compensation shall not include retirement or pension benefits. Benefits may only be established by Ordinance after publicized Commission recommendations. Mayor and Council members may receive reimbursement for certain expenses.

Add duties/responsibilities of Mayor to encourage accountability of City Hall, including ability to: review and add items to Council agendas; provide recommendations and comments to Council on policy matters such as budget and City services; gather budgetary and other information from charter officers, appoint members to various committees; hire staff to assist Mayor and Council Members; nominate candidates, for council consideration, for position of City Manager; provide written comments on charter officer and department head evaluations; participate in City staff meetings.

Establish, as fourth charter officer, an independent City auditor with specified duties, including conducting annual post, performance, and special audits and investigations assigned by the Council; submitting to Council quarterly reports. Auditor shall have access to City documents and authority to appoint consultants to assist in duties.

Require Council to adopt, with appropriate staff input, Statement of Policy that sets goals, objectives and aspirations to be accomplished for charter officers and City department heads and shall be used in Council's annual evaluations of charter officers and City Manager's annual evaluations of department heads. Statement shall be reviewed and, if necessary, may be amended every two years and when position of charter officer or department head is vacated.

Require City Manager to submit to Council annual proposed budgets, operating mid-year budget reports, and economic forecasts; implement Council policies; and conduct annual evaluations of department heads. Manager may increase disciplinary authority of certain city employees, including department heads, deputy department directors, police captains and fire battalion chiefs.

Designate as unclassified employees: assistant and deputy city attorneys, deputy directors, temporary/part time hourly paid employees, and appointed office staff of Mayor and Council Members.

Prohibit combining offices of city charter officers except in case of emergencies but, in any event, for no more than three months.

Dated: October 26, 2007

Richard R. Rudnansky, Special Counsel

ARGUMENT IN FAVOR OF MEASURE M

This measure will provide tough new accountability standards for Modesto's city government, including performance audits of all city departments, and greater budget oversight by the Mayor and City Council.

These reforms also establish an independent City Auditor and require the City Council and Mayor to establish budget priorities and policies.

Additionally, by voting "Yes" on Measure M, voters will create an independent citizens' commission to recommend council salaries, and impose mandatory salary caps on the City Council. Further, it upgrades the Mayor's duties and responsibilities, modernizes disciplinary practices and requires annual performance audits for key city personnel.

These reforms will help ensure that our budget, traffic, and public safety needs are being met by our city government.

Modesto first approved a Charter in 1910 when the population was 4,032. The City's Charter is required to be reviewed every ten years in order to keep up with changes. However, no major revisions have been made since 1962, when Modesto's population was about 37,000. Modesto is currently California's 16th largest city with a population of more than 209,000 people.

The Modesto Bee wrote on September 24, 2007, "Some of the guidelines that were suitable for a city of 37,000 no longer work effectively for a city of more than 200,000."

In keeping with Charter review guidelines, the Mayor and City Council appointed an 11-member committee of Modesto citizens to review the City Charter and make recommendations. After numerous public meetings and community feedback, the committee voted unanimously to adopt new Charter amendments found in The Increase Accountability in City Hall Measure of 2008.

These updated amendments are intended to clean-up outdated procedures and provide more government accountability, strengthening its responsiveness and efficiency.

Vote "Yes" for accountability. Vote "Yes" on Measure M!

- s/ Mark Frink, President, Modesto Police Officers Association
- s/ Cecil D. Ridge, President, Modesto City Fire Fighters Association
- s/ Joy Madison, President, Modesto Chamber of Commerce
- s/ Sandra Lucas, Co-Chair, Modesto Citizens for Accountability; Member, Charter Review Committee
- s/ Bob Dunbar, Councilman, Modesto City Council, 2003-2007

**ARGUMENT AGAINST MEASURE M
NONE SUBMITTED**