

**City Attorneys Department
League of California Cities
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City Council Qualifications, Vacancies, Incompatible Offices and Compensation

Vacancies and Appointments

Notes

This publication is provided for general information only and is not offered or intended as legal advice. Readers should seek the advice of an attorney when confronted with legal issues and attorneys should perform an independent evaluation of the issues raised in these materials. The League does not review these materials for content and has no view one way or another on the analysis contained in the materials.

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CITY COUNCIL QUALIFICATIONS, VACANCIES, INCOMPATIBLE OFFICES AND COMPENSATION

PART II – Vacancies and Appointments

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I. VACANCIES

A. CREATION OF VACANCIES

1. Government Code section 1770

Government Code section 1770 provides a number of ways an office may become vacant before the expiration of a term, including the following:

- a. Death.
- b. Physical or mental incapacitation due to disease, illness, or accident.
- c. Resignation.
- d. Removal from office.
- e. Ceasing to be a resident of the city.

RESIDENCY

If a city council member moves his or her place of residence outside of the city limits or ceases to be an elector of the city, his or her office immediately becomes vacant. (Gov. Code, § 36502, subd. (a).) (Government Code section 34882 provides similar requirements for eligibility to hold office as a city council member.)

Government Code section 244 sets forth the rules to be used in determining a person's legal residence or domicile. In general, the test for determining a person's domicile is physical presence plus an intention to make that place his or her permanent home. (*Fenton v. Board of Directors* (1984) 156 Cal.App.3d 1107, 1116.) Courts look at a number of factors in order to determine a person's domicile, including where a person votes, acts and declarations of the party involved, and a person's mailing address. (See *id.*)

An "elector" is "any person who is a United States citizen 18 years of age or older and a resident of an election precinct at least 29 days prior to an election." (Elec. Code, § 321.)

- f. Ceasing to discharge the duties of office for three consecutive months (except when prevented by sickness, or when absent from the state with permission).

ABSENCE

Government Code section 36513 provides that if a city council member is absent without permission from all regular city council meetings for 60 consecutive days from the last regular meeting he or she attended, his or her office becomes vacant. Or, if a city council meets monthly or less frequently than monthly, this time period increases to 70 days.

- g. Conviction of a felony or of any offense involving a violation of official duties.
- h. Refusal or neglect to file required oath or bond.
- i. The decision of a competent tribunal declaring the election or appointment void.
- j. Commitment to a hospital or sanitarium as "a drug addict, dipsomaniac, inebriate, or stimulant addict."

2. Incompatible Offices

The common law rule of incompatible offices, first established in *People ex rel. Chapman v. Rapsey* (1940) 16 Cal. 2d 636, holds that the acceptance by a public officer of another office, which is incompatible with the first, thereby vacates the first office. The rule is triggered if the following two elements are present:

- a. The official holds two public offices simultaneously; and
- b. There is a potential conflict between the duties or functions of the two offices.

THE LOW STANDARD OF POTENTIAL CONFLICT

All that is required to meet this standard is the *potential* for a conflict between the two offices at some point in the future; actual conflict is not required. Therefore, it is an extremely easy standard to meet. (See for example: 78 Ops.Cal.Atty.Gen. 316 (1995) [potential conflict between county board of supervisors and Board of Governors of the California Community Colleges]; 65 Ops.Cal.Atty.Gen. 606 (1982) [potential conflict between city council and school board]; 64 Ops.Cal.Atty.Gen. 288 (1981) [potential conflict between county planning commission and county water district].)

For a rare case where the Attorney General's Office found no potential conflict, see: 71 Ops.Cal.Att.Gen. 39 (1988) [no potential conflict between State Industrial Welfare Commission and Personnel Commission of the Los Angeles County Superintendent of Schools].

c. Exceptions

- The prohibition on holding two public offices simultaneously may be superceded by legislative enactment (i.e. joint exercise of powers agencies (78 Ops.Cal.Atty.Gen. 60 (1995)) and charter provisions (66 Ops.Cal.Atty.Gen. 293 (1983) [charter provision requiring county planning commissioner to be a member of city planning commission]).
- The prohibition on holding two public offices does not apply to employment. (76 Ops.Cal.Atty.Gen. 244 (1993).)

THE COMMON LAW DOCTRINE OF INCOMPATIBLE OFFICES

v. INCOMPATIBLE EMPLOYMENT AND ACTIVITIES (Gov. Code, § 1126)

Government Code section 1126 provides that a local agency officer or employee shall not engage in any employment, activity or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her official duties or the duties, functions or responsibilities of his or her appointing authority or employing agency. There are two major differences between Government Code section 1126 and the common law doctrine of incompatible offices.

First, section 1126 only applies to officers and employees; it does not apply to elected officials (except school board members). The common law doctrine of incompatible offices only applies to public officials; it does not apply to employees.

Second, section 1126 is not self-executing. A statement of incompatible activities must be adopted before the prohibition can be applied. The common law doctrine of incompatible offices is self-executing, and the first office is automatically vacated.

3. Acceptance of Passes or Discounts from Transportation Companies

Article XII, section 19, of the California Constitution provides that the acceptance of a pass or discount by a public officer by a transportation company results in a forfeiture of office.

- a. Does not apply to employees; only applies to "public officers" (those who actually make policy rather than merely advise policy makers). (See Attorney General's Office Indexed Letter No. 70-155 (1970) [executive director of redevelopment agency is a public officer].)
- b. Applies to both interstate and intrastate carriers and transportation (including airlines). (67 Ops. Cal. Att. Gen. 81, 83 (1984); see also Attorney General's Office Indexed Letter No. 75-294 (1975).)
- c. Applies to both public and personal travel.
- d. Does not apply if the pass or discount is provided to the official as a member of a larger group, unrelated to the function of his or her office. (67 Ops. Cal. Atty. Gen. 81 (1984) [spouse of flight attendant]; 80 Ops. Cal. Atty. Gen. 146 (1997) [holder of "frequent-flier" miles].)

4. Other Resources and References on Vacancies

- a. The California Municipal Law Handbook
City Attorneys Department
League of California Cities
Section II.B.3 (Vacancies and Termination of Office)
- b. City Council Vacancies and Dual Candidacies
David H. Hirsch
City Attorneys Department Paper
League of California Cities
1991 Spring Meeting
- c. 1998 Conflicts of Interest
California Attorney General's Office
<http://caag.state.ca.us/piu/coi.htm>

- Chapter 8 (The Constitutional Prohibition on the Acceptance of Passes or Discounts from Transportation Companies)
- Chapter 9 (Incompatible Activities of Local Officers and Employees)
- Chapter 11 (The Common Law Doctrine of Incompatible Offices)

5. Sample Ordinance

Attachment A – Ordinance Establishing City Council Vacancies

B. *QUO WARRANTO*

1. Nature of Remedy

Quo warranto is the exclusive remedy to challenge the right of a person to hold public office.

- a. Applications for leave to sue in *quo warranto* may be brought by any interested person, including an official whose office has been declared vacant. (*Klose v. Superior Court* (1950) 96 Cal.App.2d 913, 917 [“. . . where [an] appointing power considers a vacancy in office to exist, it may appoint a successor, without proceedings to declare the vacancy to exist, and that when it does so appoint[,] the official succeeded may by *quo warranto* question whether there was any vacancy.”] see also 79 Ops.Cal.Att.Gen. 21 (1996).)
- b. A *quo warranto* action may only be commenced after the approval of the Attorney General. The Attorney General retains control of such suits and they are brought in the name of the People.

RELATORS AND DEFENDANTS

In *quo warranto* proceedings, the individual who brings suit (in the name of the people) is termed the *relator*. The person holding the office being challenged is the *defendant*.

2. Statutory Scheme and Procedure

a. Code of Civil Procedure sections 802-811

These sections relate to *quo warranto* actions in general. Section 803 specifically authorizes *quo warranto* actions to determine the title to a public office.

b. California Code of Regulations, Title 11, sections 1-11

These sections contain requirements relating to how applications for "leave to sue" must be submitted, how complaints must be filed and served and how such proceedings must be maintained and prosecuted.

3. Criteria for *Quo Warranto*

In determining whether to grant leave to sue, the Attorney General's Office addresses three fundamental questions:

a. Whether *quo warranto* is the proper remedy to resolve the issues presented. (In the case of determining whether there is a city council vacancy, *quo warranto* is always the proper remedy.)

b. Whether the proposed relator has raised a substantial question of law or fact.

c. Whether it would be in the public interest to grant leave to sue. (79 Ops.Cal.Atty.Gen. 21, 22. (1996).)

4. Other Resources and References on *Quo Warranto*

a. Municipal Legal Forms

Chapter III – Elections

City Attorneys Department

League of California Cities

Continuing Education Seminar

February 2000

- Memorandum: Possible *Quo Warranto* Action Against an Individual (p. 175)
- Complaint in *Quo Warranto* (p. 179)

- Attorney General's Opinion No. 96-110: *Quo Warranto* Pursuant to Section 803 of the Code of Civil Procedure (p. 233)
- Attorney General's Opinion No. 88-891: *Quo Warranto* to test an Individual's Right to Continue to Hold an Office (p. 249)

b. *Quo Warranto* Applications
Quo Warranto Opinion Unit
 California Attorney General's Office
<http://caag.state.ca.us/opinions/quo.htm>

c. *Quo Warranto*
 53 Cal Jur 3d, pp. 417-470

II. APPOINTMENTS AND FILLING OF VACANCIES

A. CITY COUNCIL

1. Special Election or Appointment

A City Council vacancy must be filled within 30 days either by appointment or special election. The special election must be held on the next regularly established election date not less than 114 days from the call of the special election. (Gov. Code, § 36512, subd. (b).) An appointment cannot be made if the appointment would result in a majority of the members serving on the council having been appointed. (Gov. Code, § 36512, subd. (d).)

THE RULE AGAINST SELF- APPOINTMENT

Under this common law rule, officers are prohibited from appointing themselves to office and a city council is prohibited from appointing one of its own members. (73 Ops.Cal.Att.Gen. 357.)

Like the common law rule of incompatible offices, this rule may also be superceded by legislative enactment (i.e. charter provisions). (*Id.*)

A city may enact an ordinance, which does one of the following:

- a. Requires that a special election be called immediately to fill a vacancy on the city council and the office of mayor, if elected. (Gov. Code, § 36512, subd. (c)(1).)

- b. Requires that a special election be held to fill a vacancy on the city council and the office of mayor, if elected, when petitions bearing a specified number of verified signatures are filed. (Gov. Code, § 36512, subd. (c)(2).)
- c. Provides that a person appointed to fill a vacancy on the city council holds office only until the date of a special election which shall immediately be called to fill the remainder of the term. (Gov. Code, § 36512, subd. (c)(3).)

2. Other Resources and References on Appointments and Filling of City Council Vacancies

City Attorneys' Papers
City Attorneys Department
League of California Cities

- Whether charter provision requiring the filling of vacancies by appointment prohibits the city council from calling a special election to fill the vacancy instead. (Thomas B. Brown, City Attorney, City of Napa, July 10, 1996.)
- Whether, and in what manner, the city council may "self-appoint" to fill mayoral vacancy. (Thomas B. Brown, City Attorney, City of Napa, September 3, 1996.)
- Whether the city council may "pre-call" a special election to coincide with general election in anticipation of a council vacancy; whether the city council may then appoint a person to fill the vacancy for a limited term; whether the city council may fill the vacancy by "self-appointment." (Thomas B. Brown, City Attorney, City of Napa, September 25, 1998.)

3. Sample Ordinance

Attachment B – Ordinance Requiring the Filling of City Council Vacancies

B. ELECTIVE OFFICES OTHER THAN CITY COUNCIL

1. Election to Make Appointive Positions

The city council may, at any municipal or special election, submit to the electors the question of whether elective officers, other than members of the city council, (i.e. city clerk and city treasurer) should be appointed by the city council. (Gov. Code., § 36508.)

2. Sample Documents

Attachment C – Resolution Calling Election on Appointment of City Treasurer

Attachment D – City Attorney's Impartial Analysis on Appointment Election

C. BOARDS, COMMISSIONS AND COMMITTEES

1. Appointment by Mayor

In general law cities, where the office of mayor is an elective office, the mayor, with the approval of the city council, must make all appointments to boards, commissions, and committees unless otherwise provided by statute. (Gov. Code, § 40605.)

a. The appointment power of an elected mayor of a general law city extends to appointments to regional boards, commissions, and committees, subject to the approval of the city council. (81 Ops.Cal.Atty.Gen. 75.)

b. Statutory exceptions to this rule include appointments to a city planning commissions. Such appointments are determined by the city council. (Gov. Code, § 65101.)

2. Other Resources and References on Boards, Commissions and Committees

City Attorneys' Papers
City Attorneys Department
League of California Cities

- Whether city council may vote to remove commissioner prior to completion of regular term. (Thomas B. Brown, City Attorney, City of Napa, December 29, 1994.)

3. Sample Ordinance

Attachment E – Uniform Regulations for Council-Established
Boards, Commissions and Committees
(City of Fremont)

D. JOINT POWERS AGENCIES

The composition of a joint powers agency's governing body is controlled by the terms of the joint powers agreement. (Gov. Code, § 6508.)

ATTACHMENT A

SAMPLE ORDINANCE LANGUAGE ESTABLISHING VACANCIES OF ELECTED OFFICES

An elective office becomes vacant when the incumbent dies, resigns, is removed from office under recall proceedings, is adjudged insane, convicted of a felony, or of an offense involving a violation of the incumbent's official duties, or ceases to be a resident of the City, or neglects to qualify within the time prescribed by the provisions of this Code, or shall have been absent from the state without leave for more than sixty days, or fails to attend the meetings of the City Council for a like period without being excused therefrom by said body.

Notes

ATTACHMENT B

SAMPLE ORDINANCE LANGUAGE REQUIRING THE FILLING OF CITY COUNCIL VACANCIES

A. If any vacancy on the City Council occurs other than by expiration of a term, the City Council shall, at its option within thirty days from the commencement of the vacancy, either fill the vacancy by appointment for the unexpired term of the former incumbent, or call a special election to fill the vacancy. The special election shall be held on the next regularly established election date not less than one hundred fourteen days from the call of the special election.

B. Notwithstanding any other provision of this section, the City Council may appoint any person, otherwise qualified, to fill a City Council vacancy to hold office only until the date of a special election which is called to fill the remainder of the term pursuant to subsection A of this section.

C. Notwithstanding any other provision of this section, an appointment shall not be made to fill a vacancy on the City Council if the appointment would result in a majority of the members serving on the Council having been appointed. The vacancy shall be filled in one of the following ways:

1. The City Council may call an election to fill the vacancy to be held on the next regularly established election date not less than one hundred fourteen days after the call;
2. If the City Council does not call an election pursuant to subsection B of this section, the vacancy shall be filled at the next regularly established election date.

Notes

ATTACHMENT C

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE
STATE OF CALIFORNIA

A RESOLUTION CALLING AND GIVING NOTICE OF THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD IN THE CITY OF LIVERMORE ON TUESDAY, THE 2ND OF NOVEMBER, 1999, FOR THE ELECTION OF CITY TREASURER

BE IT RESOLVED by the City Council of the City of Livermore as follows:

Section 1. Pursuant to the requirements of the laws of the State of California relating to General Law Cities within the State, there is hereby called and ordered to be held in the City of Livermore, County of Alameda, State of California, on Tuesday, the 2nd day of November, 1999, a general municipal election of the qualified electors of the City for the purpose of electing one Mayor for the term of two years and two members of the City Council for the full term of four years each and for the purpose of submitting a measure to the voters.

Section 2. The Livermore City Council submits the following measure to the qualified electors of the City at this election:

"Shall the office of City Treasurer be appointed?"

- Yes
- No

Section 3. The City Clerk is instructed to transmit this ballot measure to the City Attorney along with a request that an impartial analysis of each be prepared for inclusion in the Voters' Pamphlet materials.

Section 4. That the polls for the election shall be open at 7:00 a.m. of the day of the election and shall remain open continuously from that time until 8:00 p.m. of the same day when the polls shall be closed.

Section 5. That the City Clerk is hereby directed to post and/or publish all official notices, printed matters, and in cooperation with the County of Alameda furnish all supplies necessary to lawfully conduct the election.

Section 6. That notice of the time and place of holding the election is hereby given and the City Clerk is directed to give such further or additional notice of the election in time, form, and manner as required by law.

Section 7. That past procedures shall be continued for this election as follows:

- (a) a tie vote shall be decided by lot; and
- (b) each candidate shall pay the full cost of printing that candidate's statement in the sample ballot

Section 8. Pursuant to Election Code 10002 the Council requests the Alameda County Board of Supervisors to permit the Registrar of Voters to render assistance in all required election services in the conduct of this election and authorizes the City Manager to enter into an agreement for compensation for those services.

Section 9. Arguments for and against this measure may be submitted to the City Clerk, 1052 South Livermore Avenue, until 5:00 p.m. on July 26, 1999. Rebuttals will be permitted and must be received by the City Clerk's office by 5:00 p.m. on August 5, 1999. Following the August 5, 1999, deadline for rebuttals, there will be a 10-day review period to inspect all materials before printing.

This resolution shall take effect immediately.

APPROVED AS TO FORM:

CITY ATTORNEY

On motion of Councilmember _____, seconded by Councilmember _____, the foregoing resolution was passed and adopted this _____ day of _____, 1999, by the following vote:

AYES: COUNCILMEMBER _____

NOES: _____

ABSENT: _____

MAYOR, CITY OF LIVERMORE, CALIFORNIA

ATTEST:

CITY CLERK

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ATTACHMENT D

A MEASURE A: "Shall the office of City Treasurer be appointed?"	YES
	NO

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE A

Currently the position of City Treasurer in the City of Livermore is elected by the voters. State law permits the voters to change the position of City Treasurer from elective to one which is appointed by the City Council. The City Council has submitted this question to the voters.

A "yes" vote on the measure is a vote to have the City Treasurer appointed by the City Council.

A "no" vote on the measure is a vote to have the City Treasurer elected by the voters.

This measure would not impose any additional cost or other monetary obligation on the City of Livermore or its taxpayers.

s/THOMAS R. CURRY
City Attorney

ARGUMENT IN FAVOR OF MEASURE A

After serving as the City Treasurer for two years it is my recommendation to the citizens of Livermore to eliminate the position of an elected treasurer. When I was elected to the position it was my stated objective to see if the position continued to merit an elected official. After meeting with city staff and other California city officials, I can attest to the fact that the position is no longer viable. Today there exist many checks and balances which are mandated by the State of California. The City Council now has the ultimate responsibility to ensure that the finances of our city are reported correctly and invested wisely. Additionally, an annual audit is required and various bond reporting agencies review the city's ability to repay their debt. Livermore is consistently praised for the job our finance department does in reporting our receipts and disbursements, our investment portfolio and the city budget.

Please join me, the Mayor and the City Council in following the lead of other California Cities in abolishing this elected position.

s/M. WELDON MORELAND
City Treasurer

s/CATHIE BROWN
Mayor

NO ARGUMENT AGAINST MEASURE A WAS SUBMITTED.

Notes

ATTACHMENT E

- (n) *Devotion of entire time to duties.* To devote full time to the duties of his office and the interest of the city.
- (o) *Performance of delegated duties.* To perform such other duties and exercise such other powers as may be delegated to him from time to time by ordinance or resolution or other action of the city council.
- (p) *Attendance at commission and board meetings.* To attend any and all meetings of any commissions or boards heretofore or hereafter created by the city council upon his own volition or upon direction of the city council. At any such meetings which he attends, the city manager shall be heard by such commissions and boards as to all matters upon which he wishes to address them.
- (q) *Delegation of council authority.* To approve, on behalf of the city, administrative matters otherwise within the authority of the city council, which the city council has by resolution authorized to be approved by the city manager or the city manager's designee during a scheduled recess of the city council.

(Ord. No. 16, § 6; Ord. No. 745, § 2; Ord. No. 1927, § 1, 5-22-90.)

Sec. 2-2108. Council to deal through city manager.

The city council and its members shall deal with the administrative services of the city only through the city manager, except for the purpose of inquiry; and neither the city council nor any member thereof shall give orders to subordinates of the city manager.

(Ord. No. 16, § 7.)

Sec. 2-2109. Subordinate officers shall cooperate with city manager.

It shall be the duty of all subordinate officers, and the city attorney, to cooperate with and assist the city manager in administering the affairs of the city most efficiently, economically and harmo-

nously, so far as may be consistent with their duties as prescribed by the law and ordinances of the city.

(Ord. No. 16, § 7b.)

Sec. 2-2110. Reserved.

Editor's note—Section 2 of Ord. No. 745 repealed § 2-2110.

Sec. 2-2111. Removal.

Removal of the city manager shall be only by a vote of at least three members of the city council at a regular meeting of the council; provided, that the vote of four members of the council shall be required to remove a city manager within sixty days after his appointment or within the sixty days after any election at which one or more members are elected to the city council.

(Ord. No. 16, § 8.)

CHAPTER 3. DEPARTMENTS, BOARDS AND COMMISSIONS

- Art. 1. Uniform Regulations for Council-Established City Boards, Commissions and Committees. §§ 2-3100-2-3104
- Art. 2. Emergency Organization and Functions. §§ 2-3200-2-3209
- Art. 3. Department of Public Works
- Art. 4. Recreation Commission, §§ 2-3400-2-3412
- Art. 5. Human Relations Commission, §§ 2-3500-2-3509
- Art. 6. Planning Commission, §§ 2-3600-2-3605
- Art. 7. Historical Architectural Review Board, §§ 2-3700-2-3702
- Art. 8. Reserved, §§ 2-3800, 2-3801
- Art. 9. Library Advisory Commission §§ 2-3900-2-3902
- Art. 10. Senior Citizens' Commission, §§ 2-31000-2-31002
- Art. 11. Sister City Commission, §§ 2-31100-2-31104
- Art. 12. Economic Development Advisory Commission, §§ 2-31200-2-31203
- Art. 13. Reserved, §§ 2-31300-2-31304
- Art. 14. Integrated Waste Management Advisory Committee, §§ 2-31400-2-31402
- Art. 15. Youth Advisory Commission, §§ 2-31500-2-31503
- Art. 16. The George W. Patterson House Advisory Board
- Art. 17. Art Review Board

ARTICLE 1. UNIFORM REGULATIONS FOR COUNCIL-ESTABLISHED CITY BOARDS, COMMISSIONS AND COMMITTEES*

- § 2-3100. Title and purpose.
- § 2-3101. Boards, commissions and committees affected.
- § 2-3102. Regulations for subject bodies.
- § 2-3103. Appointment of citizen advisors.
- § 2-3104. City clerk to keep roster of members of subject body.

Sec. 2-3100. Title and purpose.

This article may be referred to as the "Uniform Regulations for Council-Established City Boards, Commissions and Committees." The purpose of this article is to provide uniform general regulations applicable to all the various boards, commissions and committees of the city established by the city council to advise the city council and to perform such other functions and duties as prescribed by the city council in other provisions of this Code or pursuant to other action of the city council. Such uniform general relations in this article include:

- (a) Qualifications, compensation, terms of office, appointment and removal of members;
- (b) Selection of the chairman and vice-chairman thereof;
- (c) Establishment of the times, dates and places of meeting; and
- (d) Other matters requiring or appropriate for uniformity of regulations.

(Ord. No. 974, § 2, 2-5-74.)

Sec. 2-3101. Boards, commissions and committees affected.

This article shall apply to the human relations commission, planning commission, recreation commission, historical architectural review board,

*Editor's note—Ord. No. 974, §§ 1 and 2, adopted Feb. 5, 1974, amended this Code by repealing former Art. 1, §§ 2-3100—2-3123, and enacting in lieu thereof new Art. 1, §§ 2-3100—2-3104, as herein set out. Former Art. 1 pertained to the planning commission and was derived from: Ord. No. 89, §§ 2-3100, 2-3105, 2-3120, 2-3123; Ord. No. 265, § 1; Ord. No. 321, § 1; and Ord. No. 860, § 1, adopted Sept. 14, 1971. For current provisions relative to the planning commission, see § 2-3600 et seq.

civil service board, city beautiful committee, sister city commission, art review board, George W. Patterson House advisory board and such other bodies established by the city council from time to time. For purposes of this article, each such board, commission and committee shall be known as a subject body. (Ord. No. 974, § 2, 2-5-74; Ord. No. 1269, § 1, 9-5-78; Ord. No. 2225, § 1, 3-4-97.)

Sec. 2-3102. Regulations for subject bodies.

(a) The members of each subject body shall be appointed and shall be subject to removal by the mayor with the approval of the city council.

(b) No person shall be eligible to be or to continue to be a member of a subject body unless he or she is a resident of the city.

(c) No person shall be eligible to serve as a member of a single subject body for more than two full consecutive terms.

(d) No officer or employee of the city shall be eligible to be a member of a subject body, except for the sister city committee and the youth advisory commission. Members of the youth advisory commission may accept part time employment with the city.

(e) The members of the subject bodies shall receive no compensation for the performance of their official duties unless compensation is expressly provided by action of the city council.

(f) The term of office of a member of a subject body shall be four years, commencing on the first day of January of the initial year of such term, and concluding on the thirty-first day of December of the fourth year. Each member shall hold office until his or her resignation, death, removal from office, ineligibility to hold office, or disqualification for noncompliance with the attendance requirements of this section, or, in other cases, until his or her successor has been appointed and qualified.

(g) The city manager shall designate a city employee to act as secretary to each subject body. The secretary shall have no vote and shall not be deemed to be a member of the subject body for purposes of subsection (f).

(h) A member of any subject body shall be ineligible to continue his or her membership if he or she fails to attend two consecutive regular meetings of the subject body during the course of his or her term of office. As used in this subsection, "regular meeting" shall include all meetings regularly scheduled in accordance with the rules of the subject body, provided, however, that a meeting at which no business was transacted due to the lack of a quorum shall not be deemed to constitute a "regular meeting." The secretary of the subject body shall review the attendance records of such body after each regular meeting, and if he or she finds that any member has become ineligible for continued membership due to lack of attendance pursuant to this subsection, he or she shall promptly notify the chairman of the subject body and the city clerk of such fact in writing. The city clerk shall advise the city council of such fact so that the vacancy may be filled promptly.

(i) A member of a subject body shall be ineligible to continue his or her membership if during the first or last six months' period of a calendar year he or she fails to attend in excess of the following number of regular meetings of the subject body held during such period:

<i>Number of Regular Meetings in Applicable Six-Month Period</i>	<i>Number of Regular Meetings Can Miss in Six-Month Period</i>
3 or less	1 meeting
4 or more meetings	2 meetings

As used herein "regular meeting" shall have the same meaning as specified in subsection (h). The secretary of the subject body shall review the attendance records of such body after each regular meeting and if he or she finds that any member has become ineligible for continued membership due to lack of attendance pursuant to this subsection, he or she shall promptly notify the chairman of the subject body and the city clerk of such fact in writing. The city clerk shall advise the city council of such fact so that the vacancy may be filled promptly.

(j) The absence of a member of a subject body from a regular meeting of such subject body shall be excused pursuant to this subsection. The secretary of the subject body shall record a member's absence as excused if, and only if, the absence is caused by either:

- (1) The member's hospitalization;
- (2) The member's observance of a religious holiday; or
- (3) Death in the member's immediate family.

(k) If a member of a subject body is removed therefrom for failure to comply with the attendance requirements hereof, such person may apply for reinstatement before the city council. After examining the evidence, the city council may reinstate such person as a member of the subject body. This subsection shall not be construed to require the city council to give any person who has been removed from a subject body for insufficient attendance any priority or preference in appointment to such body over other persons who may desire to be appointed to such body.

(l) When an office of a subject body becomes vacant, the mayor with the approval of the city council shall appoint a qualified person to such office for the remainder of the unexpired term.

(m) Each subject body shall, at its first regular meeting held for the transaction of business during a calendar year, elect a chairman and a vice-chairman for such calendar year. When a vacancy exists in the office of chairman or vice-chairman the subject body shall elect a member to serve in such capacity for the remainder of the calendar year.

(n) Each subject body shall establish rules as to the time, place, and dates of its regular meetings, and shall adopt such rules and regulations as it deems necessary to conduct its operations, including rules of procedure. Such rules and regulations shall not be inconsistent with the ordinances and regulations of the city or with the laws of the state. Upon adoption or amendment, such rules and regulations shall be submitted to the city council for review, and the city council shall have the power to approve, disapprove, or modify them as it deems necessary.

(o) Each subject body shall prepare reports of its activities to the city council when the city council directs such subject body to do so. Each report shall be filed with the city clerk.

(Ord. No. 974, § 2, 2-5-74; Ord. No. 1164, § 1, 4-12-77; Ord. No. 1184, § 1, 7-12-77; Ord. No. 1587, § 1, 2-21-84; Ord. No. 1741, §§ 1, 2, 9-16-86; Ord. No. 1749, §§ 1, 2, 10-28-86; Ord. No. 1809, § 1, 1-5-88; Ord. No. 1947, § 1, 12-4-90; Ord. No. 1911, § 1, 2-20-90; Ord. No. 2114, § 1, 3-7-95; Ord. No. 2134, § 1, 10-3-95; Ord. No. 2225, § 2, 3-4-97; Ord. No. 2274, § 1, 1-27-98; Ord. No. 2351, §§ 1-3, 9-7-99.)

Sec. 2-3103. Appointment of citizen advisors.

(a) Any subject body, established by the city council, may establish and specify the functions, purposes and operating procedure of standing committees or subcommittees composed solely of its own membership.

(b) Subject to approval of the city council, any subject body, established by the city council, may establish citizens advisory committees, or expand the membership of its standing committees to include citizens advisors, to advise the subject body in the carrying out of its functions. Any proposal by any such subject body to establish or expand a committee as aforesaid, shall be submitted in writing to the city council, and shall specify the advisory functions, rules of operation and number and type of membership proposed. The council shall approve, conditionally approve, or disapprove each such proposal.

(c) Appointment of citizen advisory members to such citizen advisory or standing committees which have been approved by the city council shall be made by the city council from a written list of nominees submitted by the subject body, which list shall contain a total number of names equal to or exceeding three times the number of positions to be filled and the resident address of each nominee. The qualifications of each nominee shall also be included in any such list of nominees.

(d) At least one member of the subject body shall be a member of any such standing committee approved by the city council. The membership

of any citizen study committee may include a member or members of the subject body or may be exclusively composed of citizen members. Each such citizen study committee shall be dissolved by the subject body upon the completion of the study or studies assigned by the subject body, and may be dissolved prior thereto in its discretion. The membership of a citizen member of a standing committee shall terminate upon completion of the study or studies which caused his appointment or may be terminated prior thereto, in the discretion of the subject body.

(Ord. No. 974, § 2, 2-5-74.)

Sec. 2-3104. City clerk to keep roster of members of subject body.

The city clerk shall maintain an accurate roster of the names of the members of all subject bodies. Inasmuch as the terms of office of the members of the subject bodies are staggered, the city clerk shall maintain accurate records as to the commencement date and the termination date of the term of office of each member.

(Ord. No. 974, § 2, 2-5-74.)

ARTICLE 2. EMERGENCY ORGANIZATION AND FUNCTIONS*

- § 2-3200. Purpose of article.
- § 2-3201. Definition.
- § 2-3202. Disaster council—Composition; appointment of members; officers.
- § 2-3203. Same—Powers and duties.
- § 2-3204. Director and assistant director of emergency service—Office created; appointment.
- § 2-3205. Same—Powers and duties.
- § 2-3206. Emergency organization.
- § 2-3207. Emergency plan.
- § 2-3208. Expenditures.
- § 2-3209. Unlawful acts; penalty.

Sec. 2-3200. Purpose of article.

The declared purposes of this article are to provide for the preparation and carrying out of plans for the protection of persons and property

*Editor's note—Ord. No. 962, §§ 1 and 2, adopted Oct. 2, 1973, amended this Code by repealing former Art. 2, §§ 2-3200—2-3213, and enacting in lieu thereof a new Art. 2, §§ 2-3200—2-3209, as herein set out. Said former Art. 2 entitled "Civil Defense and Disaster Council" was derived from: Ord. No. 36, §§ 1-9. Ord. No. 207, §§ 1--3; and Ord. No. 683, § 1.