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May 1, 2020

Via Email & Regular Mail
stephen.fischer@oxnard.org

Stephen Fischer, City Attorney
Office of the City Attorney
305 West Third Street, Suite 100e
Oxnard, CA 93030

Re: City Council Agenda Item No. M.1 (May 5, 2020)

Dear Mr. Fischer:

As you know, I represent Phil Molina, the elected City Treasurer of the City of Oxnard. Since taking office in 2016, Mr. Molina has tirelessly worked to serve the People of Oxnard, not the municipal government of Oxnard. He promised the electorate to bring fiscal responsibility and transparency to the operation of the Treasury Department, and to protect the Treasury from mismanagement, whether negligent or intentional. The City Treasurer, of course, by law is charged to receive and safely keep all money the treasurer receives, i.e., all money received by the City of Oxnard from any source. (Govt. Code, § 41001.) Mr. Molina's efforts to carry out his duties and to fulfill his campaign promises appear to have drawn the ire of the City Manager who has orchestrated nothing less than a vendetta against the elected Treasurer including banishing Mr. Molina from his own office.

Which brings us to the topic at hand. Agenda Item No. M.1 on the Agenda for the City Council meeting on May 5 is described as an Amendment of City Treasurer Functions; Persons Authorized to Sign Financial Instruments and Initiate Electronic Bank Transactions; Oversight of Payroll Functions; and Adjustment of Future Benefits and Compensation of the Office of City Treasurer Beginning in December 2020. These proposed major revisions of the Municipal Code are being submitted to the City Council at a meeting which must be conducted virtually since a regular meeting would violate the emergency orders currently in place. It seems clear these proposed changes, many of them unlawful, are being presented to the City Council at a time when meaningful public comment and consideration of the merits is impossible.

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The proposed additions and deletions to existing Ordinances and Resolutions attempt to transfer numerous statutory duties of the Treasurer to the assistant city treasurer. For example, Sections 1-8 of the proposed Ordinance would delete the work “Treasurer” and add “Assistant City Treasurer or designee” in the definitions for License Collector and Collector. These changes directly run afoul of at least two Government Code sections which must be followed by all general law cities, including Oxnard. First, Government Code section 41005 mandates that the city treasurer is responsible for the collection of city taxes and license fees that are prescribed by ordinance. The City Council has no authority to strip an elected Treasurer of this statutory duty and assign that duty to an appointee of the City Manager. The second statute violated by these changes is Government Code section 36508 which requires a vote of the electorate to change the position of City Treasurer from elected to appointed. The proposed amendments in Sections 1-8 seek to appoint the assistant city treasurer as the defacto treasurer by assigning her duties which by statute must be fulfilled by the treasurer.

The same conflict with the Government Codes, and thereby rendering the amendments unlawful, is found with most of the proposed changes. Section 11 of the proposed Ordinance would amend Section 2-168 - Duties of City Treasurer, by transferring to the assistant city treasurer the treasurer’s statutory duty to pay out money only on warrants signed by legally designated persons found in Government Code section 41003. Perhaps recognizing that this would have the effect of making the assistant city treasurer an appointed defacto treasurer without the necessary vote of the electorate, the proposed amendment claims the authority of Government Code section 34004 to justify the transfer. That statute allows a transfer of duties to “such other officer of such city as is charged ... *by applicable general law* with the performance of duties of the same character in that city.” (Italics added.) There is no “applicable general law” which charges an assistant city treasurer to pay out money. That function is exclusively assigned in a general law city to the Treasurer. For this same reason the proposed change of Section 13, to Section 2-184 Procedure for Payment of Demands, Warrants and Checks, violates state law. The warrants must be delivered to the treasurer, not the assistant city treasurer.

There are many other proposed changes which are outside the scope of what the City Council may permissibly do within the limitations of the Government Code to substantially alter the role of the treasurer by assigning his or her statutory duties to an appointed employee. It is therefore respectfully requested that you so advise the City Council that Agenda Item No. M.1 is being withdrawn from consideration at the meeting on May 5.

Finally, I am putting you and the City of Oxnard on notice that if the Ordinance and Resolutions are adopted by the City Council, I have been instructed by Mr. Molina to take whatever legal action is necessary to challenge these unlawful changes. It is my intention to ask the court to impose an emergency TRO until such time as the court reopens so a hearing can be scheduled on a motion for a permanent injunction to prohibit the City of Oxnard from violating California law by making the treasurer a perfunctory elected position and assigning the treasurer’s statutory duties to an appointed employee without the required vote of the people.

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Please feel free to contact me if you wish to discuss this matter.

Very truly yours,

NORMAN DOWLER, LLP

/s/ Andrew H. Covner

Andrew H. Covner

cc: Alexander Nguyen (e-mail only)