

OFFICE OF THE CITY ATTORNEY

**OPINION NO. 92-02**

**TO:** Honorable Ken C. Forgia, Mayor  
**FROM:** Stephen M. Kemp, City Attorney  
**DATE:** March 16, 1992  
**SUBJECT:** Renomination and Confirmation of Department Director

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**QUESTION:**

What are the steps to bring back the nomination of a department head where the nomination was previously rejected by the City Council on a 3-3 vote.

**OPINION:**

There are two issues to be resolved in this question. First, can the initial renomination be reconsidered by the City Council, and secondly, can a nomination rejected by the City Council be resubmitted by the City Manager.

Regarding the first question, the Motion to Reconsider may be used to reconsider Council action to reject a nomination submitted by the City Manager. Robert's Rules of Order, 1990 ed. §36 at 310. Generally, this motion must be made at the next meeting following the meeting where the action occurred. In the case of a nomination that was rejected by the Council in late January, 1992, the time for the motion to reconsider would run no later than the first meeting in February.

Therefore a nomination rejected by the City Council may be subject to a Motion to Reconsider that was made at the next Council meeting following the meeting where the nomination was rejected.

The second question as to the power of the City Manager to resubmit the name of a candidate rejected by the City Council presents several issues. The first issue to be resolved in answering the question is to find the legal basis for the officer exercising the power to appoint. The City Charter states:

Section 3. City Manager; Powers and Duties.

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

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- (3) Appoint, promote, remove and demote for cause, subject to rights of appeal, and in compliance with applicable personnel rules and regulations, all officers and employees of the City, except the City Clerk, City Attorney and City Municipal Judge, and as to these named officers, he shall recommend appointment and removal; provided however, that appointments of Department Managers shall be subject to the approval of the City Council;

The Charter clearly grants the initial decision to appoint a department director to the City Manager. Under this grant of power, the City Council does not have the authority to direct or determine how the initial power to appoint is exercised by the City Manager, nor may the City Manager delegate this power to another person or entity. Taylor v. Crane, 72 Cal.App.3d 791.

The exercise of the power to appoint may be restricted by statute. For example, the Governor may not submit the name of a nominee who has been rejected for confirmation. A.R.S. §38-211. However, no such provision exists in the City Charter.

The duty of Council to consider confirmation occurs after the appointment is made by the City Manager. Rogers v. Frohmler, 59 Ariz. 513, 130 P.2d 271 (1942). Until the City Council exercises its authority to confirm or reject the nominee, the nomination may be withdrawn by the City Manager. As indicated under the Charter, the City Manager is granted the initial powers to appoint. See, Rogers.

Therefore, it is concluded that the initial power to appoint resides with the City Manager. In exercising this power to appoint, the City Manager may submit the name of a candidate for a position who has been previously rejected for confirmation by the City Council.

Should you have any questions, please do not hesitate to contact me.