

**THE CITY OF PROVIDENCE**  
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

# RESOLUTION OF THE CITY COUNCIL

No. 114

EFFECTIVE ~~Approved~~ March 18, 2004

RESOLVED, That the City Council, pursuant to Section 401(d), of the Providence Home Rule Charter, as amended, wherein it states that powers and duties of the city council shall include, without limitation, the following:

- “(d) To retain by two thirds vote of the entire city council and to fix the salaries of those consultants it deems necessary for the exercise of its functions including, but not limited to, legal counsel, accountants, engineers, and other experts not regularly employed in any city department or service. The city council shall have the power to appropriate funds to defray the costs thereof,”

hereby retains the legal services of R. Kelly Sheridan for the purpose of reviewing the employment contract of the Chief of Police as negotiated by the Mayor; to consult and advise on the legislative powers of the city council as they concern employment contracts, personal service contracts and any other similar contract that may or may not require a financial commitment from the city; and to further advise the city council as to the legislative authority vested with the city council to ratify such contracts, at a rate of \$130.00 per hour, wherein the maximum payment shall not exceed \$5,000.00.

IN CITY COUNCIL  
FEB 19 2004  
READ AND PASSED

PRES.

CLERK

**VETO**  
**I HEREBY DISAPPROVE**  
**AND VETO.**

DATE:

MAYOR

3/1/04

IN CITY COUNCIL  
MARCH 18, 2004

Read and Mayor's Veto Not Sustained

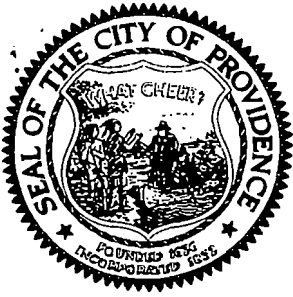
City Clerk

Effective without the  
Mayor's Signature:

Michael R. Clement  
City Clerk

RECEIVED  
JAN 10  
1917

Council President Lombardi, Councilmen Allen, Aponte, Butler, Medica, Councilman DiGuzzo,  
Councilmen Hassett, Igluzzi, Jackson, Lura, Mancini, Councilman Romano, Councilman Segal,  
Councilmen Williams & Young



## Providence City Council

Jaxid 2/6/04

# Memo

**To:** Council President John J. Lombardi  
**From:** Councilman Terrence M. Hassett  
**Date:** February 6, 2004  
**Re:** Suggested "resolution" for your review

A handwritten signature in black ink, appearing to be "Terrence M. Hassett", is written over the "Re:" line of the memo header.

RESOLVED, That the City Council, pursuant to Section 401 (d), of the Providence Home Rule Charter, as amended, wherein it states that powers and duties of the city council shall include, without limitation, the following:

*"(d) To retain by two thirds vote of the entire city council and to fix the salaries of those consultants it deems necessary for the exercise of its functions including, but not limited to, legal counsel, accountants, engineers, and other experts not regularly employed in any city department or service. The city council shall have the power to appropriate funds to defray the costs thereof,"*

hereby retains the legal services of R. Kelly Sheridan for the purpose of reviewing the employment contract of the Chief of Police as negotiated by the Mayor; to consult and advise on the legislative powers of the city council as they concern employment contracts, personal service contracts and any other similar contract that may or may not require a financial commitment from the city; and to further advise the city council as to the legislative authority vested with the city council to ratify such contracts, at a rate of \$130.00 per hour, wherein the maximum payment shall not exceed \$5,000.



Mayor of Providence

David N. Cicilline

February 27, 2004

Michael R. Clement  
City Clerk  
Providence City Hall  
25 Dorrance Street  
Providence, RI 02903

Dear Mr. Clement:

I respectfully submit the following communication to the Office of City Clerk and the members of the Providence City Council in response to the Resolution seeking to retain the legal services of Attorney R. Kelly Sheridan for the purpose of reviewing the employment contract of the Chief of Police, and consult and advise the legislative body concerning employment contracts, personal service contracts, and other similar contracts requiring a financial commitment from the city.

I am exercising veto authority, as established by the Providence Home Rule Charter, in disapproval of the Resolution.

The power of veto is among the most significant actions that can be taken by the Executive Office of this City. I have maintained a policy of extreme discretion and restraint in its use and will continue to do so. However, our responsibility to ensure public safety and reform a highly politicized and demoralized police department is primary. The Resolution will hinder this mission without providing any compensating public benefit, and I am compelled to exercise the veto on these grounds.

On January 10, 2003, in my capacity as Acting Commissioner of Public Safety, I appointed Dean Esserman as Chief of the Providence Police Department. As detailed in City Solicitor Joseph Fernandez's written opinion, which I have enclosed, on January 17, 2003 I exercised my executive and administrative power to execute an individual employment agreement between the City of Providence and the Chief of Police. The City Council, in accordance with the provisions of the employment contract, the City Charter, and applicable ordinances, approved the financial terms of the agreement by their ratification of the Compensation Ordinances on February 20, 2003 and July 28, 2003, as well as the Appropriation Ordinance on July 28, 2003.

The City Solicitor is "the chief legal advisor of and attorney for the city and all departments, boards, commissions, bureaus and officers thereof in the matters relating to their official powers and duties."<sup>i</sup> The Honorable Members of the City Council have vested their trust and support in Solicitor Fernandez through the approval of his appointment as chief legal advisor for this City. His written legal opinion regarding the Esserman Employment Agreement clearly delineates the authority of the Executive and Legislative branches regarding individual employment contracts.

I fully understand and respect the separation of powers, and the system of checks and balances that uphold the integrity and stability of our city government. As the Solicitor's opinion states, "The Esserman employment agreement properly respects the allocation of powers between the legislative and executive/administrative branches. The agreement provides for 'ratification by the City in accordance with the provisions of law and City policy.' The Council 'ratifies' the financial terms of the contract annually when it approves the Police Department budget in the appropriation ordinance and the salary of the Chief of Police in the compensation ordinance. The Council does not have the power to pass upon the non-financial terms of the agreement."<sup>ii</sup>

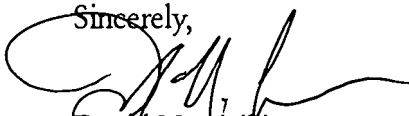
Given the authority afforded to the Office of Mayor, it was my duty to preserve the integrity and remove the political interference that had long been associated with the Providence Police Department's chief commanding officer. Evidence of promotional exam scandals and pervasive political influence in the department had discouraged the rank-and-file and tarnished the hard work of Providence's fine law enforcement agents. I entered into the Esserman employment agreement to avoid any further efforts to politicize the office, and begin long-awaited reform of the department and the fashion in which we protect the residents of Providence.

It is disconcerting, and an object of great disappointment, that this Resolution has surfaced after Colonel Esserman's thirteen months of distinguished service to Providence. Under Chief Esserman's leadership, the Providence Police Department has achieved a double-digit decrease in crime, implemented a new and more aggressive minority recruitment effort, and placed thirty-one new officers on the street walking beats and making community policing a reality. Chief Esserman continues to attain considerable progress in the investigation of the Department's testing and promotions scandal, and is rebuilding the city's trust in the men and women serving Providence with courage and character.

I have at all times been open and forward regarding the terms of the employment contract, the contract in its entirety has at all times been available through the Human Resources Department, and the City Solicitor, the chief legal advisor and attorney for this government, has confirmed that Chief Esserman's employment agreement "properly respects the allocation of powers between the legislative and executive/administrative branches."<sup>iii</sup>

Given these objections, I am compelled to disapprove and veto the City Council's Resolution.

Sincerely,



David N. Cicilline  
Mayor, City of Providence

CC: The Honorable Members of the City Council

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<sup>i</sup> City of Providence Home Rule Charter. § 603 (b)(2).

<sup>ii</sup> Fernandez, Joseph M. Legal Opinion, February 12, 2004. (pg. 2).

<sup>iii</sup> Fernandez, Joseph M. Legal Opinion, February 12, 2004. (pg. 2).

2003-2007

## CITY COUNCIL ROLL CALL

ITEM \_\_\_\_\_

*Kelly Sheridan Resolution*

	AYES	NAYS	NOT VOT'G	ABST
COUNCIL PRESIDENT LOMBARDI	✓			
ACTING COUNCIL PRESIDENT				
COUNCILMAN ALLEN	✓			
COUNCILMAN APONTE	✓			
COUNCILMAN BUTLER	✓			
COUNCILMAN DELUCA	✓			
COUNCILWOMAN DIRUZZO	✓			
COUNCILMAN HASSETT	✓			
COUNCILMAN IGLIOZZI	✓			
COUNCILMAN JACKSON	✓			
COUNCILMAN LUNA	✓			
COUNCILMAN MANCINI	✓			
COUNCILWOMAN ROMANO	✓			
COUNCILMAN SEGAL	✓			
COUNCILWOMAN WILLIAMS	✓			
COUNCILWOMAN YOUNG	✓			

*full  
Council*

AYES

NAYS

NOT VOT'G

ABSENT



Department of Law

February 12, 2004

The Honorable David N. Cicilline  
Mayor, City of Providence  
City Hall  
25 Dorrance Street  
Providence, Rhode Island 02903

Dear Mayor Cicilline:

You have asked me for a written legal opinion as to the request from Councilman Terrence M. Hassett dated January 29, 2004 to submit "the full contract" of Colonel Dean M. Esserman, Chief of Police, to the City Council for its "review and approval."

Summary of Opinion

There is no provision of law or City policy that requires that the "full contract" of Colonel Esserman be submitted to the City Council for ratification. In accordance with the provisions of law and City policy, the Council has ratified the financial terms of the Esserman employment agreement for the fiscal years ending June 30, 2003 and June 30, 2004.

The Commissioner of Public Safety has the power to appoint, discipline and remove the Chief of Police. The Commissioner also supervises and controls the Police Department under the supervision of the Mayor.

The executive and administrative powers of the City are vested in the Mayor. Among those powers is the power to implement the City budget.

Through its legislative power of appropriation, the City Council has ultimate and final authority over municipal expenditures. It exercises that authority through the appropriation process set forth in the Home Rule Charter. The financial terms of the Esserman employment agreement, like all proposed expenditures, are generally subject to the Council's approval as part of the annual appropriation process. But that process only permits the Council to modify or strike out broad categories of expenditures in the proposed appropriation ordinance. The process does not permit the Council to pass

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judgment on specific expenditures that might be encompassed within line items in the appropriation ordinance.

The Esserman employment agreement properly respects the allocation of powers between the legislative and executive/administrative branches. The agreement provides for "ratification by the City in accordance with the provisions of law and City policy." The Council "ratifies" the financial terms of the contract annually when it approves the Police Department budget in the appropriation ordinance and the salary of the Chief of Police in the compensation ordinance. The Council does not have the power to pass upon the non-financial terms of the agreement.

There is no general requirement that the Council ratify City contracts. The Council has legislated for itself a power to ratify collective bargaining agreements through passage of a specific ordinance. No comparable ordinance requires ratification of the Esserman employment agreement. It is my understanding and belief that City practice regarding individual employment agreements – including those of a prior Water Supply Board chief engineer, a former Superintendent of Parks, and a former and the current Superintendents of Schools – is that such agreements, like the Esserman employment agreement, are entered into by the appointing authority without ratification by the City Council.

#### Facts

The Home Rule Charter invests the Commissioner of Public Safety with the power to appoint the Chief of Police. (Charter § 1001(a).) The Commissioner is the head of the Police Department; the Chief is the chief executive officer, subject to the direction of the Commissioner. Id. The Commissioner is responsible for the administration of the Department and has the authority to appoint, remove, organize and control the officers of the Department, including the Chief. (§ 1001(a)(1), (3).) The Commissioner has the authority to make all rules and regulations for the management of the Department, including rules for the appointment, removal, powers, duties, discipline and control of members of the Department, including the Chief. (§ 1001(a)(4).) The Commissioner also possesses the aforementioned powers and duties as the head of the Department of Public Safety. (§§ 904, 1201(c), (d).) As a sworn officer of the Police Department, the Chief is not covered by the City's personnel system. (§ 905(m).)

The executive and administrative powers of the City are vested in the Mayor. (§ 301.) The Mayor has the power and duty to supervise, direct and control the activities of all departments of City government, including the Department of Public Safety. (§ 302(a).) The Mayor also has the power and duty to prepare and implement the City budget. (§ 302(c).)

The legislative powers of the City are vested in the City Council. (§ 401.) The Council has the power and duty to adopt the annual City budget appropriation ordinance. (§ 401(b).)

Each year, the Finance Director, at the direction of the Mayor, obtains from each department head an itemized estimate of the proposed expenditures necessary to meet the needs of the department. (§ 802.) It is the duty of the Mayor, not later than 60 days before the start of each fiscal year, to frame and submit to the City Council an operating budget. (§ 803.) Among other things, the operating budget contains an estimate of the expenditures recommended by the Mayor as necessary or desirable for the purpose of carrying on the work of each department, itemized by activities and objects and related to the performance goals of each department. (§ 803(f).) With the operating budget, the Mayor presents to the Council the following: (a) an explanatory budget message attaching such material as the Mayor may deem useful to the Council; (b) an appropriation ordinance providing for financing the City government in the manner proposed by the budget, and (c) a personnel ordinance in detail for each department for which City appropriations are provided other than the office of the Mayor. (§ 804.)

The City Council may increase, decrease, alter or strike out any item or group of items contained in the appropriation ordinance presented by the Mayor. (§ 805.) But the City Council may not vary the titles, descriptions or conditions of administration specified in the budget, appropriation ordinance or personnel ordinance. Id.

Subsequent to the passage of the annual appropriation ordinance, if the Council approves additional appropriations, it must identify and provide additional revenues for such appropriations. (§ 811(a).)

The City Finance Director is the chief fiscal officer of the City and is responsible to the Mayor for the sound and prudent financial direction of the City. (§ 813(a).) The City Controller, who is appointed by the Finance Director, has the power and duty to examine all contracts that involve financial obligations against the City and approve those obligations only upon ascertaining that monies have been appropriated and allotted, and that an unexpended and unencumbered balance is available in such appropriation and allotment to meet the obligations. (§ 813(b)(3).)

All contracts made and entered into on behalf of the City are to be signed and executed by the Mayor, unless otherwise provided by ordinance or resolution of the City Council. Ord. § 2-21.

By Executive Order No. 2, Series of 2003, dated January 10, 2003, Acting Commissioner of Public Safety David N. Cicilline appointed Dean M. Esserman as the 37th Chief of the Providence Police Department with the rank of Colonel.

On January 17, 2003, the Mayor, on behalf of the City, and Colonel Esserman signed an Employment Agreement for Esserman as Chief of Police made and entered into as of January 10, 2003. The agreement addresses, among other things, a term of employment, the Chief's duties, his base salary, additional compensation and benefits, professional liability, evaluation, termination, renewal, assignment, binding effect, and governing law.

In Section 15, the agreement provides as follows:

Subject to any provisions hereof restricting assignment, this Agreement shall be binding upon the parties hereto upon ratification by the City in accordance with the provisions of law and City policy . . . :

In Section 4, paragraph B, the agreement provides as follows:

Prior to ratification of this Agreement by the Providence City Council, the City will pay the Chief's annual base salary at the currently approved, reduced rate of \$98,081 (the "Temporary Salary"). Upon the City Council's ratification of this Agreement, the Chief shall receive retroactive pay in an amount equal to the difference between (x) the portion of the annual base salary to which the Chief was entitled for such period under Paragraph A of this Section 4 above, and (y) the Temporary Salary actually received by the Chief during such period (the "Retroactive Pay"). The City shall pay the Retroactive Pay to the Chief in full within two weekly pay periods immediately following the City Council's ratification of this Agreement, which ratification the Mayor, on behalf of the City, shall use his best efforts to expedite and secure, but which shall be obtained in any event no later than March 6, 2003.

On February 6, 2003, the City Council passed for the first time an ordinance amending the Compensation Plan for the City for the fiscal year ended June 30, 2003 by, among other things, amending the salary of the Chief of Police from A-28 to \$138,000 per year. On February 20, 2003, the Council passed that ordinance for a second time.

On July 25, 2003, the City Council passed for the first time an ordinance making an appropriation for the fiscal year ending June 30, 2004. That appropriation ordinance included appropriations for the Police Department. On the same date, the Council passed for the first time an ordinance establishing a Compensation Plan for the City for the fiscal year ending June 30, 2004 by, among other things, setting the salary of the Chief of Police at \$143,575 per year. On July 28, 2003, the Council passed those two ordinances for a second time.

### Analysis

As the appointing authority for the Chief of Police, the Commissioner of Public Safety has the power to define the terms of engagement of the Chief. The Mayor has the executive and administrative power to execute an individual employment agreement between the City and the Chief of Police.

By its terms, the Esserman employment agreement binds the parties "upon ratification by the City in accordance with the provisions of law and City policy." To "ratify" means to "approve or confirm." Webster's New World Dictionary 1114 (3d college ed. 1988). Ratification is by "the City," not by any component thereof. But the agreement does refer to the time of "ratification of this Agreement by the Providence City Council" as a trigger for an adjustment in the Chief's salary in the 2002-03 fiscal year.

Since the request of Councilman Hassett is for submission of "the full contract" to the City Council for ratification, the question is whether there is any provision of law or City policy that requires the full contract to be ratified by the Council.

There is no provision of law that requires that the City Council ratify contracts generally. There is also no provision of law that requires that the City Council ratify individual employment agreements.

By contrast, there is a provision of law that requires that the City Council ratify collective bargaining agreements. Ordinance 17-27, "Ratification of collective bargaining agreements," provides in part: "(a) No collective bargaining agreement between the City of Providence and any labor organization shall become effective unless and until ratified by the Providence city council." The Council "is endowed with the legislative power to ratify collective-bargaining agreements in order to manage the budgetary affairs of the city." Providence City Council v. Cianci, 650 A.2d 499, 502 (R.I. 1994). But an individual employment agreement is not a collective bargaining agreement. Absent a duly-enacted ordinance, there is no provision of law that requires Council ratification of contracts, including individual employment agreements. See id. (even in the context of collective bargaining, "[a] contract is not finalized and binding until the ratification process, when required by ordinance, is complete") (emphasis added).

There is also no City policy that requires that the City Council ratify contracts generally or individual employment agreements in particular. I am not aware of any written City policy requiring Council ratification of individual employment agreements. It is my understanding and belief that City practice regarding individual employment agreements – including those of a former Water Supply Board chief engineer, a former

Superintendent of Parks, and a former and the current Superintendents of Schools – is that such agreements, like the Esserman employment agreement, are entered into by the appointing authority without ratification by the City Council.

The City Council “ratifies” – that is, “approves” and “confirms” – the financial terms of the Esserman employment agreement – like the expenditures in every other City contract – through the annual appropriation process set forth in the Charter. That process only permits the Council to modify or strike out broad categories of expenditures in the proposed appropriation ordinance. It does not permit the Council to pass judgment on specific expenditures that might be encompassed within line items in the appropriation ordinance.

It is through its legislative power of appropriation that the City Council exercises its “ultimate and final authority over municipal expenditures.” Providence Teachers Union v. Providence School Board, 689 A.2d 384, 386 (R.I. 1996); see also Charter § 401(c) (Council has legislative power “to adopt the annual city budget appropriation ordinance”). Once the budget has been adopted and monies have been appropriated, however, the Mayor alone has the executive and administrative power “to implement the city budget.” Charter § 302(c). It is the duty of the executive, through the City finance department, to approve City financial obligations only after assuring that monies have been appropriated and not expended. § 813(b)(3); see also Providence Teachers Union, 689 A.2d at 386-87 (referring to role of finance director in Charter §§ 706 and 707 regarding school department budget).

In his letter dated January 29, 2004, Councilman Hassett asserts that “[t]he City Council’s authority to ratify contracts has been upheld by the Rhode [Island] Supreme Court.” That is correct only if the contracts at issue are collective bargaining agreements. Both the Providence School Board and Providence City Council cases involved violations of a valid ordinance requiring ratification of collective bargaining agreements by the Council. Those cases do not recognize a general requirement that the Council ratify contracts. In addition, the individual employment agreement at issue here does not involve the “legislation” of employee benefits through the City retirement system that would require additional appropriations from the Council. See Betz v. Paolino, 605 A.2d 837 (R.I. 1992).

The Esserman employment agreement properly respects the allocation of powers between the legislative and executive/administrative branches. The agreement provides for “ratification by the City in accordance with the provisions of law and City policy.” The Mayor, for himself as well as on behalf of the Commissioner, “approves” the agreement. The Council “ratifies” the financial terms of the contract annually when it approves the Police Department budget in the appropriation ordinance and the salary of

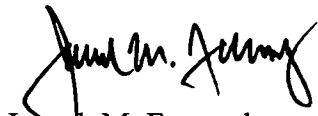
The Honorable David N. Cicilline  
February 12, 2004  
Page -7-

the Chief of Police in the compensation ordinance. The Council does not have the power to pass upon the non-financial terms of the agreement.

The agreement recognizes that, for fiscal year 2002-03, the increase in the salary of the Chief of Police to \$138,000 would need to be approved by the Council through an amendment to the compensation ordinance. The Council passed that amendment on February 20, 2003. Before passage, Colonel Esserman had to be paid at the prior, lower salary. After passage, the City could pay Colonel Esserman the difference between the old salary and the new, higher salary for the period between the start date of the contract and the date of passage, provided the total amount paid to the Chief of Police in salary for fiscal year 2002-03 did not exceed \$138,000.

In accordance with the provisions of law and City policy, the Council ratified the Esserman employment agreement for the fiscal year ending June 30, 2003 by passing an amendment to the compensation ordinance in February 2003. The Council also ratified the agreement for the fiscal year ending June 30, 2004 by passing the appropriation and compensation ordinances in July 2003.

Respectfully submitted,



Joseph M. Fernandez  
City Solicitor



Mayor of Providence

David N. Cicilline

February 19, 2004

The Honorable Terrence M. Hassett  
Providence City Council  
25 Dorrance Street  
Providence, Rhode Island 02903

Dear Councilman Hassett:

In response to your letter, dated January 29, 2004, concerning Colonel Dean Esserman's contract, I have asked the City Solicitor to review the matter and prepare a written opinion as to whether the contract needs to be submitted to the Providence City Council for ratification.

Attached please find the solicitor's opinion, which I believe responds directly to your request and concerns. If you have further questions regarding the opinion, please contact the City Solicitor.

Sincerely,

A handwritten signature in dark ink, appearing to read "D. Cicilline", is written over the printed name and title.

David N. Cicilline  
Mayor, City of Providence

CC: Members of the Providence City Council



## Department of Law

February 12, 2004

The Honorable David N. Cicilline  
Mayor, City of Providence  
City Hall  
25 Dorrance Street  
Providence, Rhode Island 02903

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### Summary of Opinion

There is no provision of law or City policy that requires that the "full contract" of Colonel Esserman be submitted to the City Council for ratification. In accordance with the provisions of law and City policy, the Council has ratified the financial terms of the Esserman employment agreement for the fiscal years ending June 30, 2003 and June 30, 2004.

The Commissioner of Public Safety has the power to appoint, discipline and remove the Chief of Police. The Commissioner also supervises and controls the Police Department under the supervision of the Mayor.

The executive and administrative powers of the City are vested in the Mayor. Among those powers is the power to implement the City budget.

Through its legislative power of appropriation, the City Council has ultimate and final authority over municipal expenditures. It exercises that authority through the appropriation process set forth in the Home Rule Charter. The financial terms of the Esserman employment agreement, like all proposed expenditures, are generally subject to the Council's approval as part of the annual appropriation process. But that process only permits the Council to modify or strike out broad categories of expenditures in the proposed appropriation ordinance. The process does not permit the Council to pass

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## Department of Law

February 12, 2004

The Honorable David N. Cicilline  
Mayor, City of Providence  
City Hall  
25 Dorrance Street  
Providence, Rhode Island 02903

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#### Facts

The Home Rule Charter invests the Commissioner of Public Safety with the power to appoint the Chief of Police. (Charter § 1001(a).) The Commissioner is the head of the Police Department; the Chief is the chief executive officer, subject to the direction of the Commissioner. Id. The Commissioner is responsible for the administration of the Department and has the authority to appoint, remove, organize and control the officers of the Department, including the Chief. (§ 1001(a)(1), (3).) The Commissioner has the authority to make all rules and regulations for the management of the Department, including rules for the appointment, removal, powers, duties, discipline and control of members of the Department, including the Chief. (§ 1001(a)(4).) The Commissioner also possesses the aforementioned powers and duties as the head of the Department of Public Safety. (§§ 904, 1201(c), (d).) As a sworn officer of the Police Department, the Chief is not covered by the City's personnel system. (§ 905(m).)

The executive and administrative powers of the City are vested in the Mayor. (§ 301.) The Mayor has the power and duty to supervise, direct and control the activities of all departments of City government, including the Department of Public Safety. (§ 302(a).) The Mayor also has the power and duty to prepare and implement the City budget. (§ 302(c).)

The legislative powers of the City are vested in the City Council. (§ 401.) The Council has the power and duty to adopt the annual City budget appropriation ordinance. (§ 401(b).)

Each year, the Finance Director, at the direction of the Mayor, obtains from each department head an itemized estimate of the proposed expenditures necessary to meet the needs of the department. (§ 802.) It is the duty of the Mayor, not later than 60 days before the start of each fiscal year, to frame and submit to the City Council an operating budget. (§ 803.) Among other things, the operating budget contains an estimate of the expenditures recommended by the Mayor as necessary or desirable for the purpose of carrying on the work of each department, itemized by activities and objects and related to the performance goals of each department. (§ 803(f).) With the operating budget, the Mayor presents to the Council the following: (a) an explanatory budget message attaching such material as the Mayor may deem useful to the Council; (b) an appropriation ordinance providing for financing the City government in the manner proposed by the budget, and (c) a personnel ordinance in detail for each department for which City appropriations are provided other than the office of the Mayor. (§ 804.)

The City Council may increase, decrease, alter or strike out any item or group of items contained in the appropriation ordinance presented by the Mayor. (§ 805.) But the City Council may not vary the titles, descriptions or conditions of administration specified in the budget, appropriation ordinance or personnel ordinance. Id.

Subsequent to the passage of the annual appropriation ordinance, if the Council approves additional appropriations, it must identify and provide additional revenues for such appropriations. (§ 811(a).)

The City Finance Director is the chief fiscal officer of the City and is responsible to the Mayor for the sound and prudent financial direction of the City. (§ 813(a).) The City Controller, who is appointed by the Finance Director, has the power and duty to examine all contracts that involve financial obligations against the City and approve those obligations only upon ascertaining that monies have been appropriated and allotted, and that an unexpended and unencumbered balance is available in such appropriation and allotment to meet the obligations. (§ 813(b)(3).)

All contracts made and entered into on behalf of the City are to be signed and executed by the Mayor, unless otherwise provided by ordinance or resolution of the City Council. Ord. § 2-21.

By Executive Order No. 2, Series of 2003, dated January 10, 2003, Acting Commissioner of Public Safety David N. Cicilline appointed Dean M. Esserman as the 37th Chief of the Providence Police Department with the rank of Colonel.

On January 17, 2003, the Mayor, on behalf of the City, and Colonel Esserman signed an Employment Agreement for Esserman as Chief of Police made and entered into as of January 10, 2003. The agreement addresses, among other things, a term of employment, the Chief's duties, his base salary, additional compensation and benefits, professional liability, evaluation, termination, renewal, assignment, binding effect, and governing law.

In Section 15, the agreement provides as follows:

Subject to any provisions hereof restricting assignment, this Agreement shall be binding upon the parties hereto upon ratification by the City in accordance with the provisions of law and City policy . . . :

In Section 4, paragraph B, the agreement provides as follows:

Prior to ratification of this Agreement by the Providence City Council, the City will pay the Chief's annual base salary at the currently approved, reduced rate of \$98,081 (the "Temporary Salary"). Upon the City Council's ratification of this Agreement, the Chief shall receive retroactive pay in an amount equal to the difference between (x) the portion of the annual base salary to which the Chief was entitled for such period under Paragraph A of this Section 4 above, and (y) the Temporary Salary actually received by the Chief during such period (the "Retroactive Pay"). The City shall pay the Retroactive Pay to the Chief in full within two weekly pay periods immediately following the City Council's ratification of this Agreement, which ratification the Mayor, on behalf of the City, shall use his best efforts to expedite and secure, but which shall be obtained in any event no later than March 6, 2003.

On February 6, 2003, the City Council passed for the first time an ordinance amending the Compensation Plan for the City for the fiscal year ended June 30, 2003 by, among other things, amending the salary of the Chief of Police from A-28 to \$138,000 per year. On February 20, 2003, the Council passed that ordinance for a second time.

On July 25, 2003, the City Council passed for the first time an ordinance making an appropriation for the fiscal year ending June 30, 2004. That appropriation ordinance included appropriations for the Police Department. On the same date, the Council passed for the first time an ordinance establishing a Compensation Plan for the City for the fiscal year ending June 30, 2004 by, among other things, setting the salary of the Chief of Police at \$143,575 per year. On July 28, 2003, the Council passed those two ordinances for a second time.

Analysis

As the appointing authority for the Chief of Police, the Commissioner of Public Safety has the power to define the terms of engagement of the Chief. The Mayor has the executive and administrative power to execute an individual employment agreement between the City and the Chief of Police.

By its terms, the Esserman employment agreement binds the parties "upon ratification by the City in accordance with the provisions of law and City policy." To "ratify" means to "approve or confirm." Webster's New World Dictionary 1114 (3d college ed. 1988). Ratification is by "the City," not by any component thereof. But the agreement does refer to the time of "ratification of this Agreement by the Providence City Council" as a trigger for an adjustment in the Chief's salary in the 2002-03 fiscal year.

Since the request of Councilman Hassett is for submission of "the full contract" to the City Council for ratification, the question is whether there is any provision of law or City policy that requires the full contract to be ratified by the Council.

There is no provision of law that requires that the City Council ratify contracts generally. There is also no provision of law that requires that the City Council ratify individual employment agreements.

By contrast, there is a provision of law that requires that the City Council ratify collective bargaining agreements. Ordinance 17-27, "Ratification of collective bargaining agreements," provides in part: "(a) No collective bargaining agreement between the City of Providence and any labor organization shall become effective unless and until ratified by the Providence city council." The Council "is endowed with the legislative power to ratify collective-bargaining agreements in order to manage the budgetary affairs of the city." Providence City Council v. Cianci, 650 A.2d 499, 502 (R.I. 1994). But an individual employment agreement is not a collective bargaining agreement. Absent a duly-enacted ordinance, there is no provision of law that requires Council ratification of contracts, including individual employment agreements. See id. (even in the context of collective bargaining, "[a] contract is not finalized and binding until the ratification process, when required by ordinance, is complete") (emphasis added).

There is also no City policy that requires that the City Council ratify contracts generally or individual employment agreements in particular. I am not aware of any written City policy requiring Council ratification of individual employment agreements. It is my understanding and belief that City practice regarding individual employment agreements – including those of a former Water Supply Board chief engineer, a former

Superintendent of Parks, and a former and the current Superintendents of Schools – is that such agreements, like the Esserman employment agreement, are entered into by the appointing authority without ratification by the City Council.

The City Council “ratifies” – that is, “approves” and “confirms” – the financial terms of the Esserman employment agreement – like the expenditures in every other City contract – through the annual appropriation process set forth in the Charter. That process only permits the Council to modify or strike out broad categories of expenditures in the proposed appropriation ordinance. It does not permit the Council to pass judgment on specific expenditures that might be encompassed within line items in the appropriation ordinance.

It is through its legislative power of appropriation that the City Council exercises its “ultimate and final authority over municipal expenditures.” Providence Teachers Union v. Providence School Board, 689 A.2d 384, 386 (R.I. 1996); see also Charter § 401(c) (Council has legislative power “to adopt the annual city budget appropriation ordinance”). Once the budget has been adopted and monies have been appropriated, however, the Mayor alone has the executive and administrative power “to implement the city budget.” Charter § 302(c). It is the duty of the executive, through the City finance department, to approve City financial obligations only after assuring that monies have been appropriated and not expended. § 813(b)(3); see also Providence Teachers Union, 689 A.2d at 386-87 (referring to role of finance director in Charter §§ 706 and 707 regarding school department budget).

In his letter dated January 29, 2004, Councilman Hassett asserts that “[t]he City Council’s authority to ratify contracts has been upheld by the Rhode [Island] Supreme Court.” That is correct only if the contracts at issue are collective bargaining agreements. Both the Providence School Board and Providence City Council cases involved violations of a valid ordinance requiring ratification of collective bargaining agreements by the Council. Those cases do not recognize a general requirement that the Council ratify contracts. In addition, the individual employment agreement at issue here does not involve the “legislation” of employee benefits through the City retirement system that would require additional appropriations from the Council. See Betz v. Paolino, 605 A.2d 837 (R.I. 1992).

The Esserman employment agreement properly respects the allocation of powers between the legislative and executive/administrative branches. The agreement provides for “ratification by the City in accordance with the provisions of law and City policy.” The Mayor, for himself as well as on behalf of the Commissioner, “approves” the agreement. The Council “ratifies” the financial terms of the contract annually when it approves the Police Department budget in the appropriation ordinance and the salary of

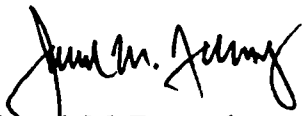
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the Chief of Police in the compensation ordinance. The Council does not have the power to pass upon the non-financial terms of the agreement.

The agreement recognizes that, for fiscal year 2002-03, the increase in the salary of the Chief of Police to \$138,000 would need to be approved by the Council through an amendment to the compensation ordinance. The Council passed that amendment on February 20, 2003. Before passage, Colonel Esserman had to be paid at the prior, lower salary. After passage, the City could pay Colonel Esserman the difference between the old salary and the new, higher salary for the period between the start date of the contract and the date of passage, provided the total amount paid to the Chief of Police in salary for fiscal year 2002-03 did not exceed \$138,000.

In accordance with the provisions of law and City policy, the Council ratified the Esserman employment agreement for the fiscal year ending June 30, 2003 by passing an amendment to the compensation ordinance in February 2003. The Council also ratified the agreement for the fiscal year ending June 30, 2004 by passing the appropriation and compensation ordinances in July 2003.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph M. Fernandez", written in a cursive style.

Joseph M. Fernandez  
City Solicitor