

EXCERPT

COURT TESTIMONY: CHRIS FREELAND, APRIL 26, 2023; TONY WU, APRIL 28, 2023
TOPIC: CITY ORDINANCE 2-151: CHANGE TO CITY MANAGER APPOINTMENT POWER

This lawsuit was filed against the City of West Covina by a former fire chief for disability discrimination, disability retaliation, whistleblower retaliation, and intentional infliction of emotional distress. The City of West Covina lost the case. The former fire chief was awarded \$4.1 million and almost \$1 million in attorney fees. West Covina is appealing the lawsuit.

This testimony discusses changes to the city manager’s appointment powers the West Covina City Council adopted April 2, 2019. The change, reprinted on page 3, requires city council approval whenever the city manager hires a department head. This change is significant. It weakens the city manager’s authority, increases the power and influence of the city council in city government operations, and runs counter to the principles adopted as part of the municipal government reform movement that occurred over 100 years ago to reduce corruption in municipal government. See “Reducing the Power of Political Machines”, page 7.

Testimony on the last page of this document illustrates the impact city council involvement can have on department head assignments. When, for example, the city council became involved with department head appointments, the former fire chief was fired and replaced on an interim basis with a fire department union leader who supported the “no confidence vote” the firefighters union held. The former city manager objected (and was subsequently “pushed out.”). As time passed, additional department heads were either fired or “pushed out” and additional wrongful termination suits were filed. ***The change the Wu council majority implemented to Ordinance Section 2-151 (g) must be reversed.***

Jerri Potras, June 5, 2024

Note: *In this excerpt, “Q” is Anthony Ngyuen, attorney for the plaintiff. He is questioning “A” Chris Freeland, former city manager of the City of West Covina. Thomas M. O’Connell is an attorney for the defendant.*

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT MOSK 54 HON. MAURICE A. LEITER, JUDGE
4
5 LARRY WHITHORN,)
6 Plaintiff,)
7 vs.) No. 20STCV08916
8 CITY OF WEST COVINA,)
9 Defendant.)
10
11 REPORTER'S TRANSCRIPT OF PROCEEDINGS
12 WEDNESDAY, APRIL 26, 2023
13

17 Q And then after this was there -- do you recall
18 a time period where one of those majority members -- I
19 think it's Dario Castellanos. So he's the city council
20 member?
21 A He was at the time.
22 Q Did he approach you about changing something
23 with the municipal code?
24 A He did.
25 Q What did he ask you to change?
26 A One of his priorities that he wanted to do was
27 change the way the department heads are hired by the
28 city. Under the -- when I was city manager there, I

1 had all rights to hire and fire any department heads.
 2 And Council Member Castellanos wanted to change the
 3 municipal code to let the city council have a say with
 4 who the gets hired and fired as any department head
 5 position.

6 Q Do you recall generally what time that was
 7 when Council Member Castellanos approached you about
 8 doing that?

9 A That was probably early 2019 before I left.
 10 January, February maybe, 2019.

11 Q Okay. So on that issue -- so who worked with
 12 you to look into the issue regarding changing the
 13 municipal code?

14 A It would have been probably the assistant city
 15 manager Nikole Bresciani as well as HR director Edwin
 16 Macias.

17 Q What did you do in terms of looking to this
 18 request by Dario Castellanos?

19 A Part of the staff report -- and a staff report
 20 is a report we bring to city council for their
 21 discussion and action. Prior to doing the staff
 22 report, we did research by looking at there's a
 23 professional association that all city managers -- I
 24 shouldn't say all. But the majority of city managers
 25 are a part of. It's the International City and County
 26 Managers Association, or ICMA.

27 So we look to them for what are some of the
 28 best practices as well as some of my other colleagues

1 and peers who are city managers in other cities.

2 Q And what were your findings generally
 3 speaking?

4 A Couple of things. Most cities stay away from
 5 having the city council involved in any selection of
 6 any city staff other than the city manager.

7 Q Why is that?

8 A Typically you don't want to involve council
 9 that would bring politics or personal believes on what
 10 should be a department head and leave it to the
 11 professionals who are hired to do so which is the city
 12 managers.

13 Q Did you report that to the city council?

14 A We did.

15 Q And then what was the response by anyone in
 16 the city council to your report?

17 A So Council Member Castellanos, he was the one
 18 who actually requested the item. He was very unhappy
 19 that we provided a professional recommendation contrary
 20 to what he wanted. He wanted the ability to say the
 21 staff supports him on making this change. And we
 22 shared with him that this is our professional
 23 recommendation and doesn't make sense to do that. And
 24 so he was very angry with us. He told us to change the
 25 report. And we said no, we will not do so.

26 Q If I can mark for identification Exhibit 238.
 27 If I can ask you, Mr. Freeland, to take a look at that.

28 A 238?

1 Q 238, yes, sir.

2 A I have it.

3 Q Do you recognize this document?

4 A I do.

5 Q What is this document?

6 A It's an email to him as well as copying of the
7 city attorney regarding the staff report for the
8 March 5th meeting regarding this issue.

9 MR. NGUYEN: Plaintiff will move into evidence
10 Exhibit 238, Your Honor.

11 MR. O'CONNELL: Your Honor, we object.
12 Attorney-client privilege.

13 THE COURT: I'm not going to admit it during
14 this time pending further argument. Let's move on.

15 BY MR. NGUYEN:

16 Q You mentioned Mr. Castellanos was upset about
17 your finding and recommendation; correct?

18 A That's correct.

19 Q What did he want you to do exactly in terms of
20 your recommendation?

21 A He directed staff, which included myself and
22 again either HR director and city manager, to change
23 the report to do exactly what he asked us to do which
24 was to make it where the department heads can be
25 selected by the city council. I shouldn't say
26 selected. You be a party to making the decision who
27 the department heads are.

28 Q And do you know if eventually that request to

1 change the code was passed?

2 A I believe that was after I left.

3 Q So in other words, after you left now the city
4 council would have the ability to have a say in who is
5 hired as a department head?

6 A That is correct.

7 Q Whereas they did not have that ability before
8 Tony Wu's majority?

9 A Correct.

Excerpt

City of West Covina Ordinance

DIVISION 2. - CITY MANAGER

The underlined text was added by the city council on April 2, 2019.

Sec. 2-151. Powers and duties.

- (g) Power of appointment. It shall be the duty of the city manager to appoint, remove, promote and demote any and all officers and employees of the city, except the city clerk, city attorney and city treasurer, subject to the rules and regulations of any applicable civil service or other personnel system in effect. Notwithstanding the foregoing, the city manager shall not appoint or promote a person to serve as the director of a department, unless a majority of the city council first voted in favor of the city manager's proposed appointment or promotion; this limitation does not limit the city manager's authority to appoint or promote a person to temporarily fill such positions on an acting or interim basis, nor does it in any way affect the city manager's power to appoint to or promote to other positions.

CITY MANAGER APPOINTMENTS 2019-2024

Court testimony makes references to city manager appointments. This list of West Covina city manager appointments was compiled using [San Gabriel Valley Tribune articles](#) reporting on West Covina city manager appointments.

- September 15, 2015 Chris Freeland appointed city manager
- March 5, 2019 Chris Freeland resigned
Nikole Bresciani appointed acting city manager
- April 2, 2019 David Carmany appointed interim city manager
- July 17, 2019 David Carmany appointed city manager
- May 18, 2023 David Carmany resigned
Paulina Morales appointed acting city manager
- May 7, 2024 Paulina Morales appointed city manager

Note: The "council majority"—Dario Castellanos, Letty Lopez-Viado, and Tony Wu--were sworn in on December 4, 2018, the first council election voted on by district.

Note: In this excerpt, "Q" is Anthony Ngyuen, attorney for the plaintiff. "A" is Tony Wu, councilmember, City of West Covina. Mr. Thomas M. O'Connell is an attorney for the defendant.

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11 FRIDAY, APRIL 28, 2023

2 Q. OKAY. AND HE WAS HIRED ON THE SAME DAY THAT
3 ORDINANCE NUMBER 2454 WAS PASSED. DO YOU REMEMBER THAT?
4 A. WHAT IS THAT?
5 Q. ORDINANCE 2454, IF YOU RECALL, WAS THE ORDINANCE
6 THAT WOULD GIVE THE CITY COUNCIL THE POWER OVER BEING
7 ABLE TO INFLUENCE HIRING OF DEPARTMENT HEADS.
8 DO YOU REMEMBER THAT?
9 A. I REMEMBER THAT, BUT THAT WOULD BE, I THINK,
10 EARLIER DURING THE CHRIS FREELAND TIME. AND WE PASSED
11 THAT. AND CONCURRENT TO CITY MANAGER HIRED THE DIRECTOR
12 HEAD, WE NEED TO SEE THE RESUME AND APPROVE -- AT LEAST,
13 WE HAVE A CHANCE TO SEE WHO HE HIRED AS A DIRECTOR HEAD.
14 AND THE REASON IS PREVIOUSLY, WE HAVE NO IDEA
15 WHO HE HIRED. AND WE HAVE A LOT OF VALUE, OKAY, ON THE
16 MANAGEMENT TEAM, AND COME AND GO. AND THAT IS THE REASON
17 WE REQUEST JUST CONCUR, JUST SEE THE RESUME AND MAKE SURE
18 IT'S NOT HIS FRIEND OR THE PERSON IS QUALIFIED.
19 Q. NOW, JUST SO WE CAN BREAK THIS DOWN A LITTLE
20 BIT, THE ORDINANCE WASN'T PASSED UNTIL AFTER MR. FREELAND
21 HAD LEFT THE CITY; CORRECT?
22 A. I DON'T REMEMBER. I THINK IT WAS DURING HIS
23 TIME. MY RECOLLECTION IS THAT IS -- HE'S DOING AS CITY
24 MANAGER.
25 Q. MR. FREELAND LEFT IN MARCH OF 2019; CORRECT?
26 A. YES. I THINK SO.
27 Q. OKAY.
28 A. WE TERMINATE HIM.

1 Q. AND BEFORE HE LEFT, WHAT HAPPENED IMMEDIATELY
2 BEFORE HE LEFT, WAS HE WAS ASKED TO PROVIDE RESEARCH INTO
3 THE CITY COUNCIL'S REQUEST TO CHANGE THE MUNICIPAL CODE
4 SO THAT IT CAN HAVE A SAY IN THE HIRING OF DEPARTMENT
5 HEADS.

6 DO YOU RECALL THAT?

7 A. WE -- OKAY. THE ORDINANCE, WHAT WE REQUEST IS
8 TO CONCUR; OKAY? MEANING, THE CITY MANAGER WANT TO HIRE
9 A PERSON, AND THEN WE HAVE THE CHANCE TO MEET THE PERSON,
10 TO BE INTRODUCED TO US, AND THEN WE CONCUR THE CITY
11 MANAGER. IT'S NOT TRY TO REJECT HIS HIRING, BUT LET'S
12 SEE WHO HE HIRED.

13 Q. COUNCIL MEMBER WU, MY QUESTION WAS A LITTLE
14 DIFFERENT. WHAT I WAS JUST ASKING WAS THAT HE WAS ASKED
15 BY THE CITY COUNCIL TO PROVIDE RESEARCH INTO THE
16 POTENTIAL CHANGE OF THIS MUNICIPAL CODE; CORRECT?

17 A. WE REQUEST --

18 Q. IS THAT A YES?

19 THE COURT: I'M SORRY. YOU CANNOT TALK OVER
20 EACH OTHER. ONCE YOU ASK HIM A QUESTION, YOU HAVE TO LET
21 HIM ANSWER.

22 MR. NGUYEN: YES, YOUR HONOR.

23 THE COURT: GO AHEAD.

24 THE WITNESS: THE PROCEDURE IS YOU NEED TO HAVE
25 THE MOTHER MAY I. WE CANNOT JUST REQUEST. SO MOTHER MAY
26 I, WAS CITY MANAGER OR CITY MANAGEMENT TEAM OR CITY
27 ATTORNEY TO LOOK INTO THE ORDINANCE FOR THE CITY COUNCIL
28 TO CONCUR THE HIRING OF A DEPARTMENT HEAD, AND THAT IS

1 "MOTHER, MAY I?"

2 "MOTHER, MAY I?" MEANING BEFORE WE DO ANYTHING,
3 WE CANNOT JUST REQUEST THE CITY MANAGER. WE NEED HAVE TO
4 HAVE "MOTHER, MAY I?" APPROVED BY FIVE CITY COUNCIL, AND
5 THEN THE CITY WOULD SPEND TIME TO REVIEW THAT ORDINANCE
6 AND BRING BACK TO CITY COUNCIL TO VOTE ON IT. SO YOU
7 NEED TWO PROCEDURES. IT CANNOT BE RIGHT AWAY.

8 BY MR. NGUYEN:

9 Q. AND MR. FREELAND RECOMMENDED AGAINST CHANGING
10 THE CODE; CORRECT?

11 A. THIS IS "MOTHER, MAY I?" BY MAJORITY CITY
12 COUNCIL 5-0 OR 4-1 TO REQUEST THE CITY, BUT I DON'T
13 REMEMBER IF HE REJECT. HE CANNOT REJECT ANYTHING. HE
14 WORKS FOR THE CITY COUNCIL FOR THE -- FOR THE COUNCIL
15 DECISION.

16 FOR EXAMPLE, WE DECIDE IT'S APPROVED, AND CITY
17 MANAGER HAD TO LOOK INTO OR CITY ATTORNEY HAD TO LOOK
18 INTO THE PROCEDURE TO MAKE SURE THIS IS ALL COMPLIED BY
19 MUNICIPAL CODE.

20 Q. WELL, AFTER HE PROVIDED HIS INPUT ABOUT THE
21 ISSUE, THAT WAS WHEN HE WAS SEPARATED FROM THE CITY
22 BEFORE THE ORDINANCE WAS EVER PASSED?

23 A. I DON'T REMEMBER.

24 MR. NGUYEN: PLAINTIFF WILL MARK FOR
25 IDENTIFICATION EXHIBIT 18.

26 (WHEREUPON EXHIBIT 18 WAS MARKED FOR
27 IDENTIFICATION.)

28 BY MR. NGUYEN:

1 Q. AND, MR. WU, IF I YOU COULD ASK YOU TO TAKE A
 2 LOOK BEHIND YOU, THERE SHOULD BE A BINDER. LOOK FOR THE
 3 EXHIBITS. IT WOULD BE EXHIBIT 18. SO IT WOULD BE
 4 CONTAINED IN, I THINK, THE FIRST BINDER, VOLUME 1.
 5 A. THIS ONE?
 6 Q. WHICHEVER SAYS 1, SO --
 7 A. OH, YEAH.
 8 Q. AND IF YOU COULD TURN TO EXHIBIT 18?
 9 A. THE POLICE POWER?
 10 Q. EXHIBIT 18?
 11 A. YEAH. YEAH, THIS IS THE CITY OF WEST COVINA --
 12 THE COURT: WELL, HOLD ON. HE ASKED YOU TO LOOK
 13 AT IT. HE'LL ASK YOU A QUESTION IN A MINUTE.
 14 THE WITNESS: OH, OKAY.
 15 BY MR. NGUYEN:
 16 Q. DOES IT SAY ORDINANCE NUMBER 2454 ABOVE?
 17 A. 2454, YES.
 18 Q. OKAY. SO IS THIS THE ORDINANCE WE WERE TALKING
 19 ABOUT RELATING TO THE CHANGE OF MUNICIPAL CODE; CORRECT?
 20 A. I THINK SO.
 21 Q. OKAY. IF I COULD DIRECT YOU TO THE END OF THIS
 22 DOCUMENT, SO IT SHOULD BE 18 AT 5.
 23 A. THE LAST PARAGRAPH?
 24 Q. THE LAST PAGE.
 25 A. THE LAST PAGE?
 26 Q. YES, SIR.
 27 A. OKAY.
 28 Q. AND THERE'S A REFERENCE AS FAR AS WHEN THE

1 ORDINANCE WAS PASSED; CORRECT?
 2 A. YES.
 3 Q. AND DOES THIS REFRESH YOUR RECOLLECTION THAT THE
 4 ORDINANCE WAS PASSED ON APRIL 2, 2019?
 5 A. YES.
 6 Q. OKAY. AND THAT WOULD BE AFTER MR. FREELAND HAD
 7 LEFT THE CITY; CORRECT?
 8 A. WHEN HE TERMINATE?
 9 Q. IN MARCH OF 2019.
 10 A. THEN, YES.
 11 Q. AND THIS WAS ALSO THE SAME DAY THAT MR. CARMANY
 12 WAS APPOINTED THE INTERIM CITY MANAGER; CORRECT?
 13 A. I DON'T REMEMBER THE DATE.
 14 Q. OKAY. AND THEN SHORTLY AFTER THIS, THERE WAS A
 15 HIRING OF THE INTERIM FIRE CHIEF AFTER MISTER --
 16 ACTUALLY, LET ME REPHRASE IT.
 17 AFTER THE PASSING OF THIS ORDINANCE, MISTER --
 18 OR CHIEF WHITHORN WAS FIRED ON APRIL 22, 2019.
 19 DOES THAT SOUND ABOUT RIGHT?
 20 A. I DON'T KNOW THE TIME.
 21 Q. OKAY. AND THEN AFTER THAT, AN INTERIM FIRE
 22 CHIEF WAS PUT INTO HIS PLACE; CORRECT?
 23 A. CORRECT.
 24 Q. ALL RIGHT. AND THAT WAS MIKE HAMBEL; CORRECT?
 25 A. THAT IS THE CHOICE OF THE INTERIM CITY MANAGER;
 26 CORRECT.
 27 Q. ON OR ABOUT MAY 2, 2019; SOUND ABOUT RIGHT?
 28 A. I'M NOT SURE.

1 Q. OKAY. NOW, CHIEF WHITHORN, TO YOUR KNOWLEDGE,
2 WAS NOT A MEMBER OF THE WORK -- THE WEST COVINA
3 FIREFIGHTERS ASSOCIATION; CORRECT?

4 A. I THINK ALL THE CHIEF DOES NOT BELONG TO THE
5 UNION.

6 Q. OKAY. BUT MIKE HAMBEL WAS A MEMBER OF THE
7 FIREFIGHTERS ASSOCIATION; CORRECT?

8 MR. O'CONNELL: OBJECTION. CALLS FOR
9 SPECULATION. LACKS FOUNDATION.

10 THE COURT: IF YOU KNOW.

11 THE WITNESS: I REALLY -- I REALLY DON'T KNOW.

12 BY MR. NGUYEN:

13 Q. OKAY. AND DO YOU RECALL THAT HE WAS ACTUALLY ON
14 THE EXECUTIVE BOARD OF THE UNION?

15 MR. O'CONNELL: OBJECTION. SAME OBJECTION.

16 THE COURT: IF YOU KNOW.

17 THE WITNESS: I REALLY DON'T KNOW.

18 BY MR. NGUYEN:

19 Q. AND DID YOU KNOW THAT HE WAS ONE OF THE
20 FIREFIGHTERS WHO HAD VOTED AGAINST CHIEF WHITHORN IN THAT
21 NO CONFIDENCE VOTE?

22 A. I HAVE NO IDEA.

23 Q. OKAY. AND YOU ARE AWARE THAT ULTIMATELY INTERIM
24 FIRE CHIEF HAMBEL WAS NOT EVEN QUALIFIED FOR THE FIRE
25 CHIEF POSITION?

26 A. I DON'T KNOW.

27 Q. OKAY. WELL, YOU WERE INFORMED THAT HE DID NOT
28 HAVE A COLLEGE DEGREE; CORRECT?

1 A. BY OUR ASSISTANT CITY MANAGER AT THE TIME.

2 Q. NIKOLE BRESCIANI?

3 A. CORRECT.

4 Q. OKAY. AND SHE INFORMED YOU THAT BY THERE BEING
5 A REQUIREMENT FOR A COLLEGE DEGREE, MR. HAMBEL WAS STILL,
6 NONETHELESS, APPOINTED AS INTERIM FIRE CHIEF; CORRECT?

7 A. THAT WAS THE DECISION OF THE CITY MANAGER AT THE
8 TIME.

RELATED TO THIS ISSUE

REDUCING THE POWER OF POLITICAL MACHINES

The municipal government structure typically in use today—a city manager, a small city council, and a merit system for hiring employees—emerged from the municipal reform movement that occurred at the end of the 19th and beginning of the 20th centuries.. Graft and political corruption in local government via political favors, kickbacks on contracts, and handing out city jobs in exchange for votes were common. In response to the widespread corruption, reform movements began to remove politics and conflict from local government. Reform efforts included:

- Electing reform candidates to enforce laws against graft and corruption.
- Adopting civil service regulations to stop patronage.
- Adopting direct primaries to reduce the influence of a party boss and make it easier to elect reform candidates.
- Adopting the initiative, referendum, and recall to give popular control over municipal government.
- Instituting nonpartisan elections to be held at different times from state and national elections to keep city politics from state and national politics and to further reduce power of a political boss.

Small city councils elected at large instead of from wards (districts) and nonpartisan elections became the norm. The intent was to remove politics and conflict from city government operations so city leadership would work for the common good of the community rather than the party's interest or personal self-interest, e.g., local home rule.

(Source: David R. Berman. (1987) *State and Local Politics*. Allyn and Bacon.)