

ORDINANCE NO. 17-1642U

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, ADDING SECTION 2560, TO CHAPTER 4, OF ARTICLE II, OF THE CARSON MUNICIPAL CODE, RELATING TO GOVERNMENT CODE § 1099

WHEREAS, the Carson City Council wishes to have its voice heard on as broad a platform as possible on behalf of the 100,000 residents that reside in Carson; and

WHEREAS, the Carson City Council knows that for too long Carson has been treated differently and not received the same fair and equitable treatment like other similarly situated municipalities; and

WHEREAS, Government Code § 1099, at sub-section (a), provides that an appointed or elected member of City Council shall be permitted to simultaneously hold two public offices if expressly authorized by ordinance; and

WHEREAS, the Carson City Council has observed that the Los Angeles County District Attorney has taken a very broad interpretation of what constitutes an “incompatible” office such that there is concern that Section 1099 will be so broadly interpreted as to prevent Carson’s effective representation on numerous boards, committees, and commissions that speak to regional, state-wide, and county-wide issues about which the City of Carson desires to have a voice; and

WHEREAS, the Carson City Council has also observed that while there are many examples throughout Los Angeles County of elected or appointed officials simultaneously holding two positions, the Los Angeles County District Attorney has been inappropriately selective and, arguably, discriminatory in its enforcement actions under Section 1099; and

WHEREAS, under the common law rule, now codified by Government Code § 1099, two public offices are deemed incompatible, in the absence of a law to the contrary (**e.g., a city ordinance**), if any significant clash of duties exists between the two offices, if the dual office holdings would be improper for reasons of public policy, or if either officer exercises a supervisory, auditory, or removal power over the other who is appointed or elected to another public. *People ex rel Chapman v. Rapsey* (1940) 16 Cal.2d 636, 644; 38 Ops. Cal. Atty. Gen. 113 (1961); and

WHEREAS, the Senate Local Government Committee analysis of Senate Bill No. 274, which codified the common law at Government Code § 1099, observed that the section allowed for “**three exceptions** to the new statutory rule: (1) an attorney employed by a local agency in a non-elective position does not create a conflict, (2) serving as a director of the Local Agency Self-Insurance Authority does not create a conflict for a local agency's officers or employees, and (3) **where a local ordinance provides an exception.**” (Emphasis added.); and

WHEREAS, the Senate Local Government Committee analysis went further to observe “[b]y deferring to [said] exceptions provided by local ordinances, SB 274 creates an . . . exception to the ban on incompatible offices;” and

WHEREAS, the exception by ordinance was not discontinued or eliminated by the California State Legislature upon the final passage and approval by the Governor of SB 274 , Government Code § 1099; and

WHEREAS, opinions of the California Attorney General make clear that a city may, by charter provision or by ordinance, adopt local laws “abrogat[ing] the common law prohibition against holding incompatible public offices.” 82 Ops. Cal. Atty. Gen. 201, 203 (1999)(city charter or ordinance); 78 Ops. Cal. Atty. Gen. 60 (1995)(reviewing opinions abrogating the common law rule); and

WHEREAS, given the current posture of the Los Angeles District Attorney’s Office in affording Section 1099 a more broad and selective interpretation than may be warranted by the plain language of the statute or its legislative history, the City Council/Mayor wishes to avail itself of the exemption authorized by Section 1099(a), and adopt an ordinance which expressly grants permission to elected or appointed members of the City Council/Mayor to hold office on the City Council/Mayor as well as simultaneously hold office as an elected or appointed officers of (i) the California State University, Dominguez Hills, Alumni Advisory Council, (ii) the Compton Community College District board of trustees, (iii) the Compton Unified School District board of trustees, (iv) the Greater Los Angeles County Vector Control District board of trustees, (v) the Los Angeles County College District board of trustees, (iv) the Los Angeles Unified School District board of trustees, (v) the Metropolitan Water District board of directors, (vi) the Sanitation District of Los Angeles County board of directors (vii) the South Coast Air Quality Management District governing board, (viii) the Southern California Association of Governments general assembly, (ix) the Water Replenishment District of Southern California board of directors, or (x) the West Basin Municipal Water District board of directors.

NOW, THEREFORE, the CITY COUNCIL of the City of Carson, California, does HEREBY ORDAIN as follows:

SECTION 1. A new Section 2560 is hereby added to the Carson Municipal Code, at Article II, Chapter 4, to read, in its entirety, as follows (new text in ***bold & italics***):

“2560. Incompatible Office

As authorized by Government Code § 1099(a), members of the Carson City Council are expressly authorized to hold office simultaneously as elected or appointed officers of the City of Carson and as elected or appointed officers of the California State University, Dominguez Hills, Alumni Advisory Council, the Compton Community College District board of trustees, the Compton Unified School District board of trustees,

the Greater Los Angeles County Vector Control District board of trustees, the Los Angeles County College District board of trustees, the Los Angeles Unified School District board of trustees, the Metropolitan Water District board of directors, the Sanitation District of Los Angeles County board of directors, the South Coast Air Quality Management District governing board, the Southern California Association of Governments general assembly, the Water Replenishment District of Southern California board of directors, or the West Basin Municipal Water District board of directors. The forgoing offices are declared by the City Council to be an exception to the potential prohibitions of Government Code § 1099.”

SECTION 2. The Carson City Council finds and declares that this ordinance shall be given retroactive effect from and after formal incorporation of the City of Carson, as a general law city and municipal corporation, to the present date and henceforth.

SECTION 3. Pursuant to Government Code § 36037(b), this ordinance shall take effective immediately upon approval of the same by a four-fifths (4/5) vote of the City Council. The City Council finds and determines that the same is necessary to the preservation of the public peace, health or safety, in that adoption of the same will allow members of the City Council to more effectively represent the interests of the community of Carson on various county, regional, multi-agency, and state boards, commissions, and committee without fear that such simultaneous service will be alleged to result in an incompatibility of office.

SECTION 4. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or circumstances, is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the application of any other section, subsection, sentence, clause, phrase, or portion of this Ordinance, and to this end the invalid or unconstitutional section, subsection, sentence, clause, phrase of this ordinance are declared to be severable. The Carson City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, parts or portions thereof be declared invalid or unconstitutional.

SECTION 5. This Ordinance shall take effect immediately, pursuant to the authority conferred upon the City Council by Government Code § 36937, upon its adoption by a four-fifths (4/5) vote of the City Council as if, and to the same extent that, such ordinance had been adopted pursuant to each of the individual sections set forth hereinabove.

SECTION 6. The City Clerk shall certify to the adoption of this Ordinance, and shall cause the same to be posted and codified in the manner required by law.

PASSED, APPROVED and ADOPTED by a four-fifths (4/5) vote at a regular meeting of the Carson City Council on this 19th day of December 2017.

MAYOR ALBERT ROBLES

ATTEST:

CITY CLERK DONESIA GAUSE

APPROVED AS TO FORM:

CITY ATTORNEY SUNNY K. SOLTANI

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