



CITY COUNCIL STAFF REPORT



August 9, 2022

ITEM TITLE

Proposed Charter Update: Consider Final Approval of a Comprehensive Charter Update Measure for Placement on the November 2022 Ballot

Report Number: 22-0238

Location: No specific geographic location.

Department: City Attorney

Environmental Notice: Environmental Notice: The activity is not a "Project" as defined under Section 15378 of the California Environmental Quality Act State Guidelines; therefore, pursuant to State Guidelines Section 15060(c)(3) no environmental review is required.

Recommended Action

Adopt a resolution amending Resolution No. 2022-150 to order submission to the qualified electors of the City a ballot measure to comprehensively update the City's Charter, including provisions to require City residency and increased experience for the elected City Attorney, remove the requirement that most board and commission members be qualified electors, and allow City Council to take action at special Council meetings, use mail ballot elections to fill vacancies, and approve bonded debt under State general laws; to authorize the City Council's designee to submit ballot arguments in favor of the measure; to direct the City Attorney, with assistance from the City Clerk, as appropriate, to prepare an impartial analysis of the measure; and to appropriate funds for that purpose. **(4/5 Vote Required)**

SUMMARY

For over a year now, the Charter Review Commission and the City Attorney's Office, in consultation with City staff, have worked on a comprehensive review and update of the City's charter to address legal changes, to align with modern best practices, to incorporate amendments supported by previous Charter Review Commissions and public surveys, and most importantly, to make the Charter easier to understand and use. The comprehensive Charter update proposal was presented to City Council on July 12, 2022 and on July 26, 2022 for feedback and direction. The item is now returning to Council with a proposed resolution submitting the Charter update measure to the qualified voters at the November 8, 2022 election.

ENVIRONMENTAL REVIEW

The activity is not a “Project” as defined under Section 15378 of the California Environmental Quality Act State Guidelines; therefore, pursuant to State Guidelines Section 15060(c)(3) no environmental review is required.

BOARD/COMMISSION/COMMITTEE RECOMMENDATION

Council adopt a resolution submitting the Charter update measure to the qualified electors of the City on the November 8, 2022 ballot.

DISCUSSION

This item is presented to Council as the culmination of an extensive effort by the Charter Review Commission (“CRC”) and City Attorney’s Office, in consultation with City Departments most governed by Charter provisions, to review the entire Charter and make recommendations for a proposed comprehensive Charter update to be submitted to voters at the November 2022 election. Multiple individual Charter amendments have been approved by voters since the Charter was originally adopted in 1940, but the Charter has not been comprehensively updated since 1978.

On July 1, 2022, the proposed Charter amendments were first sent to Council with a cover memorandum from CRC Chair Scofield and a description of the proposed Charter changes. The proposed amended Charter was provided in clean and underline/strikeout formats for review. All materials were also posted in multiple locations on the City’s website.

The materials were again provided to Council and to the public as attachments to an agenda item for the July 12, 2022 Council meeting. At the July 12, 2022 meeting, CRC Chair Scofield presented an overview of the CRC’s work and expressed the CRC’s enthusiastic support for the proposed Charter changes. City Attorney Glen Googins presented a detailed overview of the three types of changes made as part of the comprehensive proposed Charter update. The Mayor and Councilmembers provided initial comments and asked questions of staff regarding the proposed changes.

On July 26, 2022, CRC Chair Scofield and staff returned with supplemental information to provide to Council and received additional feedback and direction from Council. At that meeting, the Mayor and Councilmembers communicated support for all Level 1 and Level 2 changes, in addition to support for the following Level 3 changes: eliminating the requirement for most boards and commissions that members be qualified electors, and instead requiring City residency; requiring the elected City Attorney to be a City resident and have at least 10 versus seven years of legal experience; and allowing all mail ballots for special municipal elections to fill a vacancy. Council also expressed support for a provision requiring local candidates to be a resident of the City for one year prior to filing nomination papers for an elected City office.

Since early July and continuing to the present, information about the proposed changes, including materials presented to Council, have remained available via the following City websites: the City Council Meeting webpage; the City’s Charter home page; the City Charter page on the Clerk’s webpage; and the Charter Review Commission’s webpage. Members of the public have also been able to submit comments via a contact form available on City’s website, via email to the City Clerk, and as an eComment on each agenda item that was presented to Council.

Staff are now returning with a comprehensive Charter update measure that incorporates Council's direction as to the Level 1, 2, and 3 changes. The ballot question contained in the attached resolution submitting the measure to the voters summarizes the general nature of the updates, enumerates new City powers as required by state law, and highlights all Level 3 changes contained in the proposed amendments.

The proposed measure does not include a one-year residency duration requirement for candidates for elected office. At the July 26, 2022 meeting, the City Attorney's Office indicated that such requirement would not be lawful. However, based on Council's continued interest in a durational residency requirement, the City Attorney's Office committed to re-review applicable law and report back to Council. The City Attorney's Office has completed such review and confirms that any city charter provision requiring residency for candidates for local office in excess of 30 days has been found to violate the Equal Protection Clause of the 14th Amendment and would be highly vulnerable to legal challenge. (See, *Johnson v. Hamilton* (1975) 15 Cal.3d 451;; *Thompson v. Mellon* (1973) 9 Cal.3d 96; *Young v. Gnos* (1972) 7 Cal.3d 18; *Smith v. Evans* (1974) 42 Cal.App.3d 154; 7 Witkin, Summary 11th Constitutional Law § 291 (2022); 28 Cal.Jur. 3d Elections §107 (August 2022 Update).) The City Attorney's Office therefore advises against including a provision in the Charter update measure that would impose a one year durational residency requirement for candidates for local elected office.

The proposed resolution submitting the comprehensive Charter update including Level 1, Level 2, and specified Level 3 changes to voters is attached for your review and consideration. Copies of the proposed amended charter in both red-line strikeout and clean formats are additionally provided. If Council wishes to move forward with the proposed Charter update at this time, staff and the CRC request that Council approve the proposed resolution, which takes the following actions: (1) amends Resolution No. 2022-150 calling a special municipal election to be held on November 8, 2022; (2) orders submission to the qualified electors of the City a measure to comprehensively update the City's charter; (3) authorizes the CRC Chair, as the City Council's designee, to submit a ballot argument in favor of the measure; (4) directs the City Attorney, with assistance from the City Clerk, as appropriate, to prepare an impartial analysis of the measure; (5) and appropriates funds in the amount of \$195,000 from the General Fund reserve to the City Clerk's supplies and services expenditure category to fund the costs of such measure.

In order for the ballot measure to qualify for the November 2022 ballot, all materials would need to be finalized and transmitted to the County Registrar of Voters by no later than August 12, 2022.

DECISION-MAKER CONFLICT

Staff has reviewed the decision contemplated by this action and has determined that it is not site-specific and consequently, the real property holdings of the City Council members do not create a disqualifying real property-related financial conflict of interest under the Political Reform Act (Cal. Gov't Code § 87100, et seq.).

Staff is not independently aware, nor has staff been informed by any City Council member, of any other fact that may constitute a basis for a decision-maker conflict of interest in this matter.

CURRENT-YEAR FISCAL IMPACT

The cost for a measure providing for the comprehensive update of the City Charter, with a link to clean and underline/strikeout versions of the proposed Charter language itself on the City's website, is estimated to cost \$195,000. There are currently no funds identified in the City Clerk's budget for such a measure, so if Council were to proceed, additional funding would need to be identified out of available general fund revenues.

ONGOING FISCAL IMPACT

Staff has identified some potential future savings associated with certain proposed amendments. The Registrar of Voters ("ROV") has estimated that going from an "all polls" to an all vote-by-mail ("VBM") election could reduce an election cost by 15-20%. To provide context, the last estimates received from the ROV for a special, standalone district seat election were: \$350k-\$600k for a traditional polling place election and \$250k-\$500k for a VBM election.

In addition, it is estimated that there would be some savings for publishing online versus publishing in a newspaper. The City Clerk's office alone budgets about \$6,000 for legal publications each year, and other departments additionally fund their legal notice requirements. Final estimated savings numbers are currently being calculated.

Other savings from improved operational efficiencies, and benefit of less City Attorney staff time required to interpret the Charter, are hard to estimate, but are likely to be meaningful, estimated at a minimum to be in the high tens of thousands per year.

ATTACHMENTS

1. Resolution
2. Exhibit A to Resolution
3. Proposed Amended Charter (clean)
4. Proposed Amended Charter with Comments (redline-strikeout)

Staff Contact: Glen R. Googins, City Attorney