



CITY COUNCIL STAFF REPORT



July 12, 2022

ITEM TITLE

Presentation by the Charter Review Commission and the City Attorney's Office of a Comprehensive Charter Update Proposal for Possible Placement on the November 2022 Ballot

Report Number: 22-0208

Location: No specific geographic location

Department: Charter Review Commission and City Attorney's Office

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

Council consider the proposed Charter update and provide direction as it deems appropriate. If the Council is amenable to keep the item moving forward, the Charter Review Commission and Staff stand ready to incorporate Council's input into an updated draft of the proposed revisions, to prepare possible draft ballot language, and to bring the item back to the City Council for its further consideration at the July 26 Council meeting.

SUMMARY

The last time the City Charter was substantially updated was in 1978. Since that time, the laws applicable to cities have significantly changed; so too have many municipal best practices. The Charter Review Commission has been working with the City Attorney's Office for over a year on a "top to bottom" review and update of the City's Charter to address legal changes, to align with modern best practices, and, most importantly, to make the Charter easier to understand and to use.

The item presented for Council consideration is a comprehensive update to the existing City Charter, and includes three basic categories of changes designated by the Charter Review Commission as Level 1, Level 2, and Level 3 changes. Most recommended changes are not substantive; they instead propose corrections, clarifications, elimination of redundancies, and reorganizations intended to make the Charter more accurate and usable. Such changes are generally referred to as "Level 1" changes. Other proposed changes go a step further to provide consistency with state law, update or eliminate outdated practices, fill in gaps, and

eliminate ambiguities. While some of these changes may be considered more substantive, they mostly reflect changes in law, technology, and best practices and would not alter present day City practices or the general intent of existing Charter provisions; therefore, such changes are not believed to be significant enough to warrant separate ballot measures. We refer to these as “Level 2 changes”.

A few recommended changes are of greater significance and might arguably deserve consideration as separate ballot measures. These proposals are identified as “Level 3” changes. A number of such changes were developed and recommended by the Charter Review Commission and presented to the City Council back in 2020. Although the proposals were generally well received, given the circumstances at that time and the costs involved, the Council decided not to place any of those measures on the 2020 ballot. Some of the proposed Level 3 changes include refinements of those previous proposals or are new proposals from this iteration of the Commission. This Commission considers Level 3 changes worthy of City Council consideration once again, in combination with, or separate from, the less substantive Level 1 and Level 2 changes being proposed.

A more detailed description of the proposed Level 1, Level 2 and Level 3 changes is set forth below. If the Council is amenable to further pursue this item as a possible ballot measure in the November 2022 election, the next step would be for the Commission and Staff to put together a more definitive proposal (or options for proposals) for consideration by the Council at its next Council meeting scheduled for July 26th. In order for any ballot measure to qualify for the November ballot, all materials would need to be finalized and transmitted to the County Registrar of Voters no later than August 12th.

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 consider the proposed Charter update and provide direction as it deems appropriate. If the Council is amenable to keep the item moving forward, the Charter Review Commission and Staff stand ready to incorporate Council’s input into an updated draft of the proposed revisions, to prepare possible draft ballot language, and to bring the item back to the City Council for its further consideration at the July 26 Council meeting.

DISCUSSION

Background

The City’s Charter is equivalent to the City’s constitution. It establishes the basic legal framework for the structure and operations of City government and can only be amended by a vote of the people. Being a charter city in California gives the City authority over what are commonly known as “municipal affairs.” Municipal affairs are areas of law where charter cities exercise primary authority to make their own rules, subject only to the requirements of the California Constitution and other matters determined to be of “statewide concern.” Typical “municipal affairs” include how a city finances and procures public works, enters into contracts, elects its local officials, makes land use regulations, compensates its employees, and adopts its own laws.

General law cities, by contrast, are subject to all the laws regulating local jurisdictions adopted by the State legislature. Of the 482 cities in California, approximately 125 are charter cities.

The City's Charter was first adopted in 1949. It has since been amended on multiple occasions, with the most recent major update occurring in 1978.¹ The most recent Charter amendment of any kind occurred in November of 2014. This was an update of the City's rules regarding public works [Charter Section 1009]. The amendment simplified and modernized the City's public works procurement rules and created a better balance between the rules set forth in the Charter and the more detailed implementing rules to be adopted by ordinance. This amendment was the first of what was contemplated as a possible series of changes to the Charter identified as the "Charter Project." The idea of the Charter Project was to engage in a systematic review of the Charter with the Charter Review Commission ("CRC") and the City departments most governed by its rules, and to evaluate which changes would be necessary or appropriate to update the Charter and improve the efficiency of City governance and operations. Appropriately, the City's Public Works department was substantially involved with and supportive of the 2014 Charter Section 1009 update.

The "Charter Project" concept was re-initiated in 2018, with a number of Charter sections proposed for update. Substantial input at that time was provided by the City Clerk's office, particularly with respect to Charter Article III, regarding elections and City Council approval processes. These changes, along with a number of other changes that had either been referred to the CRC by City Council or were developed by the CRC itself, were presented to the Council for consideration in July 2020. Although the proposals were generally well received, given the circumstances at that time, and the costs involved, the Council decided not to place any of those measures on the November 2020 ballot.

The Charter Project was picked up again by the CRC in 2021 with a commitment to engage in—and complete if possible for the November 2022 election—the most substantial Charter review and revision effort to date. The goal was to engage in a truly comprehensive review of every section of the Charter. The review involved asking and researching many critical questions: What were the origins and purpose of various sections? Were the terms described still relevant? If not, could/should they be deleted? Or would it be more appropriate to update the section to make it consistent with current "best" practices? What was the relationship between existing Charter language and current State law? What changes, if any, did that suggest? Could the wording in various Sections be made more clear? What corrections, reorganizations, or conventions could be made to improve the usability of the document? Were there Sections that didn't seem to belong in the Charter but that nonetheless should remain given the sensitivity of the subject area? All these questions and more were explored. Ad hoc subcommittees of the Commission were formed to focus in on the various subject areas of the Charter; these meetings producing additional questions and a number of proposed revisions. Multiple rounds of input were also solicited from the various City departments most governed by Charter provisions. The City Clerk's office, Human Resources, Finance, and the City Manager's office provided the most substantive input, but other departments also participated. Other cities' charters were also reviewed for ideas and context. Research into the State Constitution and analogous State statutes was conducted. Previously proposed changes were also revisited, with a number of enhancements developed. In the end, above and beyond the individual Ad Hoc Subcommittee meetings and separate meetings with and among City staff, the CRC itself met over nine times to review, discuss questions and

¹ An index of all Charter amendments since its original adoption (entitled "Legislative History") is contained at the end of the Charter document.

provisions, provide input, and propose language and other possible revisions to the existing Charter. The collective result of these efforts is before you now.

The proposed draft Charter update was first sent to you on July 1, 2022 with a cover memorandum from CRC Chair Scofield and a summary of the proposed Charter changes. The proposed amended Charter was presented to you in both “clean” and “underline/strikeout” forms. These versions have also been posted in multiple locations on the City’s website. These materials are again provided to you (and the public) as attachments to this item. The underline strikeout version shows changes to the current version of the Charter. Please note that in a few areas what appear to be substantial deletions are actually relocations of provisions to other Articles or Sections. A summary of all proposed changes follows below.

Proposed Amendments

In General

The Charter changes proposed by the CRC and City staff run throughout the entire document. While the quantity of changes is large, the vast majority of the changes proposed, although important and thought to add value, are not actually substantive in terms of content. They instead propose corrections, clarifications, eliminations of redundancies, and reorganizations designed to make the Charter more accurate and usable. These are categorized as **“Level 1”** changes.

Other proposed changes go a step further to provide consistency with state law, update or eliminate outdated practices, fill in gaps, and eliminate ambiguities. While some of these changes may be considered more substantive, they mostly reflect changes in law, technology, and best practices and would not alter present day City practices or the general intent of existing Charter provisions; therefore, such changes are not believed to be significant enough to warrant separate ballot measures. We refer to these as **“Level 2”** changes. The CRC recommends that the Council consider combining Level 1 and Level 2 changes into a single, comprehensive ballot measure.

Finally, a few recommended changes within the overall draft are thought to be of greater significance and/or propose changes in sensitive subject areas. Most of these were recommended by the previous CRC panel back in 2020, but were never acted on by the City Council. Such changes are identified as **“Level 3”** changes; these are now presented (again in most cases) for Council consideration. Although one or more of these changes could be combined with the Level 1 and Level 2 changes as part of a single, comprehensive ballot measure, the CRC thought them significant enough to be separated out into their own category for possible consideration as one (or more) separate ballot measure(s).

A more detailed description of how Level 1, Level 2, and Level 3 changes are characterized is set forth below. The more significant of the Level 1 and Level 2 changes have been highlighted, along with all of the specific proposals that have been characterized as Level 3.

Level 1

Level 1 changes consist of changes in form and appearance that are important and useful, but not content substantive. They include corrections, rewording for clarity, reorganization, elimination of redundancies, consistency of cross-references and numbering, consolidation of sections, elimination of headings for

previously deleted sections, rewording of headings to better reflect content, addition of subheadings, defined terms, and other Charter-wide conventions to improve comprehension and usability. Some of the more significant Level 1 changes include:

1. Moving and consolidating provisions in Article III regarding elections, including Section 300.5 regarding Council districts, into Article IX, which is entitled “Elections;”
2. Deleting outdated provisions regarding the creation of and the transition to districts from old Section 300.5 (now Section 903);
3. Deletion of references to previously repealed Sections, with renumbering of Sections as required (throughout);
4. Converting all gender specific references (he/she) to neutral references (they, them, their) or to the specific office itself (e.g., “the City Manager shall”);
5. Consolidating statements of the authority or responsibilities of certain City officials into the Sections that actually list the responsibilities of those certain officials (throughout);
6. Adding subheadings to Sections with substantial text to make those Sections more readable and accessible (e.g., see revised Sections 300, 308, 500, 501, 506, 509, 511, 603, 704, 900, 901, and 1008); and
7. Adding key defined terms (see Section 1200).

Level 2

Level 2 changes consist of rewordings, deletions, and additions intended to add clarity, fill gaps, eliminate ambiguities, replace outdated (no longer used) practices with current best practices, and provide consistency with state law. Some changes might be considered substantive, but are not thought to be that significant or inconsistent with the concept of clarifying and updating the Charter so as to warrant consideration as possible separate ballot measures. The more significant of these types of changes include:

1. Added language makes it explicit that the City uses the “Council-City Manager” form of government [Section 201];
2. Added language specifies what it means to “run again” (submit nomination papers) in the context of how long a termed-out candidate must wait before they can “run again” [Section 300(E)];
3. Old Section 301 relating to certain City Council “Powers” has been revised to indicate City Council authority to judge elections and member qualifications are subject to Elections Code and constitutional limits [Section 301];
4. Authority of Mayor to command the police to maintain order in the event of an emergency has been revised to clarify that such authority only exists during the state of emergency and would be exercised with the advice of the City Manager and the City Attorney [Section 305(A)(3)];
5. Rules regarding special meetings have been updated to allow City Council to take any action at a special meeting that it could at a regular meeting subject to the limitations of applicable law [Section 308(C)];
6. The specific requirements for publication of legal notices in a newspaper of “general circulation” has been replaced with a reference to the requirements of “applicable law” [Section 313];
7. Language regarding City Council authority with respect to the City Manager has been clarified and updated to reflect current standards/practices [Section 401];
8. Language regarding a process for a “name clearing hearing” for Unclassified positions is proposed for deletion as antiquated [Section 500];

9. Language changes throughout Section 503 clarify, refine and make corrections to how the authority and employment status of the elected City Attorney is described [Section 503];
10. The section regarding “illegal contracts” has been revised and clarified to be more referential to the extensive state law in this area [Section 508];
11. Revisions to the section triggering elected official forfeiture of office if they accept other employment now limits applicability to full-time elected officials (Mayor and City Attorney) [Section 509];
12. Requirements that board and commission members be “residents” of the City unless the board or commission is advisory and involves “regional issues” has been replaced by a reference to City Council’s ability to appoint non-residents where provided by ordinance and with four fifths vote [Section 602(D)] **Note:** See also “Level 3” change proposed for this Section, below;
13. Parks and Recreation Commission provision for appointment of non-residents when required by contract has been replaced to allow for this where allowed by ordinance [Section 608];
14. A variety of relatively minor changes are proposed to the “Civil Service” sections in the Charter. Although relatively minor, any proposed changes to these sections will, nonetheless, require notice to bargaining units and an opportunity to meet and confer with respect to possible “impacts.” If this process cannot reasonably be completed in time to allow the City to meet the August 12 deadline for submittal of the measure to the County Registrar, proposed changes in these Sections may need to be withdrawn [Section 606 and Article 7];
15. Language has been added to specify that any temporary **department head** appointment must be ratified by Council if the appointment exceeds one year in duration. (Existing language contemplates Council “approval” but does not specify the term.) Temporary appointments for positions in the **Classified Service** are now proposed to be allowed for up to one year instead of six months [Section 704];
16. Political activity protections have been revised to include Unclassified employees [Section 707];
17. A new section makes clear a person signing nomination papers can only nominate one person for each office, including only one City Council candidate from their district [Section 900(C)];
18. Language changes the nomenclature for City elections from “general” (in March) and “special” (in November) to “primary” and “general,” respectively, in order to conform our Charter language to the more common terms for these elections used throughout the state [Sections 900, 901, 902];
19. Consistent with previous interpretations, write-in candidate rules have been clarified to confirm that you must qualify and be one of the top two vote getters in the primary election in order to participate in the general election run-off [Section 902(A)];
20. What has been standard practice for budget consideration and adoption implementing Sections 1002 through 1004 is now expressly provided with revisions to those Sections;
21. City bonded debt limit provisions have been reviewed by outside counsel with proposed revisions to make them consistent with state law requirements [Section 1008];
22. Provisions for a “Capital Outlays Fund” and “Department Trust Fund” have been deleted as these are no longer maintained or consistent with “best practices” [Old Sections 1013 and 1014];
23. Violations of the Charter used to be punishable as “infractions” with \$50 fines; revised language now makes violations potential misdemeanors. [Section 1201];
24. A provision has been added to allow the City Clerk to make minor corrections to Charter text, subject to the ratification of the City Council and approval as to form by the City Attorney [Section 1203]; and
25. Consistent with current legal interpretations, provisions have been added that (a) clarify the relationship between the Charter and any conflicting general law city provisions (the Charter

prevails), and (b) provides for State law to govern if not in conflict with the Charter or other City Council “home rule” enactments [new Section 1205].

Level 3

Level 3 changes include proposed changes that may be substantive enough to warrant presentation to the voters as separate ballot measures, but could also be included as part a single, comprehensive Charter update that includes the Level 1 and Level 2 changes because the Level 3 changes reflect the natural evolution of our Charter in response to our City’s growth. Level 3 changes include:

1. ***Eliminating the requirement for most boards and commissions that members be “qualified electors” (i.e., U.S. citizens), and instead requiring “residency” [Section 602(D)].*** In September 2019, the City Council referred an item to the CRC to bring back for City Council consideration proposed language that would revise Charter section 602 to allow City residents, not just qualified electors, to serve on City boards and commissions. The term “qualified elector” refers to an individual who is qualified to register to vote, although may not actually be registered. In order to register to vote in the City, an individual would have to be at least 18 years of age, a U.S. citizen, and a City resident. Thus, a resident who lives in the City but is not a U.S. citizen would not be a “qualified elector” and, therefore, could not serve on a City board or commission. The CRC considered the referral, received public input, deliberated on the matter, and proposed language that would eliminate the citizenship requirement for board and commission members, but would still require them to be City residents and at least 18 years of age. The proposed language retained two exceptions that were in the existing Charter: that youth commissions created by ordinance may allow members under 18 years of age, and that non-residents may be allowed to serve on boards or commissions created by ordinance and approved by four votes of the City Council. Finally, the CRC also proposed retaining the requirement that Districting Commission members be registered voters of the City. Such Charter amendments were presented to Council for consideration in July 2020 and positively received, but ultimately not placed on the ballot due to the circumstances of the global pandemic and the costs involved. This proposal is now again presented to the Council for consideration in July 2022, with minor stylistic and formatting updates to the previous CRC’s proposed language.
2. ***Providing for the suspension of elected officials with felony charges pending [Section 304].*** In July 2019, the previous CRC presented to the City Council the results of a public survey regarding potential Charter amendments. Based on the survey results, the previous CRC identified three potential Charter amendments, one of which was to permit the City Council to suspend an elected official from their duties if felony charges are pending against such elected official. The current CRC proposes a similar provision permitting City Council to suspend an elected official from their duties by majority vote upon confirmation that felony charges are pending against such official. The proposed language would suspend the official’s pay, but maintain the official’s City-provided health benefits, during the period of suspension. In the event that the pending charges do not result in a conviction, the reinstated official would receive back pay for any amounts not paid during the suspension.
3. ***Requiring residency for elected City Attorney, and ten versus seven years of legal experience [Section 503(D) and (E)].*** The previous CRC’s public survey also identified support for a Charter amendment requiring the elected City Attorney to be a resident of the City. The previous CRC recommended such change to Council in July 2020, and the current CRC once again recommends

that Council consider such amendment. In addition, the current CRC proposes language requiring the City Attorney to have ten, rather than seven, years of legal experience.

4. ***Converting the provisions for Legislative Counsel into provisions for “Conflict Counsel” [Section 504].*** This item was drafted by the City Attorney with the intent of maintaining a mechanism for an alternative legal advisor to the City Council when the City Attorney has a conflict of interest, but limiting alternative legal advice to the situation where such a conflict actually exists. Additional language would allow for separate legal counsel to City Councilmembers seeking conflict of interest advice of their own. In its current form the “Legislative Counsel” provision creates the possibility for conflicting legal advice on the same issue. The provision was placed on the ballot in 2012 without any review by the then sitting CRC and has not been implemented in its current form.
5. ***Adding provisions for using a “mail in ballot” system for special elections [Section 303(C)(6)].*** The previous CRC’s public survey identified support for a Charter amendment allowing all vote-by-mail balloting for certain City elections. Accordingly, the previous CRC recommended such change to Council in July 2020, and the current CRC again proposes similar language for Council consideration. A mail-in ballot option to fill Council vacancies at a special election could result in substantial cost savings over traditional in-person voting. [See the discussion in the Ongoing Fiscal Impact Section, below.]

Conclusion/Next Steps

The CRC and the City Attorney’s Office have presented for Council consideration a comprehensive update to our City’s Charter. The goal of the proposed changes is to make the Charter easier for constituents, staff, and all to read, understand, and implement. The CRC and the City Attorney’s office enthusiastically support the proposed changes. The CRC in particular thanks you for your support throughout this process, and the time and effort you have taken in reviewing these materials. If City Council desires to move forward with any of the proposed amendments, the next step would be to direct staff to come back to the City Council on July 26th with any changes the City Council may have requested and, potentially, all of the documentation required to place them on an upcoming ballot. Necessary documents include a resolution, the City Attorney’s Impartial Analysis, the formal Ballot Statement, and Ballot Question. Additional provisions may need to be made to address or incorporate any issues or proposals that might be forthcoming from Councilmember Padilla who has expressed a substantial interest in this item. Ultimately, in order for the item to qualify for the November 2022 ballot, this work would need to be completed, approved by the City Council, and submitted to the County Registrar by no later than August 12th. With Council direction, this could be accomplished, with the work being done and presented to Council for action at the next City Council meeting scheduled for July 26th and/or the Council meeting currently scheduled for August 9th.

Finally, as indicated above in the Level 2 change summary, it should be noted again that changes made to the Civil Service section of the Charter, even if minor, may require notice to the bargaining units and an opportunity to meet and confer. The relatively minor clean-up edits to such sections are presented subject to the condition that any required meet and confer processes be completed in time. Staff have reached out to the bargaining units and provided a copy of the proposed edits. The Chula Vista Mid Managers/Professional Association has requested a revision to language in Charter Section 704 to eliminate an ambiguity, which is supported by staff. The bargaining units have not expressed any other concerns to staff at this point.

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. The cost to present the entire revised Charter to the voters in the form of a separate pamphlet is estimated to cost approximately \$ 625,000. Any additional separate measures, depending upon length, are estimated to cost approximately \$ 165,000 per measure.

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. Memo to City Council dated July 1, 2022
2. Previously distributed Descriptions of Level 1, Level 2, and Level 3 Changes (now updated in this report)
3. Proposed Amended Charter (clean version)
4. Proposed Amended Charter (redline strikeout version)

Staff Contact: Glen R. Googins, City Attorney