

REPORT TO COUNCIL

SUBJECT

Discussion and Possible Direction on Proposed Amendments to Charter Article VI (The Council) to be Submitted to Voters in the March 2020 Election to Implement City Council By-District Elections

BACKGROUND

On June 18, 2018 (RTC No. 19-0362), the City Council voted 6-2 to direct staff to prepare a ballot measure for the March 2020 election amending the City Charter to change the City's electoral system from seven at-large numbered City Council seats to six district seats and an at-large, directly elected mayor.

DISCUSSION

1. Overview of Prior Council Discussions on Proposed Charter Amendments

On September 10, 2019 (RTC No. 19-0798), staff provided an overview of necessary revisions to Article VI and highlighted policy issues requiring Council direction (**Attachment 1**). The Council approved staff's general approach for the charter amendments of adding provisions necessary to implement district elections for six council districts and a directly-elected mayor, while maintaining existing concepts and principles in the Charter to the extent possible, and requested that staff return with language on the necessary administrative changes, and sample language for the three major policy issues requiring Council direction: mayoral term of office, total term limits, and redistricting.

At the October 8, 2019 Council Meeting (RTC No. 19-1009), staff provided the requested sample language (**Attachment 2**) for further discussion and potential direction. As requested by the Council, a chart that briefly summarizes Council comments at that meeting on the three policy issues is included as **Attachment 3**. The Council appeared to have a consensus on the following issues:

(a) **Mayor Term Limit.** Five Councilmembers (Fong, Goldman, Hendricks, Larsson, Smith) preferred a four-year term for the Mayor. Vice Mayor Melton preferred a two-year term and Mayor Klein was still weighing the two options. Based on the majority preference for a 4-year term, staff will proceed with drafting provisions for a four-year mayoral term.

(b) **Total Term Limits.** Staff had outlined three broad options for total term limits:

Option A: Maintain current limit of 8 years (two four-year terms) for all members/mayors;

Option B: New limit greater than current two-term standard (e.g., three terms rather than two; and

Option C: Separate term limits for Council Member and Mayor not to exceed a total (e.g., no more than four terms with no more than two terms as Council member or mayor).

Five Council members (Klein, Fong, Goldman, Hendricks, Larson) preferred Option B with a three-term limit. Vice Mayor Melton and Councilmember Smith preferred maintaining current limits (i.e., Option A). Based on the majority preference for Option B, staff plans to proceed with drafting provisions for a three-term limit in both offices of council member and mayor.

In addition, one Councilmember expressed a desire that Option B use clearer language. Given the Council's previously approved approach of maintaining existing provisions to the extent possible and making only the changes necessary to implement district elections, the sample language provided at the last meeting made minimal modifications to existing charter language. The following addition may provide the clarification Council seeks: "No person shall be eligible to serve as a member of the Council or Mayor for more than three successive four year elective terms. Any person who has served three successive four-year elective terms as Mayor or Councilmember or any combination thereof shall not serve again until at least four years have passed since that person last held office..." This change was added to the sample language included in Attachment 2. Further, as staff refines the final proposed language for Council's consideration, all sections, including this one addressing term limits, will be reviewed with a preference for simple language and consistency in style.

2. Redistricting Issues

Councilmembers did not have a consensus on how to approach redistricting. Councilmembers indicated interest in a wide range of options for redistricting, including (1) the Council completing redistricting with extensive public outreach, (2) an advisory commission, (3) a modified advisory commission, or (4) a completely independent commission.

Redistricting Criteria and AB 849. AB 849 was signed by the Governor on October 8, 2019 and will become effective on January 1, 2020. Staff has worked with outside counsel on an initial analysis of the new provisions. Compared to earlier versions, the final version of the bill creates more uncertainty for charter cities because it appears to eliminate some of the flexibility regarding redistricting criteria and prioritization of such criteria. The language could arguably be interpreted as a legislative intent to mandate the same redistricting criteria for all agencies. However, such a mandate is legally questionable as applied to charter cities because the state Constitution gives charter cities control over municipal affairs, which typically include local elections.

Given the complexities and uncertainties AB 849 has created, the fact that charter language addressing redistricting is not integral to the immediate issue of implementing district elections, and that different criteria in the City's charter could lead to potential litigation in future redistricting if it was held that AB 849 controls redistricting for charter cities, later in this report staff has provided options which would not include redistricting criteria in the March 2020 charter measure. Redistricting criteria could, of course, be the subject of a future measure, which would allow time for clarifications in the law and, if the Council desired, formation of a charter review commission to study the issue in more detail. Of course, if the Council does nothing, the default would be the criteria and prioritization set forth in AB 849.

Redistricting Commission. Staff's initial outline suggested two broad options for addressing redistricting in a charter amendment: (1) stating that the Council would address redistricting by ordinance, or (2) establishing a commission (advisory, independent or modified.) Either approach is allowed by law and could be incorporated into the proposed charter amendments.

If the Council desires a commission, in September staff recommended a statement in the charter that “Council shall adopt an ordinance establishing a public process for appointment.” There were two reasons for that recommendation. First, it paralleled language recently approved for charter section 604(e), which the Charter Review Commission on vacancies had recommended. Second, it would allow more time for robust public discussion on process and appointment issues for a redistricting commission that the City does not have with the time constraints for placing a measure on the March 2020 ballot.

Several Councilmembers requested sample language from other cities related to redistricting commission formation, selection, and operation. At the state level, Elections Code sections 23000 to 23004 (**Attachment 5**) provide some particulars concerning the method of appointment of commissioners, qualifications for candidates for commission membership, and restrictions on commissioner activities for advisory, “hybrid”, and independent commissions. The City has the ability to act pursuant to the state-established scheme.

For advisory commissions, state law permits the local jurisdiction to prescribe the manner in which members are appointed to the commission. A person who is an elected official of the local jurisdiction, or a family member, staff member, or paid campaign staff of an elected official of the local jurisdiction, cannot be appointed to serve on the commission.

For hybrid and independent commissions, the local jurisdiction may prescribe the manner in which commissioners are appointed, except the commissioners may not be directly appointed by the legislative body or an elected official of the local jurisdiction. In addition, state law contains numerous restrictions on whom can be appointed to the commission. Generally speaking, exclusions include a person or a family member of the person (including in-laws) who has been a candidate for an elective office of the local jurisdiction in the preceding eight years, or who has been an officer, employee or paid consultant to a campaign committee for elective office in the local jurisdiction or a political party or political party central committee, a staff member or consultant to an incumbent elected official of the jurisdiction, a registered lobbyist in the jurisdiction, or contributed \$500.00 or more in a year to any candidate for elective office in the local jurisdiction.

Attachment 4 summarizes whether redistricting, including by commission, is addressed in the Charters of other Bay Area charter cities. Notably, only San Jose and Berkeley, have redistricting provisions in their charters. Oakland established redistricting by commission in a 2014 charter amendment. San Francisco established district elections and redistricting by task force in 1996 (for the 2000 elections). The cities that have recently switched or are in the process of switching to district elections have not yet addressed redistricting. The City of Santa Clara established a charter review commission that is finishing a study of potential charter changes for district elections, and its current recommendation regarding a charter provision on redistricting is to state in the charter that redistricting will be addressed by ordinance.

Options for addressing redistricting. A charter amendment to implement district elections may address the manner of redistricting (i.e. by the legislative body, by commission, type of commission, etc.), but such provisions are not integral to the immediate issue of implementing district elections. Therefore, the charter may also remain silent on the question entirely, with default to state law, or defer certain details (such as appointment, structure, process), to ordinance. A non-exhaustive list of possible options and considerations for addressing redistricting include:

- a. *Do not address the manner of redistricting in the March 2020 ballot measure.* This would provide the City with multiple options for follow up. For example, the Council could establish a Charter Review Commission to study redistricting and make recommendations on whether and/or what issues should be addressed in the Charter. Or the City could address the issue comprehensively when the new census results are released and redistricting is required, through ordinance or other process, similar to the other cities that have recently switched to district elections.
- b. *State in the proposed ballot language that the Council will address redistricting by ordinance.* This approach would be like the one currently under consideration in Santa Clara. The process required for adoption of ordinances would provide an opportunity for a focused public discussion on the details of redistricting decision-making and process.
- c. *If the Council reaches a consensus that they desire a redistricting commission, specify the type of commission in the ballot language and defer details to ordinance.* If the Council determines that establishing a redistricting commission is an important factor in this stage of moving to district elections, this option would allow the commission approach to be included in the Charter, while still providing further opportunity for public discussion of the details of the process and operation of the commission.
- d. *Detailed language in Charter describing the type of commission and full operational details.* There are multiple policy elements on which the Council will need to reach consensus (e.g., method of appointment of commissioners, qualifications of commissioners, restriction on commissioner activities, removal of commissioners, commission meetings, transparency provisions, vote required for approval of a redistricting plan, etc.) if it desires this type of comprehensive approach. Staff anticipates that at least one additional meeting will be required to work through such details, and suggests that Council focus its decision making first on the type of commission desired, and second on sample provisions already provided.

3. Timeline for Preparing Charter Language for March 2020 Ballot

A resolution approving the final Charter language and placing the measure on the ballot must be adopted no later than 88 days before the election. The last City Council date to place the measure on the ballot is December 3, 2019; however, the City Clerk's preferred date for this action is the November 12, 2019 Council meeting or earlier. Adoption of a resolution placing the final charter measure on the ballot is currently scheduled for November 12. Based on the Council's direction at this and prior meetings, staff is currently planning to work with outside counsel to refine and finalize the proposed charter language for the Council's consideration on November 12.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

RECOMMENDATION

Staff recommends that the Council discuss the proposed amendments to Charter Article VI and provide direction on the desired approach to addressing redistricting.

Prepared by: Melissa C. Tronquet, Assistant City Attorney

Reviewed by: Teri Silva, Assistant City Manager

Reviewed by: Kent Steffens, City Manager

Reviewed and Approved by: John A. Nagel, City Attorney

ATTACHMENTS

1. Chart- Summary of Charter Provisions and Options for Changes (from 9/10/19)
2. Sample Charter Amendment Redline (for discussion purposes, subject to change/refinement) (from 10/8/19, except addition noted above to Section 604 Option B)
3. Summary of 10/8/19 Council comments on Charter policy issues (new)
4. Elections Code sections 23000-01 (new)
5. Table summarizing how Bay Area charter cities address redistricting (new)