



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: RICHARD DOYLE
City Attorney

SUBJECT: Proposed Charter Amendments

DATE: June 13, 2008

BACKGROUND

On February 6, 2008, the Rules and Open Government Committee ("Rules Committee") discussed four proposed amendments to the City Charter for the November 2008 ballot. The Rules Committee referred the proposed Charter amendments to the City Council.

On March 4, 2008, the Council referred these proposed measures and other potential ballot measures back to the Rules Committee for further discussion.

On April 9, 2008, the Rules Committee agreed to defer the discussion about all ballot measures until after the Council had begun the budget process for the next fiscal year.

On May 21, 2008, the Rules Committee set a Special City Council Meeting on June 19, 2008 to consider a number ballot measures.

This memorandum provides a summary and status of the following proposed measures:

- A. Council Appointee Administrative Leave
- B. Council Salary Setting Methods and Options
- C. Recall Elections
- D. Charter Section 600 – Ability to Abstain for Appearance of a Conflict
- E. City Clerk - Power of Appointment
- F. Instant Run Off Voting
- G. Charter Amendment for Redistricting
- H. Duration of Leases on City Parks

The City Council will also consider some revenue-generating ballot measures as described in a separate memo from the City Manager and the Executive Director of the Redevelopment Agency.

The City Council will also consider adopting a resolution submitting to the voters a ballot measure about construction of a Fire Station on the Lincoln Glen Park site as described in a separate memo from the Acting Fire Chief, Director of Parks, Recreation & Neighborhood Services and Director of Public Works.

DISCUSSION

A. Council Appointee Administrative Leave

The Rules Committee approved a proposed amendment to the City Charter to allow the Council by majority vote to place Council Appointees on administrative leave of absence. The amendment would provide that the Council may take actions to ensure that the functions, duties and administrative operations of an office of an Appointee are performed during the leave of absence.

B. Council Salary Setting Methods and Options

The Rules Committee recommended that community input be solicited – including from the Council Salary Setting Commission (“CSSC”) – on options for Council salary setting which included tying salaries to those of Superior Court judges or adjusting salaries to the Consumer Price Index. The CSSC met on April 30, 2008 and held public hearings for May 12, 15 and 19, 2008.

The CSSC recommends that the Council submit a proposal to the voters on the November 2008 ballot to change the City Charter and the method of establishing compensation for the Mayor and City Council as follows:

1. Compensation to the Mayor will be based at 80% of the salary established for a Judge of the California Superior Court;
2. Compensation for Councilmembers will be based at 60% of the salary established for a Judge of the California Superior Court;
3. Benefits, such as health, dental, etc., will be equivalent to that provided to Management employees. The Mayor and Councilmembers will have a choice of retirement plans provided by CalPERS or the City’s PTC 457 plan; and
4. Other compensation, such as automobile allowance, will be equivalent to that provided to Executive Management employees.

The CSSC’s report will be issued shortly.

C. Recall Elections

The Rules Committee approved a proposed amendment to model the City’s recall process after the procedure applicable to state officials, in which one election is held to decide two questions: whether to recall an official, and, if so, who will be his or her replacement. Under the City’s current Charter provisions, an office vacancy resulting from any cause, including a recall, must be filled by Council appointment or through an election called by the Council. This means that with respect to a recall, there would be, at minimum, two elections – one for the recall and one to fill the vacated seat – and

possibly three elections if no candidate received a majority of the vote at the second election.

We request further direction on whether the Council wants to follow the state's recall procedure with respect to the election of a successor, which may be by a plurality vote, or whether it wants to adhere to the majority vote requirement applicable to all San Jose municipal elections.

D. Charter Section 600 – Ability to Abstain for Appearance of a Conflict

The City Council directed the City Attorney to amend City Charter Section 600 to allow members of the Council to voluntarily abstain from participating and voting in situations where there may be an appearance of a conflict. Currently, Section 600 requires all members of the Council present at the meeting to vote on every item "unless disqualified from doing so by law." Pursuant to the Political Reform Act and Government Code Section 1090, the Mayor and Councilmembers are prohibited from voting when they have a financial conflict of interest. The state laws mandating disqualification would apply to Council even if the City Charter did not have this provision.

When the Rules Committee discussed this proposed amendment, it decided that the requirement to abstain should be voluntary, that the matters from which the Mayor and Councilmembers could abstain should be limited to administrative actions, and the basis for abstention should be limited to specific relationships. Section 600 can be amended to allow for abstention pursuant to Council policy or Section 600 can be amended to include the criteria and attendant definitions. We recommend the former approach; the question to the voters could therefore be presented as "should the City Charter be amended to allow the Mayor and Councilmembers to recuse themselves when there is an appearance of conflict."

E. City Clerk - Power of Appointment

This proposed Charter amendment was recommended in the FY 2008-2009 Mayor's March Budget Message. Currently, the City Clerk is not authorized to appoint officers or employees employed in the Office of the City Clerk. By contrast, all other Council Appointees are authorized by the Charter to appoint and prescribe the duties of specified employees who are employed in their respective offices.

If directed, we would prepare a Charter amendment to provide the City Clerk with the authority to appoint an assistant who will serve in an unclassified position at the pleasure of the City Clerk and to appoint all technical and clerical employees subject to the Civil Service Rules.

F. Instant Run-Off Voting

Councilmember Constant is recommending an amendment to the City Charter to implement instant run-off voting as soon as the technology is approved for use by the Secretary of State. If directed, we would prepare a Charter amendment accordingly.

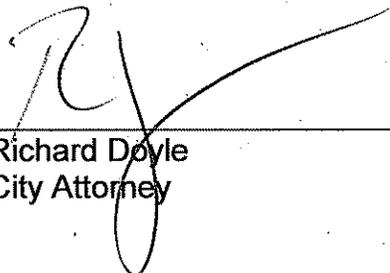
G. Charter Amendment for Redistricting

Councilmember Liccardo is recommending an amendment to Section 403 of the City Charter to delay the beginning of the 120 day period in the Charter for the Redistricting Advisory Commission to issue its report and recommendations with regard to Council District boundaries. Currently, the 120 day period begins when the Commission members are appointed. In 2001, federal census data was released after the appointment of the Commission, thus shortening the time for the Commission to conduct its review. Delaying the beginning of the 120 day period from the appointment of the Commission, or the receipt of federal census data, whichever is later will allow the Commission a full 120 day period to complete its review and issue redistricting recommendations.

This Charter amendment could be submitted to the voters in 2010, since the City will not receive the federal census data until 2011.

H. Duration of Leases on City Parks

Councilmember Liccardo is recommending a proposed Charter amendment to extend the duration of leases on City parks. The Parks and Recreation Commission considered this proposal on April 2, 2008 and issued a memo to the Rules and Open Government Committee supporting the amendment with certain guidelines.



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cc: Lee Price
Debra Figone