

CONTINUED DISCUSSION OF ELECTION OF MAYOR BY CITY-WIDE VOTE

Charter Review Committee Meeting
February 2, 2022

Sue Gallagher, City Attorney
Rob Jackson, Assistant City Attorney

Outline of Agenda

- Hear from those with experience
- Address questions raised at last meeting
- Identify decision points, discuss and provide direction

Hearing from those with Experience

- **Mayor Teresa Barrett**
 - At-large Mayor
 - City of Petaluma

- **Mayor Kate Colin**
 - At-large Mayor
 - City of San Rafael

Remaining Questions

- Clarification of Mayor's powers and position
- Voting Rights Act implications
- Voter turn-out by District
- Additional related questions:
 - Removal of Mayor/Council member for misconduct
 - Ability to allow vote for undocumented individuals
 - Potential to revise Charter to allow for more frequent revision

Mayor's Position and Powers

- City Council, as a whole, is the legislative body of the City, responsible for establishing City policies and priorities
- Mayor is the presiding officer of the Council
- The City Manager is the administrative head of the City government, responsible for City operations and implementation of the Council's policies and priorities.

Mayor's Position and Powers

- Mayor cannot, acting alone:
 - Set City policies or priorities
 - Hire or fire employees or direct their activities

- Mayor can and does:
 - Preside over Council meetings
 - Set Council agendas, in collaboration with the City Manager
 - Establish and appoint Council subcommittees
 - Appoint Chairs of City boards, commissions and committees
 - Appoint City representatives to County, regional and state bodies
 - Act as City spokesperson

Strong City Manager / Strong Mayor

Council-Manager

- Elected Council, including Mayor, is legislative body, responsible for setting City policies and priorities and approving significant transactions
- City Council appoints City Manager, who is then responsible for all day-to-day City operations
- City Manager is a professional public administrator

Mayor-Council

- Elected Council is legislative body, responsible for setting City policies and priorities and approving significant transactions
- Mayor is chief executive of the City, with significant administrative authority
- May have authority to set policy, appoint and oversee City Manager and other employees, draft budget, veto legislation, and other executive powers

What is the Issue at Hand?

- Question initially posed by Council is whether to move from an appointed Mayor (a Council member selected by the Council itself) to an elected Mayor (elected by City-wide vote)
- Whether to move to a strong Mayor system is a separate, but fair question
- Whether to otherwise adjust the Mayor's roles and responsibilities is also a fair question

California Voting Rights Act

- Short Answer: Does not preclude a hybrid system with district-based Council members and at-large Mayor
 - State law allows for hybrid system
 - Numerous cities have settled CVRA litigation with hybrid system
- May impact if and how Council Districts are realigned

California Voting Rights Act

“An at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class.”

(Elections Code §14027)

California Voting Rights Act

- Four key elements:
 - **At-large election system:** Voters of entire city vote for, and elect, all members of the City Council
 - **Presence of protected class:** Class of voters who are members of a race, color or language minority group, as defined by the Federal Voting Rights Act

California Voting Rights Act

- Four key elements (cont):
 - **Racially polarized voting**: Voters in the protected class prefer candidates and electoral choices that are different from those preferred by voters in the rest of the electorate
 - **Impairment of voting influence**: The votes of those in the majority non-protected class have the effect of defeating the preferences of the protected class

California Voting Rights Act

- How is violation established?
- Violation is established if it is shown that **racially polarized voting** occurs in elections for members of the governing body or in other key electoral decisions (Elections Code §14028)

California Voting Rights Act

- **Necessary elements:**
 - Evidence that protected class is politically cohesive
 - Evidence that the non-protected class votes sufficiently as a bloc to enable it to defeat the protected class' preferred candidate
 - No finding of racial animus or intent to discriminate is required to find a violation of the CVRA

California Voting Rights Act

- Why did City shift to district-based Council elections?
 - 2017 letter from law firm asserting that racially polarized voting exists in Santa Rosa and results in the dilution of Latino voting
 - Independent review of elections in 2012, 2014 and 2016 indicated potential evidence of racially polarized voting
 - Evidence was not conclusive, but law unsettled and evolving
 - Financial risks of litigation enormous (with attorneys' fee awards ranging from \$50,000 to \$4.5 million)

Implications for At-Large Mayor

- State law expressly allows for at-large Mayor (see Gov Code §34900 et seq)
- Numerous cities have settled CVRA lawsuits with agreement for hybrid of district-based Council members and at-large mayor
- Here, two considerations:
 - Proposal may result in conversion of one existing district-based Council seat to an at-large Mayor
 - Care required if redistricting to six Council Districts, to ensure no diminution of protected class voting

Voter Turn-Out by District

- November 2020
 - City-wide: 80% – 90% turnout
 - A few precincts in Districts 1 and 6 were 68%-78% turnout
- March 2020
 - Districts 1 and 7: 45% - 50% turnout
 - District 3: 80% - 90% turnout
 - Remainder of City: 55% - 60% turnout

For later consideration: Removal of Mayor for Misconduct

- Requires Charter Amendment
- Requires clear standards for removal – criminal activity or serious misconduct
- Requires due process – notice and fair hearing
- San Francisco model?

For later consideration: Voting Rights for Undocumented Individuals

- **Federal law** prohibits non-citizens from voting in federal elections
- **State law** prohibits non-citizens from voting in state elections
- **State law** does not contain an express prohibition against non-citizens voting in local elections
- **San Francisco example:** Non-citizen parents of school children may vote in School Board election

For later consideration: More Frequent Charter Amendments

- **Allowance** for more frequent Charter amendments
 - As needed?
 - Any specific time limitations?

- **Requirement** for more frequent Charter review
 - Maintain 10-year comprehensive review?
 - Revise to shorter period?

Key Decision Points

- Move forward with drafting a ballot measure
- Term of office
- Scope of roles and responsibilities
- Full time / part time
- Voting / non-voting
- Selection of Vice Mayor
- Resulting composition of Council

Term of Office

- Mayor currently serves a two-year term

- Options for term of elected Mayor:
 - Two year term?
 - Four year term?
 - Other?

- Possible term limits?

Scope of Responsibilities

- Maintain current scope of roles and responsibilities?
- Expand roles and responsibilities?
- Shift from strong City Manager to strong Mayor system?

Resulting Composition of Council

- Reconfigure from seven district-based Council members to six district-based Council members and one at-large Mayor
- Maintain seven district Council members, add at-large Mayor
- Expand or contract Council membership

Other Elements

- Formally designate as full or part time?
 - Impact on compensation
 - Impact on expectations
- Voting / non-voting / tie-breaking vote only?
 - Tied to composition of Council
 - May affect candidate interest
- Method of selection of Vice-Mayor

Questions?