



Memorandum

TO: CITY COUNCIL

FROM: Mayor Sam Liccardo

SUBJECT: POTENTIAL BALLOT
MEASURE TO AMEND THE
CITY CHARTER

DATE: June 19, 2020

APPROVED:

DATE: 6/19/2020

DIRECTION

1. Direct the City Clerk to place an item on the June 30th City Council meeting agenda for consideration of a potential November 2020 ballot measure, to amend the Charter to enhance accountability of City Hall through campaign finance reform, and clearer alignment of mayoral authority and responsibilities.
2. Direct the City Clerk to establish an additional meeting date(s) in the final week of July and/or first week of August, if necessary, for public discussion and input of this measure.

DISCUSSION

A. Campaign Finance Reform and Gift Ban

Public confidence in City Hall—if not accountability—is diminished to the extent that residents believe that specific organizations and interest groups have undue influence over the decisions of the Council and Mayor through their contributions to campaigns. These groups—developers, unions, businesses ranging from technology companies to marijuana dispensaries, political action groups, landlords, and their associations—are routinely cited as powerful players in local politics in every US city. Through a Charter amendment, we can institute provisions that will ensure that Councilmembers and the Mayor recuse themselves from any vote with a direct impact on an interest group that has contributed to that candidate's campaign, or any campaign or initiative for which that official is fundraising. The duration covered by any recusal mandate should align with rules for public agencies like VTA under California Government Code Section 84308. Moreover, we should halt political contributions to candidates from lobbyists, as well as any gifts from contractors and lobbyists to councilmembers.

B. Aligning Authority with Accountability

Through the pandemic and protest of recent weeks, many residents have understandably demanded that I take specific actions or direct City officials in ways that—unbeknownst to them—exceed my lawful authority under the City Charter. Thousands of emails, texts, and social media messages urge that I respond one way or another to the protests, for example, or to help people get back to work more quickly amid this devastating recession. San Jose residents reasonably expect and demand action from their mayor, particularly as they see mayors in other large cities routinely issue executive orders that respond to those expectations.

No mayor in San Jose’s modern history has ever had such authority. Section 411 of the Charter precludes the Mayor from giving any direction to any member of the City Administration, including the City Manager. Even in a crisis, the response of a mayor remains constrained by multi-month processes of proposals, hearings, committee and Council votes, and enactment after a second public reading—all dependent on resources, workload, timing, and alignment with staff priorities. Even upon passage of a budget or enactment of an ordinance, the mayor must hope that the staff actually implements the proposal as it was articulated, and has little recourse—beyond the extreme sanction of seeking Council approval to fire the City Manager—when it isn’t implemented.

Every mayor is accountable to San Jose voters for her or his decisions. Yet those voters cannot hold anybody accountable for the overwhelming majority of decisions made in City Hall that affect their daily lives. Under Section 411, those decisions are generally made by City Staff over whom no elected official in the City has any direct authority.

The current system contravenes the expectations of San Jose’s residents, who reasonably expect their city government to function in a manner similar to that of nearly every other large American city. They vote for a mayor with an expectation that the person they vote for has an executive role in the government. Section 502 of the Charter defines the mayor as the “political leader” of the City, but does not empower that role with the authority that any other political leader would possess. When decisions are made in San Jose about when to warn or evacuate residents from a flood, how many police to deploy to a political rally, or what parks to close during a pandemic, the mayor has no authority over those choices—but bears all of the public’s expectation of responsibility.

Our “council-manager” form of government amounts to an anachronistic, small-town remnant of San Jose’s history. Large U.S. cities typically have a “mayor-council” structure that aligns public accountability with legal authority. That is, in most large cities, mayors have the ability to direct decisions as the head of the City administration, and therefore appropriately bear the public responsibility for those actions. Large, diverse cities—including all of California’s other large cities, such as San Francisco, Oakland, Los Angeles, Fresno, and San Diego—tend to have charters that put executive authority within the Mayor’s office. Sacramento is proposing such a change this year. Most of those cities are smaller than San Jose, yet still benefit from a more nimble decision-making structure that better aligns the public’s reasonable demands for accountability with actual authority.

Among the nation's largest 20 cities, only a handful of others have a Council-Manager structure remotely similar to San Jose's, and they are located mostly in Texas. Even most of those cities have begun to move away from that small-town council-manager structure, and like San Jose, have adopted hybrid structures. For example, in the 1970's, San Jose voters amended the City Charter to allow for direct election of the Mayor, and in the 1980's, voters further gave the San Jose mayor power to propose and direct the budget process, and to direct the City's Public Information Office.

In recent years, several organizations have publicly advocated for this re-alignment of authority and accountability within the Charter, and [public polling suggests generally strong support for the notion](#). Multiple crises—the pandemic, economic devastation, and recent civil unrest—have precluded the ability for us to have a robust public discussion of any proposed changes, however. Nonetheless, these same crises have exposed the necessity of moving San Jose to a 21st century governance model.

Accordingly, I'd encourage a two-step approach. First, we make modest but long-overdue changes—the “low hanging fruit”—through a proposed Charter amendment for voters this November. A more thorough process, undertaken and guided by a community-led Charter Revision Commission, could engage the public on more robust changes that could be considered by voters in a future election cycle.

These structural reforms can give San Jose mayors the modern tools of city governance so critically needed in an era of rapid change and immense challenge. More importantly, such changes can enable our community to have greater accountability—both in perception and fact—over the local decisions that affect their daily lives.