



Memorandum

TO: THE HONORABLE MAYOR &
CITY COUNCIL

FROM: Councilmember Lan Diep

SUBJECT: CAMPAIGN FINANCE, MAYORAL AUTHORITY & CHANGE OF MAYORAL ELECTION DATE **DATE:** June 28, 2020

Approved

Lan Diep

Date *6/28/20*

RECOMMENDATION

Place a ballot measure on the November 2020 election that would amend the City Charter to:

1. Establish a mayor-council form of government for San José, empowering the mayor’s office as a true executive beginning July 1, 2023 with authority to:
 - a. Unilaterally hire and dismiss the city manager and department heads except for the City Attorney, the Independent Auditor, the Independent Police Auditor, the City Clerk, and the director of the Budget Office, who shall be appointed and dismissed by a majority of the City Council;
 - b. Veto legislative actions (not hiring decisions) by the City Council, which may be overridden by a two-thirds council majority;
 - c. Exist as head of the executive branch, separate from the City Council, not entitled to a vote in council deliberations nor required to attend council meetings;
 - d. Propose an annual budget for consideration by the City Council to reconcile with their own proposed budget;
2. Empower the City Council to pass ordinances and take budgetary actions in accordance with the process already established, without necessitating approval from the Mayor, although the Mayor may exercise a veto over legislation passed by a simple majority;
3. Create the office of Councilmember-At-Large, to be elected by a majority of the citywide electorate, during midterm election years, beginning in 2022;
4. Eliminate the ceremonial role of Vice Mayor and create the role of Council Speaker – to be elected by a majority of councilmembers every two years – tasked with chairing council meetings, assigning committee assignments to councilmembers, leading the annual process of authoring a Council-proposed budget to be reconciled with the Mayor’s annual budget proposal;
5. Limit the maximum campaign contribution candidates running for city council or mayor may receive from a single entity to the equivalent of earnings from 40 hours of work at San José’s minimum wage, rounding up or down to the nearest \$25 increment.
6. Move the mayoral election to the 2024 election year, aligning the mayor’s race with the presidential election, and extending the current mayoral term by two years.

Or alternatively, take a more incremental step towards a mayor-council form of government by adopting the memo authored by Vice Mayor Jones and Councilmember Jimenez and additionally:

- I. Keep the mayor as a member of the council, but only as a tie-breaking voter;
- II. Not require the mayor to attend city council meetings;
- III. Designate the Vice Mayor as the person who chairs council meetings;
- IV. Clarify that the Charter would be amended to adopt the full language of Government Code §84308, which only requires recusal from a vote for contributions valued at over \$250 or more;
- V. Require the City Attorney's office to keep track of campaign finance disclosures from the mayor and councilmembers and affirmatively notify them when they must recuse themselves from votes.

BACKGROUND

Cities are increasingly taking a more prominent role in the national imagination. As partisanship prevents the federal government from effectively addressing the many pressing needs of Americans, people are turning to cities to step up. To varying degrees of success, cities are meeting the challenge. Through public-private partnerships, voter-approved taxes, and attracting commerce, cities are building housing, creating communities, and even responding to pandemics.

It is against this backdrop of the rising prominence of cities that there has been renewed interest in San José about our mayoralty. In 2019 it was proposed that San José should move the mayor's election to coincide with presidential elections. More people vote in presidential elections and the higher turnout would presumably result in selection of a mayor who was more accountable to the diverse citizenry of San José.

The question of accountability was again brought up recently in the aftermath of protests in San José following the murder of George Floyd in Minneapolis. Activists called for swift action to change policing in our city, even going so far as to demonstrate in front of the Mayor's personal residence. Yet whereas other mayors in other cities may have been able to act on such calls, under San José's present form of government, the Mayor does not have any true executive power to hold anyone accountable without the agreement of at least five other councilmembers.

Recognizing that other big cities – and in many cities smaller than San José – have transitioned to a “strong mayor” form of government to increase efficiency and accountability, Mayor Liccardo has proposed amending the Charter to more align the mayor's powers with the common expectation of our residents as well as to reduce the influence of special interests.

ARGUMENT

The Council has been asked to consider three distinct matters: 1) Moving the mayoral election to presidential years; 2) campaign finance reforms; 3) granting executive powers of the mayor. This memo shall discuss each in turn.

Shifting The Mayoral Election

The proposal to elect the mayor at the same time America elects its president has stumbled three times to date. The Council declined to advance the notion to voters in 2019. A signature-gathering campaign to place the proposal on the ballot fell short. A court-mandated recount confirmed the defeat.

Proponents of the idea are correct that voter turnout is higher in presidential election years. It is certain that more votes will be cast in the mayoral race if it is held simultaneously with the presidential race. Implicit in this line of reasoning is the belief that shifting the timing of the mayor's race is a process improvement because doing so somehow lowers systemic barriers to voting and allows more people to engage in the democratic process. Yet in all elections in Santa Clara County, residents will have ballots mailed home 30 days prior to election; they will not have to pay postage to return their ballot; they can get ballots in multiple languages; they can return their ballots in a mailbox up until the Election Day... the only barrier to entry to voting for mayor or any other elected position in Santa Clara County is one's own apathy.

On its own, spending over a million dollars to change the timing of an election is questionable. But if the inclusion of this change paves the way for the consensus needed for to make other, more substantive improvements, then so be it.

Campaign Finance Reforms

Mayor Liccardo suggests banning gifts and campaign contributions from lobbyists and requiring that councilmembers recuse themselves from any vote that involves a party from whom the councilmember received a contribution in the prior 12 months. His aim is to boost public confidence in City Hall. Such confidence is diminished to the extent that residents believe special interests have undue influence over the decisions of elected officials.

The goal is laudable. But rather than adding complexity to achieve this end, we might instead employ simple reforms that directly prevent the influence of individuals or special interests from outweighing the influence of the general body politic.

At the federal level, an individual can contribute a maximum of \$2,800 per election cycle to a presidential, senate, or congressional candidate. In California, candidates for state senate and the assembly can receive up to \$4,700 from each donor. Candidates seeking statewide office such as the Lt. governor, secretary of state, or attorney general can receive up to \$7,800 per donor. Gubernatorial candidates can receive up to \$31,000 from a single donor. The average person is unlikely to easily have a discretionary \$2,800 to contribute, to say nothing of \$4,700 or \$31,000. An often-cited figure suggests that the average American could not cope with an unexpected expense valued at \$400.

If San José adhered to federal or state-level campaign finance rules, the reforms proposed would be revolutionary as a method of curbing the perceived and actual influence of special interests. Yet in San José we have already addressed this matter by imposing contribution limits much lower than the federal or state level. In contrast to those contribution limits, a council candidate in San José can only accept a maximum contribution of \$600 per person or entity per election.

Although it is true that \$600 is still a very high amount for many in our valley, it is still plausible that an individual in Silicon Valley can afford to contribute \$600 to a candidate out-of-pocket. Instead of implementing complex reforms, an elegant solution would be to further constrain this limit by tying it to something lower than the rate of inflation, such as the minimum wage in our city. The Council could also consider lowering the limit even further or make it so that mayoral candidates (who can accept up to \$1,300 per entity) cannot accept more money in contributions than council candidates. If the Council set campaign contribution limits at a figure that the average voter could easily give, lobbyists would be restricted in their ability to give more money than the average individual and this would dampen any outsized influence they might wield.

The proposed campaign finance reforms address the perception of undue influence but does nothing to correct the misconception that politics at the local level is as intense as politics at the state and federal levels. A bright-line rule banning all gifts and money from lobbyists is a fine accountability measure but the number of registered lobbyists in San José probably falls short of public perception. Adoption of Government Code §84308 creates an administrative burden of keeping track of donors, legal liability for accidentally failing to recuse, and potential problems of interpretation or confusion because Government Code §84308 expressly exempts local agencies whose members are elected by voters such as city councils. If the Council goes down this path, at least we should require that the City Attorney keep track of contributions and recusals to assist councilmembers from inadvertently violating the law.

Strong Mayor

Politics are cyclical. Through the centuries American cities have “reformed” themselves from a mayor-council system to a council-manager system, from a strong mayor system to a weak mayor system, and back again. Reforms during the progressive era moved cities away from a strong mayor form of government, citing the potential for corruption and abuse of power. At the same time, there was also fear that a strong, democratically elected mayor would be too responsive to the desires of immigrants and minorities who flocked to cities. The move to a weak mayor or council-manager system of government was an attempt to preserve the power of the established elite just as much as it was an argument for better governance by way of professional administrator. At this moment in time, the momentum seems to be swinging towards a strong mayor form of government for big cities. San José should put the question before voters.

While typical arguments in support of creating a unitary executive have centered on increasing efficiency and accountability, the stronger argument is that having a strong mayor will further democratic norms. Whereas stability and professional administration are the hallmark San José’s present council-manager form of government, shifting to a mayor-council form of government will finally vest authority in someone at the city to reflect and act upon the popular will of the people. It will give the electorate more say over their city.

San José has always strived to be more responsive to our residents. We made reforms so that councilmembers are elected by district instead of at-large to ensure that different neighborhoods and minorities would have a champion for their specific interests. It is time for us to go one step further and empower a mayor – who is elected by voters across the city – to be a champion for the entire city, equipped with the tools he needs to implement the platform she wins on.

As it stands now in San José, a mayoral candidate can win but will be prevented from enacting the mandate given to her by voters unless she can convince five other councilmembers to go

along with her. If the mayor does not have the coalition to push through his agenda, the will of the voters, the majority of whom support that vision, will be thwarted. Disappointment will ensue and the mayor will be deemed to have not fulfilled campaign promises that he never really had a chance of ever enacting because of an uncooperative council.

In a council-manager form of government decisions are made collectively. Each councilmember is simultaneously a legislator and an executive, laying claim to 1/6th of the votes needed to take action. This may be adequate for smaller cities with part-time councils who rely on professional administrators and primarily make decisions over providing basic services to residents. But for larger, more dynamic cities with a full-time council, it makes sense to separate executive and legislative powers so that City Hall can more nimbly respond to the concerns of the electorate.

By granting the mayor direct authority over department heads, he or she can put the machinery of government towards doing the work of the people. Issues can be prioritized as needed without an annual priority-setting-session. By freeing up the mayor to not have to participate in legislative council meetings, he or she can focus on executive tasks that necessitate focus and deep thinking. The mayor can study the latest literature on police reforms. He can be out and about connecting with residents and experiencing the city through their eyes. She can be in contact with our state and federal delegations to lobby for resources and gain better understanding of the environment in which we will have to govern in months to come.

A stronger mayor will be a stronger advocate for San José. When legislators in Sacramento or Washington, D.C. know they are speaking to a mayor who is empowered to use the resources he is asking for in the way he intends to use it, the request will surely carry more weight. And in a time when cities are front and center in national discussions, cities need stronger advocates.

As former Chicago mayor Rahm Emmanuel argues in his book *The Nation City: Why Mayors Are Now Running The World*, cities are the most ancient political institutions and have reemerged as the nation-states of our time. In the last few years alone, San José has not only worked to win resources for better infrastructure, focused on building new affordable housing, preventing homelessness, protecting green space, and economic development... we've also defended our Dreamers, contended with Public Safety Power Shutoffs from PG&E, taken aim at climate change, distributed food countywide during a pandemic, and begun to confront issues of racial equity. We and other cities are leading states and the federal government on many issues.

All politics are local, and cities offer the possibility of the purest exercise of democracy. An empowered mayor with the authority to act can actually shape a city the way residents want. A unitary executive can focus bureaucratic energy to a task, more quickly improve quality of life for residents, and channel populist demands for a more accountable government. A council-manager form of government is intentionally built to be slow to respond to the political pressures of the moment because power is dispersed. The professionals in charge of city functions are unelected administrators. They are subject-matter experts who are insulated from political pressure and thus feel less urgency to respond to it. Such a system favors continuity and stability rather than efficiency and democratic responsiveness.

A valid concern about granting executive authority over one person is that he or she will have too much power. It is true that humans are fallible and that putting the wrong person in the role of executive can be disastrous. But that is what free elections, term limits, and recall efforts are

for. In a mayor-council form of government, it is the council that will have the power of the purse. The mayor can set an agenda but only a willing council can fund it.

Additionally, the weighty concern over an empowered mayor run amok is made less so when placed in the context of federalism. In America, power is shared between the national government and states. Cities are an afterthought and are only granted limited powers to begin with. However strong a mayor may be under a city charter, he or she will ultimately still be constrained because cities are constitutionally weak and seen as existing in service to the state. Cities cannot control their borders, print money, or take action to intervene in economic trends. Cities have no say in state and federal policies that impact them. But a strong mayor can at least be seen as speaking with authority and that authority gives his words weight to the officials who share the same constituents and make the decisions directly impacting cities. To the extent one agrees that cities have an important role to play in a democracy, increasing mayoral authority is a way of boosting a city's power in a system that downplays the role of cities.

CONCLUSION

The council-manager form of government used by the majority of small cities across America is effective for the types of decisions such towns with part-time councils must make. But as America's 10th largest city, San José is diverse and dynamic. It is deserving of a system of government responsive to political pressure and able to act swiftly around political consensus. The idea of a unitary executive separate from a legislative city council is not a new or radical idea. It is modeled after our federal government and it is how states are governed. Most big cities have a strong mayor. The task for us is not to invent a new system of governing or to study and examine a proven system of government that most residents already think we have. We should let the voters decide directly whether they want the increased accountability and democratic responsiveness that comes with a strong mayor form of government, along with the heightened politicization and potential pitfalls of vesting power in one individual. We should put the full question to voters, not take incremental steps towards an already familiar idea. Let the voters decide.

