



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
City Attorney

SUBJECT: Charter Review Commission
Report

DATE: January 7, 2022

This memorandum discusses the purpose of a city charter, as well as issues raised by the Commission's recommendations that may not be fully discussed in the Commission's report. This includes the deadlines to submit a ballot measure for the 2022 statewide primary and general elections, a discussion of the recommendations that require a Charter amendment, and additional considerations related to election timing and implementation.

BACKGROUND

The California Constitution authorizes the adoption of a city charter and affirmatively grants to charter cities supremacy over "municipal affairs."¹ A charter city's supremacy over municipal affairs is commonly referred to as "home rule." Specific matters that constitute a municipal affair are not specified in the Constitution, but Courts have consistently found the following to be municipal affairs:

- Municipal Election Matters
- Procedures for Initiative, Referendum and Recall
- Procedures for Adopting Ordinances
- Compensation of City Officers and Employees
- Processes Associated with City Contracts
- Financing Public Improvements
- Making Charitable Gifts of Public Funds for Public Purposes
- Term Limits for Council Members
- Land Use and Zoning Decisions (with some exceptions, such as statewide concerns to increase the supply of housing)

In many ways, a city charter acts as a constitution for the city adopting it. It is the supreme law of the City, with the force and effect of State law, and can only be adopted, amended, or repealed by a majority of the city's voters. One advantage of a charter is that it transfers the power to adopt legislation affecting municipal affairs from the State legislature to the city adopting it, thus giving voters of a city more control over their local government. However, a city operating under a charter is still subject to the general

¹ See Cal. Const. art. XI §§ 3, 5.

laws on affairs that are of statewide concern (e.g., vehicle regulation, labor negotiations) and conflicting constitutional law.

While a city charter is not generally required to have any particular provision or limit in it, the Constitution requires a charter to provide for competent enforcement of all ordinances and regulations regarding municipal affairs, subject only to general State and constitutional law and any limits the charter may impose on the city's exercise of its home rule authority.² The Constitution also requires a charter to provide for (1) the creation and regulation of the city police force (2) subgovernment in all or part of a city (3) conduct of city elections and (4) provisions for the appointment, removal, and compensation of municipal officers and employees.³ Indeed, the City's own Charter contains such provisions as well as limits on the City's exercise of its home rule authority.

ANALYSIS

1. Deadline to Submit Ballot Measures.

If the Council moves forward with one or more of the Commission's recommendations to amend the Charter, then a ballot measure will be needed. The Council may choose to consolidate the proposed amendments into a single measure, place each amendment as its own separate measure, or some combination thereof.

Charter measures must be submitted to the voters at least 88 days before the election.⁴ Thus, the deadlines to submit a measure to the County Registrar of Voters (ROV) is:

June 7, 2022 Primary	Friday, March 11, 2022
November 8, 2022 General	Friday, August 12, 2022

2. Recommendations That Require a Charter Amendment.

The Charter Review Commission made several recommendations for amending the Charter, and their report explains why the Charter should be so amended for each recommendation. But not all recommendations require a Charter amendment to implement; some could be achieved through other means. For example, the recommendation to "Establish Future Charter Review Commissions" could be achieved by enacting an ordinance to create such a body, which could be amended or repealed by the Council in the future. However, including it in the Charter would require voter approval to make any change.

² Cal. Const. art. XI § 5(a).

³ *Id.* at (b).

⁴ Elec. Code §1415(a)(2).

The chart below shows what recommendations require a Charter amendment to implement, either because the proposal requires amending an existing provision or because the proposal directly conflicts with another provision in the Charter.

RECOMMENDATION	WHY AMENDMENT IS REQUIRED
Allow Council Members to Make Nominations for City Manager Candidate	The Charter currently grants this power exclusively to the Mayor (see Charter §700).
Expand Council to 14 Districts	The Charter specifies that there will be 10 Council Districts. (§403)
Moving Mayoral Elections from Gubernatorial to Presidential Elections	The Charter specifies that the Mayor is elected during the gubernatorial cycle. An amendment is also required to address the term and term limit for the person elected to the Office of Mayor in 2022 to accomplish the transition. (§1600, see also §§402, 500)
Rank Choice Voting	The Charter calls for a primary election and run-off, if needed, to elect the Mayor and Councilmembers. (§1600)
Remove citizenship requirement for all applicable Boards and Commissions	The Charter requires one to be a citizen or qualified elector (e.g., a citizen and 18 and over) to serve on the Planning Commission, Salary Setting Commission, and Civil Service Commission. (§§1000, 1001, 1001.1)
Gender-Inclusive Language in the Charter	Although the Charter states the use of “masculine gender includes the feminine and neuter,” gender-specific pronouns remain. An amendment is required to remove gender-specific language and replace it with gender-neutral language.

RECOMMENDATION	WHY AMENDMENT IS REQUIRED
Create a Police Commission, an Independent Investigation Department, and an Office of the Inspector General	An amendment is required to change the powers of the Independent Police Auditor specified in the Charter. The Charter also reserves the power to terminate department heads, like the Police Chief, to the City Manager. Finally, an amendment would be required to create the Office of the Inspector General with an Inspector General appointed by the Council. (§§ 701, 809)

3. Election Timing and Other Considerations.

3.1. Creation of a Police Commission, an Independent Investigation, and Office of the Inspector General.

The recommendation to “Create a Police Commission, an Independent Investigation Department, and an Office of the Inspector General” raises issues that affect the development and timing of an election, because aspects of the recommendation appear to affect the terms and conditions of employment for police officers.

Generally, the City Council can place a ballot measure to amend the Charter on any municipal or statewide election date except proposals that alter any “procedural or substantive protection, right, benefit or employment status of any local government employee or retiree of the local government or of any local government employee organization.”⁵ Such a proposal must be placed on a statewide general election date in November of an even-numbered year.⁶ Therefore, the November 8, 2022 statewide general election is the earliest this proposal could be submitted to the voters.

Furthermore, any ballot measure proposal that affects a term and condition of employment is subject to the Meyers-Miliias-Brown Act (MMBA). The MMBA governs labor-management relations in local government and requires local agencies to meet and confer in good-faith with representatives of recognized employee organizations regarding wages, hours, and other terms and conditions of employment, including any proposed ballot measure that would affect a term and condition of employment. Referred to as “Seal Beach bargaining,” it is so named after the holding in *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach*,⁷ where the Court held that the MMBA requires a charter city to meet and confer with its employees before putting a ballot measure to the voters that would directly affect a term and condition of

⁵ Elec. Code §1415(a)(2)(A).

⁶ See Elec. Code §§1200, 9255.

⁷ (1984) 36 Cal.3d 591.

employment. Because aspects of this proposal appear to affect the terms and conditions of employment for police officers, the City may be required to meet and confer with the San Jose Police Officers' Association—the recognized employee organization for City police officers—before such a measure could be submitted to the voters.

3.2. Moving Mayoral Election to Presidential Election Cycle.

The Commission also recommends that the election for Mayor be moved from the gubernatorial election cycle to the presidential election cycle beginning in 2024. To accomplish this transition, the Commission recommends that the person elected to the Office of Mayor in 2022 serve a two-year term with the opportunity to run for two additional, successive four-year terms. This Office has advised that any ballot measure to move the mayoral election and alter the term of the person elected in 2022 should be submitted to the voters at the June 7, 2022 primary election, so voters have an opportunity to vote on this proposal at the same time they will first be voting for who should be the next Mayor.

3.3. Native Land Acknowledgement.

Finally, the Commission recommends that a Native Land Acknowledgement be included as a preamble to the Charter. There is no prohibition against including such an acknowledgement in the Charter and the language proposed by the Commission does not confer any substantive legal right to any Native American tribe or create a binding obligation to any tribe.

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However, if a land acknowledgement is included in the Charter, a ballot measure will be needed anytime there is ever a need to change or add to it. The Council may wish to further study the language recommended by the Commission, particularly the statement that “the Muwekma Ohlone Tribe of the San Francisco Bay Area is the **legal successor** of all of the surviving Native American lineages, including the Thámien Ohlone-speaking tribes, who comprised the historic sovereign and previously federally recognized Verona Band of Alameda County.” (**emphasis added**). While this tribe may be the successor to the tribes identified in the acknowledgement, we are not aware of a legal determination to this effect.

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