



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Potential Ballot Measure for
November 3, 2020 Election to
Amend Charter Provisions
Related to the Planning
Commission and Redistricting

DATE: July 30, 2020

REASON FOR SUPPLEMENTAL

This Supplemental Memorandum explains the ballot measures Council directed the City Attorney's Office to bring forward for Council consideration on August 4, 2020 for submission to the voters on November 3, 2020.

This supplemental memorandum is in conjunction with the memorandum submitted by City staff discussing the proposed ballot measure to expand the Independent Police Auditor's authority.

BACKGROUND

At the Special Meeting on July 28, 2020, the Council directed the City Attorney's Office to bring forward a proposed ballot measure for consideration at the August 4, 2020 meeting that would amend the Charter to change the size and composition of the Planning Commission, consistent with Council direction on June 2, 2020, and permit the Council, by ordinance, to adjust the deadlines to conduct redistricting if the results of the 2020 Census are delayed.

This proposed measure will be discussed in conjunction with the proposed ballot measure to amend the Charter to expand the Independent Police Auditor's review authority.

ANALYSIS

A. Planning Commission

The proposed measure would amend Charter Section 1000 to increase the size of the Planning Commission from 7 to 11 members, with Commissioners appointed by the Council from each Council District and one "at-large" member. Under the proposed

July 30, 2020

**Subject: Potential Ballot Measure for November 3, 2020 Election to Amend Charter Provisions
Related to the Planning Commission and Redistricting**

Page 2

measure, the eighth and ninth member would be appointed for a term ending June 30, 2022 and the tenth and eleventh member would be appointed for a term ending June 30, 2024.

B. Redistricting

As for Redistricting, the proposed measure would maintain the October 31 deadline in the Charter to enact a redistricting ordinance but amend the Charter to permit the Council to adopt a different deadline by ordinance if the results of the Census were not delivered by April 1 in the year following the decennial census. Not only would this permit the Council to adjust the timeline to redistrict because of delays in the 2020 Census, but future Councils could do the same if Census results were ever delayed again.

In addition, the proposed measure would maintain the February 1 deadline to appoint the Advisory Commission but amend the Charter to allow the Council to establish the deadline for the Advisory Commission to submit its report and recommendations, instead of the current deadline of 120 days after appointment. However, if the Council failed to establish its own deadline for whatever reason, the Advisory Commission would then still be required to submit its recommendations within 120 days of appointment

This would allow the Council to adjust the deadline for the Advisory Commission to submit its report if the 2020 Census results are delayed, and also add greater flexibility in later census years as the Council would be allowed to establish its own deadline and give the Advisory Commission more time to prepare its report. Both the 2001 and 2011 Advisory Commission recommended that the Council consider a Charter amendment to adjust the 120-day deadline currently in the Charter because each Commission found the period to be too short.

Finally, the proposed measure does not change the requirement currently in the Charter that the redistricting ordinance must be effective by the beginning of the nomination period for the redistricted Council boundaries to apply to the election following the census. This requirement is important to maintain as potential candidates for Council office require certainty as to what District they are eligible to run for. Presently the nomination period for the March 8, 2022 election is November 15, 2021. However, SB 970 proposes to move the 2022 primary election, and indeed all mid-term primary elections, back to June. If SB 970 passes, the nomination period for the 2022 primary will begin February 14, 2022.

July 30, 2020

Subject: Potential Ballot Measure for November 3, 2020 Election to Amend Charter Provisions Related to the Planning Commission and Redistricting

Page 3

C. Consolidation with the IPA ballot Measure

The Council also requested at the July 28 Special Meeting that the City Attorney's Office present options to consolidate the proposed measure related to the Planning Commission and redistricting with the proposed measure to expand the Independent Police Auditor's authority. Both measures propose to amend the City Charter and could be consolidated into one measure if the Council so chooses.

To that end, the City Attorney's Office has drafted two ballot questions, one if the Planning Commission/Redistricting measure is submitted separately and one if combined with the IPA measure, for Council to consider as follows:

[Separate from IPA measure]: Shall the San José City Charter be amended to change the size and composition of the Planning Commission from 7 to 11 members with Council appointing one member from each Council District and one "at-large" member, and to allow the Council by ordinance to establish timelines to conduct redistricting when Census results are late?

[Consolidated with IPA]: Shall the City Charter be amended to: expand the Independent Police Auditor's oversight, including unredacted review of officer-involved shootings and use of force incidents causing death or great bodily injury, review of department-initiated investigations against officers, and other technical amendments; increase the Planning Commission to 11 members with Council appointing one member from each Council District and one "at-large" member; and allow the Council to establish timelines for redistricting when Census results are late?

CONCLUSION

The deadline to submit measures to the Santa Clara County Registrar of Voters for consolidation with the statewide general election on November 3, 2020 is Friday, August 7, 2020. The Council meeting on August 4, 2020 is the last regularly scheduled Council meeting to discuss these measures and submit them to the voters.

HONORABLE MAYOR AND CITY COUNCIL

July 30, 2020

**Subject: Potential Ballot Measure for November 3, 2020 Election to Amend Charter Provisions
Related to the Planning Commission and Redistricting**

Page 4

The City Attorney's Office requests the Council provide direction on how the proposed measure should proceed (e.g. separate or consolidated). In addition, the Council will need to decide which member, or members, of the Council will be authorized to submit a ballot argument on behalf of the Council for the measure, whether to permit rebuttal arguments, and whether to print the text of the proposed measures in the Sample Ballot.

RICHARD DOYLE
City Attorney

By: /s/ Mark J. Vanni
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Deputy City Attorney

For questions please contact Mark Vanni, Deputy City Attorney, at (408) 535-1997.

cc: David Sykes