RECEIVE PROPOSED CHARTER AMENDMENT LANGUAGE AND HOLD PUBLIC HEARINGS TO SOLICIT COMMUNITY FEEDBACK

RECOMMENDATION

The Council Charter Review Ad-Hoc Committee recommends that the City Council receive the proposed Charter amendment language for Articles IV, X, XII, XVI and XXIV and hold a Public Hearing on June 10, 2014 to solicit community feedback related to these recommendations.

Summary

In June 2013, the City Council established the Council Charter Review Ad-Hoc Committee (Ad-Hoc Committee) and the Charter Review Advisory Commission (CRAC) for the purpose of undertaking a review and considering amendments to the City Charter. The Council provided a specific scope of work, deliverables and schedule to the CRAC for carrying out their work. The purpose of the work plan was to move forward with the highest priority Charter amendments in as timely and efficient a manner as possible given the resources and time constraints of City staff. Over the past eight months, the CRAC has been working through the first of three phases of the Council approved work plan. The review of this first block of recommendations is now complete. The recommendations from both staff and the CRAC for amended Charter language have gone before the Ad-Hoc Committee and are now before the full Council for consideration.

The staff report that follows summarizes for each topic the following:

1. Issue identified in the Council approved work plan;
2. Original staff recommendation to the CRAC;
3. CRAC recommendation to the Ad-Hoc Committee;
4. Ad-Hoc Committee recommendation to the full Council.

More detailed background for each of the recommendations is included in a series of attachments to this staff report.

The first of two required public hearings was held during your April 15, 2014 Council Meeting. Following the second public hearing on June 10, 2014, to meet Election Code requirements, Council is required to approve any recommended charter amendment language in a subsequent agenda item on July 1 in order to meet the deadline for its inclusion on the July 22 agenda of the County Board of Supervisors for consolidation and placement on the November 2014 ballot.
DISCUSSION

Background

Over the years there have been identified various provisions in the City Charter that bear consideration for potential amendment. These provisions include outdated language, ambiguities, and conflicts with external laws or mandates that do not align with current best practices.

Council action is necessary to place before the voters potential amendments to the City Charter. As such, the Council designed a process for Charter review that would allow the Council to be well informed prior to approving proposed Charter amendments. The process that was adopted was intended to foster a robust, organized, and deliberate public conversation that would reflect the Council’s priorities and the views of the City’s diverse constituencies without giving undue weight to the pursuit of “special interests” or specific agendas.

On June 11, 2013, the City Council established by resolution the Council Charter Review Ad-Hoc Committee (Ad-Hoc Committee) and the Charter Review Advisory Commission (CRAC) for the purpose of advising the Council regarding amendments to the City Charter. The June 11 resolution of the Council outlined the role of the Ad-Hoc Committee and defined the scope of work for the CRAC. In particular, the Council identified specific sections of the City Charter, organized into three phases or blocks, for review based on strategic prioritization of Charter language that has proved to be ambiguous or problematic. The scope of work was organized into these sections with the intent to move forward priority issues in a timely manner in order to coincide with the placement of those amendments with upcoming ballots.

Members of the CRAC were appointed in July and the Commission began meeting in August. Over the past eight months, staff has developed recommendations for each of the topics in the first block of the Council approved work plan. A small number of items from the second block have also been prepared. Each of these recommendations has been forwarded to the CRAC and the CRAC has deliberated on these topics and developed recommendations related to each item. During their November 12, 2013, November 20, 2013 and March 26, 2014 meetings the Ad-Hoc Committee reviewed the recommendations of staff and the CRAC and adopted recommendations for each Charter amendment to be forwarded to the full Council for consideration.

Present Situation

With the completion of the review by the CRAC and Ad-Hoc Committees for all items in the first block of the Council approved work plan, the Ad-Hoc Committee presents the following recommendations to the full Council. These same recommendations were forwarded to the Council at your April 15, 2014 meeting. In addition to providing the same information as was provided at your April 15, 2014 meeting, this staff report also addresses four other issues, two of which were discussed at the April 15 Council meeting and two which were raised subsequent to that first public hearing: 1) Revised recommendation from staff related to Article XVI - Fire Department; 2) Clarification on when charter amendments may be placed on the ballot; 3) Recommendations from the CRAC related to grouping charter amendments on the ballot and 4) Delay in scheduling the second public hearing.
1. Article VXI - Fire Department

During the presentation of this agenda topic at your April 15 meeting, staff pointed out that Fire Management and leadership from Fire Local 456 had proposed that they meet together to craft revised charter language that was amenable to both parties. In recent weeks, these discussions have taken place and resulted in a joint recommendation. The recommendation is consistent with the original staff recommendation to eliminate Section 1605 of Article XXVI. It is recommended that language governing the selection of Chief Officers in the Fire Department instead be reflected in the Municipal Code. Additional details are provided in the section below that speaks to this potential charter amendment.

This agreement has been recently reached and was not able to be presented to either the CRAC or the Ad-Hoc Committee prior to this Public Hearing. For this reason, this recommendation is coming directly before the City Council. However, this proposed language was shared with the CRAC electronically as soon as it was available in order to provide the members an opportunity to review the language and make comment at the public hearing if they so desired.

2. Placement of Charter Amendments on the Ballot

The original charter review work plan approved by the Council in June 2013 organized the review process into three distinct blocks because it anticipated the possibility of moving forward first with priority amendments and placing other amendments on future ballots.

However, recent legislation requires generally that City Council initiated charter amendments only be placed on the ballot at an established statewide general election. These changes to State law have resulted in some confusion; because the change in State law occurred after this charter amendment process had begun and has now required alteration of the anticipated timing for submission of the measures to the voters from what was originally expected. This requirement that charter amendments be placed on the ballot at an established statewide general election has been researched and confirmed as accurate by staff in the City Attorney’s Office.

3. CRAC Recommendations for Grouping Charter Amendments

During their April 30, 2014 meeting, the CRAC approved a recommendation to group potential charter amendments into three distinct ballot measures. The CRAC recommends that the proposed amendments in Articles XII and XX related to the purchasing authority of the City Manager be placed on the ballot as a distinct measure. In addition, the CRAC recommends placing as a distinct ballot measure changes to Article XVI related to appointing employees in the Fire Department. The CRAC recommends that the other remaining charter amendments be placed on the ballot as a group.

Staff is not in concurrence with the CRAC related to these recommendations. Staff recommends forwarding all of the proposed charter amendments as a single ballot measure. Addressing all of the amendments together allows the public to consider charter reform comprehensively and fosters a robust and balanced debate for all of the considered amendments. In addition, placing multiple measures on the ballot is cost prohibitive. Each potential ballot measure is estimated to cost $75,000, resulting in a dramatic increase in costs for multiple measures. Any potential grouping of proposed amendments on the ballot can be determined at the July 1 action required of Council to authorize placement of measures on the ballot.
As in the case of the charter amendment recommendations related to the Fire Department, there was not time to present these recommendations of the CRAC to the Ad-Hoc Committee prior to this June 10 Public Hearing. As such, this recommendation is also coming directly before the City Council.

4. Delay in scheduling the second public hearing

As noted during discussion at the April 15 Public Hearing, there is a very lengthy and constricted timeline required by State law for the public process leading up to placing charter amendments on the ballot. City staff prepared a calendar for completing this public process April through July. The schedule had very little margin for error, including public hearings in April and May with final action by Council on June 24 and action by the County Board of Supervisors on July 22. Unfortunately, due to an error on the part of staff, public notice was not appropriately posted in a timely manner for the intended May 20 public hearing. For this reason, the public hearing had to be scheduled for this June 10 meeting. This delay in the public process has created significant challenges for meeting the timeline requirements in State law. However, staff has prepared an alternative schedule that is only possible by holding a Special City Council meeting on the evening of Tuesday, July 1. As soon as the public noticing error was realized, staff immediately noticed the next available public hearing (June 10). The earliest date that a final action can be taken by Council is July 1. In addition, the delay has required that staff seek assistance from the County to make special accommodation in order to include the Council’s action on July 1 in the agenda preparation cycle for the Board of Supervisors meeting of July 22. While it will be challenging to complete the process in this timeline, this is the best alternative that staff can propose for moving forward. The revised schedule is as follows:

March 25 Hard copy notice of 1st Public Hearing
April 1 First notice of 1st Public Hearing
April 8 Second notice of 1st Public Hearing
April 15 1st Public Hearing
May 13 Hard copy notice of 2nd Public Hearing
May 27 First notice of 2nd Public Hearing
June 3 Second notice of 2nd Public Hearing
June 10 2nd Public Hearing
July 1 Council approval
July 22 Board of Supervisors approval

Given this delay, it is worth noting that members of the CRAC expressed interest in potentially including additional items on the ballot if additional time could be made available in the required public process. While the delay mentioned above has required additional time before holding the second public hearing, it does not actually create additional time for addressing new charter amendment proposals. Items intended for inclusion on the ballot are required to be presented through the full public process. This means that new items that were not presented at the initial April 15 public hearing would have to be presented for two public hearings prior to July 1. In addition, as noted in the revised timeline above, there are multiple noticing requirements with staggered timelines. Unfortunately, it is not feasible to hold two additional public hearings for new charter
amendment proposals prior to July 1.

Proposed Charter Amendments

In an effort to summarize the proposed charter amendments, Attachment A provides a comparison of the existing Charter to the recommendations that have been made through the Charter review process. In addition, included below is a brief outline of the main points related to each recommendation. As noted above, more detailed background for each of the recommendations is included in a series of attachments to this staff report.

Introduction to the Charter (Attachment B)

Issue Recognized in Council Adopted Work Plan:
Consider updating language to remove outdated references.

Staff Recommendation:
There was no staff recommendation for revising the Charter introduction.

CRAC Recommendation:
The CRAC developed a series of recommended revisions to the Charter introduction. In summary, the recommended changes reflect a small number of additions to note important historical information, updates to remove outdated references and reflect more recent history related to the Charter and other minor changes to clarify and improve the content of the introduction.

Ad-Hoc Recommendation:
The Committee approved forwarding to the full Council the amendments as presented by the CRAC.

Article IV The City Council, Section 410 Compensation (Attachment C)

Issue Recognized in Council Adopted Work Plan:
Address recommendations from the Council Salary Setting Committee on Mayor's compensation.

Staff Recommendation:
Staff recommended that the Charter be revised to reflect the recommendations of the 2013 Salary Setting Commission for the Mayor and Council. This recommendation was to remove the requirement that the Mayor's salary not be less than the Chair of the County Board of Supervisors. By removing this requirement, it would allow the Commission as representatives of the community to determine the salary of the Mayor without being limited by a factor that is not directly connected to the scope and demands of the Office of Mayor.

CRAC Recommendation:
The CRAC agreed with the recommendation of staff and included one additional amendment. The CRAC recommended that an additional clause be added to a subsequent paragraph in Section 410 that would give the Council the authority to reduce the salaries of the Mayor and Council at any time by a two-thirds vote.

Ad-Hoc Recommendation:
The Ad-Hoc Committee approved the recommendations as adopted by the CRAC.
Article X Officers and Employees, Section 1000 Restrictions (Attachment D)

Issue Recognized in Council Adopted Work Plan:
Remove ambiguities and align this provision with current State law.

Staff Recommendation:
Staff developed a more organized, clear and succinct description of the principles originally outlined in Article X. The section was organized into four distinct ideas, ambiguous language was clarified and provisions were removed that were pre-empted by State law.

CRAC Recommendation:
The CRAC approved this Section as recommended by staff. The CRAC did note one clerical error in which a redundant “shall be” phrase was removed. With this correction, the proposed language was approved as recommended.

Ad-Hoc Recommendation:
The Ad-Hoc Committee approved the recommendations as adopted by the CRAC.

Article X Officers and Employees, Section 1001 Vacation and Military Leave (Attachment E)

Issue Recognized in Council Adopted Work Plan:
Section represents a topic not normally contained within a Charter; align section with current external laws if it remains in the Charter.

Staff Recommendation:
Staff recommended removal of references to military leave in the City Charter. Military leave is addressed through state and federal law. It is unnecessary and overly prescriptive to include provisions in the City Charter. Any changes in state and federal law would supersede the City Charter and require additional Charter amendments.

Staff recommended additional language to clarify the agreements and policies which govern the employee vacation benefit. The additional language references that the vacation benefit will be provided in accordance with the applicable memorandum of understanding, compensation plan or employment contract for employees.

CRAC Recommendation:
The CRAC recommended revisions that improved upon the language recommended by staff. The CRAC recommended a revision to the Charter which reflects that the vacation benefit of employees will be provided subject to the approval of the executive head of their respective department.

Ad-Hoc Recommendation:
The Ad-Hoc Committee further improved upon the recommendations of both staff and the CRAC by removing language from the Charter that references the vacation benefit as being available to employees after one year of service. This Charter language is inconsistent with current employment agreements and overly prescriptive. Employees begin accruing vacation days immediately upon
employment. In addition, the CRAC discussed language that would incorporate the intent of both of the recommendations from staff and the CRAC related to clarifications of the governing authority for the vacation benefit. Following this discussion, the Ad-Hoc chair read into the record a revised recommendation for this charter section.

The staff report and Attachment A for the April 15 Public Hearing did not accurately reflect the nuances for each of the recommendations referenced above. As a result, during the presentation for this item on April 15, staff clarified these points and read into the record the correct recommendation from the Ad-Hoc Committee. This staff report reflects an accurate representation of the series of recommendations and Attachment A reflects the correct recommendation made by the Ad-Hoc Committee.

Article X Officers and Employees, Section 1002 Qualifications Prescribed by Ordinance (Attachment F)

Issue Recognized in Council Adopted Work Plan:
Align section with current external laws and remove references to potentially discriminatory employment criteria.

Staff Recommendation:
Staff recommended the removal of two words from the Article which suggest that an individual's height and weight could be viewed as qualifications and conditions of employment. This is contrary to state and federal laws.

CRAC Recommendation:
The CRAC approved these revisions as recommended by staff.

Ad-Hoc Recommendation:
The Ad-Hoc Committee approved these revisions as recommended by staff.

Article XII City Manager, Section 1201 Chief Administrative Officer & Article XX Public Contracts and Supplies (Attachment G)

Issue Recognized in Council Adopted Work Plan:
Revise to put in place current best practices, provide for desired flexibility, increase operational efficiency and ensure proper accountability in the City's purchasing process. Evaluate administrative spending limit in order to address potential improvements to operational efficiency.

Staff Recommendation:
Staff recommended that the Charter language focus on high-level policy and governance while referring to the Municipal Code for additional details. Staff recommended that the spending authority of the City Manager be removed from the City Charter, and as noted above, establish by Municipal Code the spending authority of the City Manager at $75,000 and establish guidelines in the Municipal Code for evaluating and adjusting this authority over time. In addition, staff recommended that language be removed from the Charter which requires Council approval to issue a Request for Proposals. Council would retain the authority to authorize final contracts. The recommendation is to
eliminate the inefficiency and time lost by a redundant Council approval to simply request proposals from vendors.

**CRAC Recommendation:**
The CRAC amended the staff recommendation. The CRAC agreed with the recommendation to increase the City Manager’s spending authority to $75,000, but recommended that the spending authority remain as a specific clause within the City Charter. The CRAC also recommended that the Charter call for specific reporting requirements by the City Manager to the City Council for all contracts that are less than $75,000. In addition, the CRAC agreed with the staff recommendation to remove language from the Charter which requires Council approval to issue a Request for Proposals.

**Ad-Hoc Recommendation:**
The Ad-Hoc Committee deliberated on the differences between the staff and CRAC recommendations. Following this discussion, the Ad-Hoc Committee approved a motion to forward to the full Council the revised Charter language that was recommended by staff.

**Article XVI Fire Department, Section 1605 Assignment of Chief Officers (Attachment H)**

**Issue Recognized in Council Adopted Work Plan:**
Consider revision to expand discretion of Fire Chief in assigning personnel to various supervisory roles, including the positions of Fire Marshall and Director of Training.

**Staff Recommendation:**
Staff recommended eliminating this section of the Charter. The existing Charter language is overly prescriptive and limits the ability of the City to recruit the best trained individuals to fill the management and supervisory positions that require the technical and critical evaluation needs for these highly specialized positions.

**CRAC Recommendation:**
The CRAC recommended that this section of the Charter be retained. The CRAC recommended revisions to the Charter language that would encourage a competitive selection process for the positions of Fire Marshall and Director of Training. The CRAC also recommended that the Charter specify that these positions be filled by qualified sworn fire personnel. The CRAC further recommended language that specifies that these positions would have the authority to carry out all the duties of their title regardless of rank under the direction of the Fire Chief.

**Ad-Hoc Recommendation:**
The Ad-Hoc Committee dedicated a significant amount of time to the deliberation of the distinct recommendations from staff and the CRAC. Following this discussion, the Ad-Hoc Committee determined that the staff recommendation should be forwarded to the full Council. In addition, the Ad-Hoc Committee provided an opportunity for the CRAC to revise their recommended language and approved that this revised recommendation be provided to the full Council alongside the recommendation of staff. The intent of this recommendation is to allow the full Council the opportunity to discuss the merits of both recommendations before taking final Council action. This revision of the CRAC recommendation did take place and is included in Attachment H. However, it is worth noting that staff has assessed this revised recommendation and would point out that there is some ambiguity. The CRAC recommendation that the Charter specify that these positions be filled
by qualified sworn fire personnel is somewhat unclear and continues to place limits on the pool of candidates from which the Chief may choose. It is positive that the statement encourages a competitive selection process. However, if the intent of this language is to allow the Fire Chief to appoint positions from among existing sworn fire personnel, it does not create a more open pool of candidates. If, however, the statement would allow the Fire Chief to make a selection from a broader pool of qualified individuals that would then report to the Chief, this would be consistent with the staff recommendation, and it would create the desired flexibility in appointing the most qualified and experienced candidates as possible for the City.

Revised Staff Recommendation:
As noted above, following the April 15 meeting of the City Council, the Fire Chief and representatives of Local 456 met together to discuss this potential charter amendment. The joint recommendation is that language governing the selection of Chief Officers in the Fire Department be removed from the Charter and instead be reflected in the Municipal Code. This is consistent with the overall principle that overly prescriptive language should not be included in the City Charter. The conceptual Municipal Code language that has been discussed would outline that the Fire Chief has the ability to appoint from a broader candidate pool a command-management team of no less than 9 sworn Chief Officers to meet the Fire Department Mission. These proposed changes to the Municipal Code are reflected in Attachment J to this staff report. These changes provide the flexibility to the Fire Chief to assign existing employees and select new hires from a competitive process to ensure that the most qualified individuals are placed in management and supervisory positions that require the technical and critical evaluation needs for these highly specialized positions. In addition, it provides assurance that the City will place a sufficient number of sworn Chief Officers in key leadership roles in the Fire Department (Attachment J).

Article XXIV City Planning Commission, Section 2400 Appointment of Members (Attachment I)

Issue Recognized in Council Adopted Work Plan:
Consider aligning term of office to coincide with term of office of appointing Council Member.

Staff Recommendation:
Staff recommended that the Charter be revised to make the term of office of Planning Commission Members concurrent with the term of office of the appointing Council Member.

CRAC Recommendation:
The CRAC recommended that no change be made to this section of the Charter. The CRAC cited two important factors for allowing Planning Commission members to fulfill their terms of office: 1) continuity and retention of institutional knowledge and 2) maintaining objectivity independent of the appointment made by a Council Member.

Ad-Hoc Recommendation:
The Ad-Hoc Committee agreed with the recommendation of the CRAC to leave this section of the Charter unchanged.

Ballot Measure Process

The timeline that was initially envisioned when this process began was for Council to take up in early
2014 those recommendations that could potentially be ready for approval and placement on the November 2014 ballot. The process for placing measures on the ballot requires significant time and resources. Government Code SEC 34458(b) requires that two Public Hearings be held to consider any proposed amendments to Charter Language. These hearings have more lengthy noticing requirements than standard hearings and there is a required time break between the hearings. Following the Public Hearings, a subsequent Council agenda item is required to adopt a Resolution approving the recommended Charter amendments and authorizing staff to place the amendments on the ballot. And finally, an agenda item must go before the County Board Supervisors to place a measure on the ballot. Election Code 9255(b) requires that ballot measures for Charter amendments must be submitted at least 88 days prior to the election in which they will be considered.

By holding public hearings on April 15 and May 20, there is just enough time to meet the noticing and procedural requirements to forward a ballot measure to the County Board of Supervisors before the August deadline for inclusion on the November ballot. If additional time is necessary for process or further consideration, it could delay the ballot on which potential measures are placed. Furthermore, it is anticipated that the review by the CRAC of remaining topics will continue for some time. Because these future recommendations will not be completed in time to be included on the November 2014 ballot, consideration can be given to forwarding all ballot measures at one time at a future election date. As noted above, ballot measures amending the City Charter can only be placed on the ballot during a general election. The next general election following November 2014 is the November 2016 election.

Future Charter Amendments

As noted above, the CRAC will continue to review items in the second and third phases of the Council approved work plan. Staff will continue to develop recommendations related to the topics identified in these blocks and forward them to the CRAC. In addition, on February 25, 2014 the Council adopted a motion to allow the CRAC to consider Charter topics and sections not included in the original Council approved work plan. The CRAC may develop other recommendations to bring forward to the Ad-Hoc Committee. Recommendations to amend Charter language based on the Council approved work plan or from other Charter sections explored by the CRAC will be prepared for future Council consideration and potential inclusion on a future ballot as they are finalized.

FINANCIAL SUMMARY

While the cost for including ballot measures in general elections is far less than the recent special election, the financial investment is significant. The estimated cost is $75,000 for each ballot measure included. Staff will budget $75,000 for fiscal year 2014-15 in the Elections account in the Non-Departmental budget 010-0131-510. If the City Council determines that the Charter amendments should be packaged in more than one ballot measure, this will increase the estimated cost accordingly. For instance, if Council adopts the recommendation of the CRAC to place three distinct measures on the ballot, the cost is estimated to be $225,000. Likewise, if competing amendments are placed on the ballot in an effort to offer the public distinct options in amending the Charter, the cost of the ballot measure will also increase significantly.

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Attachment B - Introduction to the Charter
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