PUBLIC HEARING REGARDING PROPOSED CHARTER AMENDMENTS TO BE PLACED ON THE 2016 GENERAL ELECTION BALLOT

RECOMMENDATION

It is recommended that the Council hold the first of potentially three public hearings to consider Charter amendments proposed by the Charter Review Ad-Hoc Committee, and adopt a motion to provide direction to the City Manager, City Attorney, and City Clerk regarding the proposals to be developed into ballot measures for the 2016 General Election, whether any revisions to the operative language of the proposals should be made, and whether the Charter amendment proposals should be consolidated into one measure or multiple measures.

Summary

To adhere with Election Code requirements, the City is holding a public hearing to discuss and hear public comments on Charter amendments approved by the Charter Review Ad-hoc Committee to be forwarded to the full Council for deliberation. The Charter amendment proposals are included as Attachments.

DISCUSSION

Background

The Charter Review Advisory Commission (Advisory Commission) is comprised of community members appointed by Council to serve in an advisory role to the Charter Review Ad-hoc Committee. The Advisory Commission is tasked with the development of recommendations to update the City's Charter. The Advisory Commission held its first meeting on June 26, 2013, to review, discuss, and propose amendments to the Charter. The proposals were presented to the Charter Review Ad-hoc Committee for review. The Charter Review Ad-hoc Committee is comprised of three council members. On December 7, 2015, the Charter Review Ad-hoc Committee reviewed and approved the final recommendations to the charter amendment language. Based on the Committee’s recommendation and Council's direction provided on January 26, 2016, staff developed redlined versions of the proposed Charter sections that highlight the proposed changes.

Present Situation

The following sections have proposed amendments:

**Article II, VI (Section 601 and 606), VII and XI - Council Districts**

Proposed by Staff, modified by Advisory Commission, approved by Charter Ad-hoc Committee

Attachment A - Current Charter Language
Creating Additional Council Districts

The Advisory Commission proposed changes to increase the number of Council districts from six to eight. Increasing the number of districts requires multiple sections in the Charter be updated. Additionally, it would be necessary to coordinate the transition of existing Council Members from six districts to eight districts. As this would be a one-time transition it would be more appropriate to define that process in an ordinance rather than the Charter. A draft ordinance to implement the increase in the number of districts is included as Attachment C as an example of what would be presented to Council for approval, if the measure to amend the Charter is approved by the voters.

The City Council Election Process

The City Charter, in Article VI and Article VII, sets out a process for the election of members of the City Council. The process can best be described as a “combined” system. A combined system blends elements of both a “by district” and an “at large” selection process.

In a typical “by district” process, candidates are nominated from each district and in turn are elected solely by the voters in that district. In an “at large” system, candidates are nominated from anywhere within the city and elected by the voters of the entire city.

In the City’s combined system each candidate is nominated from the district from where he or she resides, but is elected at large. The City’s current election process came in to being following the passage of Measure C in 1986. Measure C (among other changes) reduced the number of districts from nine to six, put in place the current combined system for the election of City Council members, and provided for the election of the Mayor at large.

Measure C was challenged under the Voting Rights Act of 1965 (the “Federal Act”) in the case of Badillo v. City of Stockton, 956 F.2d 884 (1992). While the court acknowledged that Measure C contained several “devices” that have the potential to cause dilution of minority voting strength, the plaintiffs had nonetheless failed to meet their burden because they had failed to provide sufficient evidence that there existed a cohesive minority voting block in Stockton that was not able to elect candidates of their choice due to racially polarized voting.

The California Voting Rights Act

The California Voting Rights Act (“CVRA”) was signed into law in 2002. The CVRA made it far easier for opponents to challenge local jurisdictions that have an “at large” electoral system, since the challengers need not establish all of the elements of liability required under the Federal Act. An “at large” system is one that does not provide for election of members strictly by district.

As discussed above, the Charter has an at-large component that may render it vulnerable to challenge under the CVRA. While there is obviously more to a voting rights challenge than just the at-large component, its presence allows an opponent to take advantage of the much lower hurdles presented by a challenge under the CVRA.
The Redistricting Process

Pursuant to Article II, section 200 of the Charter the City Clerk is responsible for redrawing the City Council districts following each decennial census. The current process limits the Clerk’s redistricting options as the districts are to be arranged from north to south with each containing one-sixth of the City’s population. As the arrangement and approximate shape of each district is tightly controlled, there is little allowance for consideration of other factors. Furthermore, the current language of section 200 does not provide direction to comply with state and federal law that would protect against the dilution of minority voting strength. Absent redefining the redistricting process defined in section 200, the City Clerk may not be able to comply with state or federal laws, and the City is susceptible to further legal challenge.

Proposed Changes

The proposed Charter amendments would increase the number of Council districts from six to eight following the 2020 Census, establish an Advisory Commission to develop redistricting recommendations to the City Council, and establish Redistricting Standards that comply with state and federal law to guide the Commission. Additionally, the proposed Charter amendments call for the adoption of an ordinance to define the process to transition from six to eight districts. The recommendation to implement the redistricting process through the adoption of an ordinance provides ease and flexibility in addressing possible scenarios that may arise due to redistricting and the transition of current districts to the new districts given the overlapping of election terms. An example of this is if current Councilmember “A” is placed into a different Council district through the redistricting process and wants to run for their newly assigned Council district and ends up winning the new seat. A legal opinion would need to be rendered to determine if Council member “A” would be termed out after the term in the new Council district expires or if they are eligible to serve two complete terms in the new council district. This among other scenarios will be addressed in the ordinance.

Article IV Section 409 - The City Council Statement of Policy

Proposed by Staff, approved by Advisory Commission and Charter Ad-hoc Committee

Attachment D - Current Charter Language
Attachment E - Proposed Charter Language

The recommendation is to delete Section 409 in its entirety from the Charter. This section requires Council to adopt a written Statement of Policy for each City department. The policy must include broad goals, objectives and aspirations to be accomplished by that department. This section provides direction for the Council to review, and if necessary revise, the Statement of Policy if a department head position becomes vacant. This requirement to review and revise the Statement of Policy is redundant as the Council reviews the goals and objectives for each department during the annual budget process. Further, Section 409 requires the Council to submit questions for department head candidates regarding the Statement of Policy and the City Manager shall provide the candidates responses to the Council prior to making an appointment. Section 409 only directs Council to submit questions regarding the Statement of Policy and review candidate responses. However, it could be misinterpreted to imply that the Council is involved in hiring department heads even though this section provides no such authority and such authority would be inconsistent with other Charter sections.
This section is inconsistent with Section 408, which states that “neither the Council nor any of its members nor the Mayor shall interfere with the execution by the City Manager of his or her powers and duties, nor in any manner dictate the appointment or removal of any City officers or employees whom the City Manager is empowered to appoint.” It is also in direct conflict with Section 1202 which states that “the City Manager shall appoint all officers and employees of the City.”

**Article IV Section 410 - Compensation**  
*Approved by Advisory Commission and Charter Ad-hoc Committee*

**Attachment F - Current Charter Language**  
**Attachment G - Proposed Charter Language**

The proposed changes to section 410 seek to prevent a mid-term salary reduction for a Mayor by aligning the activities of the Commission more closely with the election cycle. If approved, the salary for the Mayor would be set by term, while Council salaries would be set biennially. The proposed language would limit any change to the Mayor’s salary to be implemented at the beginning of each term.

There is also provision made for the transition to the new process. The amendment would have the Commission meet in 2017 to set the salary for the Mayor for the remainder of the then-current term, which ends December 31, 2020. The Commission would also in 2017 set the salaries for the Council through December 31, 2022. Following these initial transition periods the Commission would meet biennially to consider salary changes.

The proposed amendment also mandates that the salary of the Mayor exceed that of the Council, but does not otherwise place a floor or ceiling on either salary.

**Article V Section 510 - City Council Actions: Lease or Sale of Real Property**  
*Proposed by Staff, approved by Advisory Commission and Charter Ad-hoc Committee*

**Attachment H - Current Charter Language**  
**Attachment I - Proposed Charter Language**

Article IV Section 510 provides direction for the lease or sale of the City’s real property. It currently requires that a “general description of the property to be leased” be included in the publication notice of the lease or sale. It is recommended to revise the language to only require the address to be listed in the publication. This will reduce the cost of the advertisements published in the newspaper, but still allow for a description to be included for the public to identify the location.

**Article XI - The Mayor - Section 1102 Power & Duties**  
*Proposed and approved by Charter Ad-hoc Committee*

**Attachment J - Current Charter Language**  
**Attachment K - Proposed Charter Language**

At the August 31, 2015, Charter Review Ad-hoc Committee meeting, the Mayor requested the proposed changes to Article XI, Section 1102. The proposed changes would allow the Mayor or Vice-Mayor to serve as a member of a committee and specifies that the Council shall fund no less than three positions in the Mayor’s office, including a Public Information Officer appointed by the Mayor pursuant to section 1151 of article XI. The proposed changes would require the Council to include funding each year for these positions in the approved budget.
Article XV - City Auditor

Proposed by Advisory Commission, alternate proposal from staff, both versions forwarded by Charter Ad-hoc Committee

Attachment L - Current Charter Language
Attachment M - Advisory Committee Proposed Charter Language
Attachment N - Staff Proposed Charter Language

The Advisory Commission initially discussed changes to Article XV City Auditor at the June 26, 2013 meeting. This section of the Charter is not included in the original scope of work provided to the group by the City Council. On July 22, 2015, staff presented an alternate proposal to the Advisory Commission. Both proposals were subsequently presented to the Ad-hoc Committee on August 31, 2015. The Ad-hoc Committee approved submitting the Advisory Commission’s proposed changes as well as the alternate staff recommendation to Council.

Charter Review Advisory Commission Recommendation

A sub-committee met over several months to discuss and develop Charter amendments. The changes include updates to Section 1500 and 1501, as well as, creation of Sections 1502 and 1503. The Advisory Commission’s proposal includes the following recommendation:

Section 1500

- Requires that the City Auditor be an employee of the City of Stockton
- Specifies an employment term of not less than four years
- Allows appointment of a qualified independent auditor for period not to exceed one (1) year in the event of a vacancy
- Mandates that the Auditor budgets shall be at least 0.15% of the City-wide budget

Section 1501

- Objective of the City Auditor will be to ensure the City produces timely and accurate financial statements and reports
- Completes required financial, compliance and specialized audits
- Provides timely and proper responses to findings
- Maintains effective internal controls
- Operations are economical, effective and efficient, and conducted without fraud, waste or abuse

Section 1502

- City Auditor will advise and report to the City Council
- Submit an annual audit plan to the City Council
- Undertake independent examinations, review, and investigations
Section 1503

- City Auditor will review quarterly and annual financial statements
- City Auditor will receive copies of all communications relating to internal and external audit requests, audit responses, program reviews, and monitoring visits.
- For any proposed contract or agreement that entails a potential new or continuing obligation of $1 million or more, the City Auditor will provide an independent analysis of the possible effects on the current and next year’s general fund and city-wise financial statements

Although similar language currently exists in the Charter, the Advisory Commission reorganized and redefined Sections 1501, 1502, and 1503 regarding objectives, oversight, duties and powers.

Alternate Recommendation

Staff reviewed the proposed changes and identified operational concerns. The main concern with the proposed changes was the reduction of Council discretion. By more narrowly defining the operational choices and mandating certain funding levels, Council has less discretion to ensure appropriate auditing oversight and will have fewer discretionary resources. The Charter should address the essential objectives, oversight, duties and powers of the City Auditor, and allow flexibility to allocate resources in the most efficient manner.

City Auditor as a City Employee

Restricting this role will be detrimental to the management of the City auditing function. Restricting the City Auditor to be a City employee is overly prescriptive and eliminates options available to the City today. Based on a survey of other cities, it was determined that contracting with an independent certified public account to perform the internal auditing function is common. In these cities, internal staff did not perform the auditing function for the City, and this allowed for independent oversight in a more cost effective manner. It is not in the best interest of the City to limit the options for completion of the Auditor duties, and nothing in the current language or alternate recommendation would prohibit the hiring an employee as City Auditor. To date, there is no indication that the City’s current contracted auditor is not meeting performance measures and objectives.

The current charter language requires the auditor to be a Certified Public Accountant or a Certified Internal Auditor and staff recommends continuing this requirement in the charter as recommended by the Advisory Committee.

Minimum Budget for City Auditor

The Advisory Commission recommendation includes a minimum budget for the Auditor. The minimum budget would be equivalent to 0.15% of the City-wide budget total. Compared to the current budget, such a mandatory formula would increase of the Auditor’s budget by approximately $200,000 even though current objectives are being met. The City is currently utilizing the services of Moss Adams LLP to perform the auditing function and the work plan is being completed in a timely and efficient manner. Although the Advisory Commission proposal would automatically increase the Auditor budget, presumably an ongoing redirection from another department, it does not specify additional duties or objectives and therefore there is no measurable return on this additional
Also, because the proposed funding formula is based on the City-Wide Budget inclusive of capital improvement projects, grant monies and one-time funds the Auditor’s budget could fluctuate significantly from year to year. Such fluctuations could limit the ability of the Auditor to effectively use the funds for desired objectives, and unnecessarily restrict the funds from being used for other priorities.

Article XIX Section 1903, 1904, 1905, 1906, 1907, 1908 - Budget and Fiscal Affairs
Proposed by Staff and Advisory Commission, approved by Advisory Commission and Charter Ad-hoc Committee
Attachment O - Current Charter Language
Attachment P - Proposed Charter Language
Attachment Q - Draft Code Changes

Much of Article XIX of the Charter of the City of Stockton was last updated over 20 years ago, when systems and processes were much less capable of tracking and controlling budget and financial information than they are today. While Article XIX contains some sections that are concise and well written (Sections 1900, 1901, 1902, 1910, 1911), other sections are outdated, cumbersome, vague, or overly prescriptive. Additionally, current Charter language includes conflicting timelines that cannot be implemented.

The vast majority of City charters provide policy level statements while the details are typically provided within City Ordinances.

Review of the current Article XIX was conducted with consideration of guidelines from the Government Finance Officers Association (GFOA) and review of charters from many award winning California cities that are similar in size and complexity to Stockton. Following these current best practices, the proposed language of the City Charter includes high level guidelines that address risk, operational structures and responsibilities. In addition, the recommended language is more concise and clear.

Municipal Code amendments will be proposed at a later time to include high level timeframes that allow for adequate analysis and review by the City Council and administration. Draft codes changes were shared with the Advisory Committee, and if the Charter amendments are approved similar code would be brought to Council. Defining operational policies in the Code will allow more flexibility to keep pace with state law changes.

The proposed changes to Article XIX will provide a clear and concise path into the future for budget and fiscal affairs. In addition, proposed Municipal Code amendments will need to be processed once the language is adopted. Checks and balances within the budget development process have been provided within an attainable progression. Specific changes, such as guidelines for establishing reserve policies, will help to prevent mistakes of the past and provide for fiscal solvency into the future. These revisions will remove unattainable expectations, support accountability of the City Manager and administration, provide for better transparency, and establish best practices for budget and fiscal management.

It is the objective of this recommendation to provide Charter language that guides and serves the citizens of Stockton now and for many years into the future.
Ballot Measures

Consistent with prior Charter amendment efforts, staff recommends consolidating all of the proposed changes in one ballot measure for the 2016 General Election. This recommendation is based on the cost to publish each ballot measure, and the goal of being cost effective. Ballot measure costs are determined by the San Joaquin County Board of Elections, and beyond the control of the City other than by determining the number of ballot measures. The County estimates it will cost approximately $60,000 to place each measure on the ballot.

It is important to note, that although the Advisory Commission did not adopt a specific recommendation regarding the number of ballot measures significant discussion was had on this topic. In general, the Advisory Commission discussion noted the complexity and diversity of the proposed changes as justification for separate ballot measures. Neither did the Ad-hoc Committee adopt a specific recommendation regarding the number of ballot measures or package of the proposals.

In recognition of the Advisory Commission discussion, the following is presented as an alternate packaging of the proposed Charter amendments. The following packaging of amendments is organized by topics, and avoids making each distinct policy change in separate measures. Addressing each distinct policy change in a separate measure would lead to multiple measures addressing the same Charter section and could result in chaptering problems that prevent voter approved amendments. Packaging the proposed amendments in five topical measures would increase the cost by $240,000, from $60,000 to $300,000, as compared to preparing a single measure for the 2016 General Election ballot.

Measure 1 - Redistricting and At-large Voting (Article II, VI, VII, XI)

Measure 2 - Mayor Compensation and Powers & Duties (Article IV and XI)

Measure 3 - Language Clean-up (Article IV, Section 409 & Article V, Section 510) Lease or Sale of Real Property and The City Council Statement of Policy

Measure 4 - Budget and Fiscal Affairs (Article XIX)

Measure 5 - City Auditor (Article XV)

Future Timeline

Attachment R outlines the timeline to place a measure on the 2016 General Election ballot. The next Public Hearing is scheduled for the April 26, 2016 Council meeting.

FINANCIAL SUMMARY

It is anticipated that placing a measure on the 2015 General Election ballot will cost approximately $60,000. At the Council’s discretion, these funds will need to be included in the proposed fiscal year 2016-2017 Annual Budget within the General Fund Tax Collection and Election budget (Account Number 010-0131-510). If Council elects to adopt multiple measures, each measure would cost $60,000, and the cost to place five measures on the 2016 General Election ballot is estimated to be
$300,000.

Attachment A - Article II, VI (Section 601 and 606), VII and XI - Current Version
Attachment B - Article II, VI (Section 601 and 606), VII and XI - Redline Version
Attachment C - Proposed Draft Ordinance
Attachment D - Article IV Section 409 - Current Version
Attachment E - Article IV Section 409 - Redline Version
Attachment F - Article IV Section 410 - Current Version
Attachment G - Article IV Section 410 - Redline Version
Attachment H - Article V Section 510 - Current Version
Attachment I - Article V Section 510 - Redline Version
Attachment J - Article XI Section 1102 - Current Version
Attachment K - Article XI Section 1102 - Redline Version
Attachment L - Article XV - Current Version
Attachment M - Article XV - CRAC Redline Version
Attachment N - Article XV - Staff's Redline Version
Attachment O - Article XIX - Current Version
Attachment P - Article XIX - Redline Version
Attachment Q - Draft Budget Ordinance
Attachment R - Ballot Timeline