City of Sacramento
City Council

915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: **1/17/2012** **Report Type:** Staff/Discussion

Title: Proposed Charter Revision Analysis

Report ID: 2012-00042

Location: Citywide

Recommendation: Receive and file.

Contact: Matthew Ruyak, Supervising Deputy City Attorney, (916) 808-5346, City Attorney's Office
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Department: City Clerk / Mayor-Council Office
Division: Elections
Dept ID: 04001021

Attachments:

1-Description/Analysis
2-Background
3-Exhibit Proposal Language

City Attorney Review
Approved as to Form
Matthew Ruyak
1/12/2012 3:16:57 PM

Approvals/Acknowledgements

Department Director or Designee: Eileen Teichert - 1/12/2012 3:14:01 PM (via email)

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Description/Analysis

Issue: On December 13, 2011, Mayor Kevin Johnson requested the City Attorney to prepare a report comparing his proposed Sacramento City Charter changes with charter provisions of other executive ("strong") mayor cities. This report responds to that request.

Policy Considerations: This report concerns the city's charter and city government structure and operations.

Environmental Considerations: N/A

Sustainability: N/A/

Commission/Committee Action: N/A

Rationale for Recommendation: N/A

Financial Considerations: This report requests no action and therefore has no financial impact.

Emerging Small Business Development (ESBD): N/A

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BACKGROUND

At the December 13, 2011, City Council meeting Mayor Johnson requested that the City Attorney present a report to the City Council on January 17, 2012, with a comparison of the current Sacramento City Charter to a then-to-be-delivered draft proposal for Charter change. The Mayor requested:

- A comparison like the one prepared in 2010 (for the "Accountability Plan of 2010").
- A timeline for having a measure on the June 2012 ballot (request directed to the City Clerk).
- Identification of the proposal's potential legal issues.
- Suggestions for corrective language, if the proposal presents legal issues.

A copy of the charter change proposal, entitled "The Sacramento Checks and Balances Act of 2012" (the Act), was delivered to the City Attorney's Office on December 21, 2011.

The attached document, entitled "Proposed 2012 Charter Revision Analysis," is prepared in response to the Mayor's request. As with previous reports presented by this office, this report does not answer the question whether a strong mayor form of governance or the Act is best for Sacramento. It is intended to facilitate discussion about the proposal.

Additionally, reproduced below is a table prepared by the City Clerk's Office. The table is applicable for any measure to be place on the upcoming June ballot.

June 5, 2012 Election
Action Dates for Ballot Measures

Action Description	Date
Recommended deadline for proponents to file initiative petitions with City Clerk.	12/14/11
City Council to approve measure text and question.	02/21/12
City Council to approve Clerk's resolutions calling measures to the ballot and authorizing other administrative matters.	02/28/12
Notice of Measure to be Voted on published in Daily Recorder.	03/02/12
Deadline to file City Attorney's impartial analysis of measures with City Clerk.	03/07/12
Deadline to file primary arguments with City Clerk.	03/07/12
Deadline to file rebuttal arguments with City Clerk.	03/14/12
Last day to register to vote for June election	05/21/12
Election Day	06/05/12

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PROPOSED 2012 CHARTER REVISION ANALYSIS

By: Eileen Teichert, City Attorney
Matthew Ruyak, Supervising Deputy City Attorney

JANUARY 17, 2012

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INTRODUCTION

At the December 13, 2011, City Council meeting Mayor Johnson requested that the City Attorney present a report to the City Council on January 17, 2012, with a comparison of the current Sacramento City Charter to a then-to-be-delivered draft proposal for Charter change. The Mayor requested:

- A comparison like the one prepared in 2010 (for the "Accountability Plan of 2010").
- A timeline for having a measure on the June 2012 ballot (request directed to the City Clerk).
- Identification of the proposal's potential legal issues.
- Suggestions for corrective language, if the proposal presents legal issues.

A copy of the charter revision proposal, entitled "The Sacramento Checks and Balances Act of 2012" (the Act), was delivered to the City Attorney's Office on December 21, 2011. The Act is attached to this report as Appendix A.

This report, entitled "Proposed 2012 Charter Revision Analysis," is prepared in response to the Mayor's request. As with previous reports presented by this office, this report does not answer the question whether a strong mayor form of governance or the Act is best for Sacramento. It is, rather, intended to facilitate discussion about the proposal.

For ease of reading this report, an Executive Summary describes key facts and conclusions.

Chapter One provides an overview of the governance structures used by the selected cities. It also describes, briefly, some differences (and similarities) between California law and the laws of Colorado and Washington, with respect to city organizational structure and governance.

Chapter Two summarizes the Act's proposed Charter changes. Chapter Three compares the provisions of the proposed Act to the charters of the selected cities. The organization of Chapter Three follows the Plan Components outlined in the materials accompanying the Act. Tables are used liberally in this Chapter to graphically explain the similarities and differences. Special notes: if the Act provides that the current charter provisions are to remain the same, no comparison table is provided, and grammatical or minor changes are not reflected in tables.

Chapter Four identifies potential legal issues with the Act. And Chapter Five proposes language changes to the Act.

The reader is advised that this report is a limited and time-constrained response to the request made to the City Attorney's Office. Although this report is similar to the June 2010 report prepared by the office (and indeed uses much of the same information and text from that report), it does not compare or review any other previous strong mayor plan. And it is not

intended to be a complete and final comparison and analysis with full references or citations. It does not, for example, describe the variegated language used in other cities' charters. Additionally, not all of the comparison cities' charters address all of the points within the proposed Act. Just as readers were previously cautioned in the June 2010 report, this report must be read with a knowledge that while this report is sizable, it is not intended to be the definitive or final review of the Act's language or substance. Nor is it intended as a formal legal opinion about the terms, legality, interpretation, or application of the Act.

Finally, readers who seek additional information – e.g., reports on previous charter change proposals, 2009 Sacramento Charter Review Committee materials – are encouraged to research the materials listed in Appendix B.

EXECUTIVE SUMMARY

1. Comparison to Selected Cities

The bulk of this report compares and contrasts the proposed Act with the provisions in the existing Charter of the City of Sacramento and the charters of five California cities, as well as Denver, Colorado and Seattle, Washington. The comparison cities have Mayor-Council (also known as strong mayor) forms of governance. The comparison with these cities' charters is based on the points listed in the Act's supporting documents.

A. ***Similarities With Strong Mayor City Charters***

The structure of government and basic mayoral powers that would be established by the Act are generally similar to those of the strong mayor cities' charters reviewed. Indeed, most of the proposed changes are modeled, either verbatim or in fundamental principal, after the provisions of one or another of the Comparison City charters. Under the proposed Act the structure and establishment of basic mayoral powers include:

1. Mayor's position as the chief executive officer of the City.
2. Mayor's power to prepare and present the budget to the City Council.
3. Mayor's power to appoint the City Manager, subject to City Council concurrence, and sole discretion to remove the City Manager.
4. Creation of a Council President position.
5. Mayoral veto for ordinances.
6. Mayoral veto over budget resolution (including line item veto).

B. Dissimilarities

The proposed plan may be similar to a selected city on one issue, but dissimilar on another. The proposed plan is different than most other cities' charters on the following issues:

1. Scope of the mayor's veto (the mayor would not veto resolutions).
2. Effective date of charter revision after the election (potentially shorter).
3. Lead time on the mayor's proposed budget submission to council (longer).

4. Public vetting of Charter Officers prior to appointment.

5. Explicit requirement that certain documents (e.g., council actions, budget, financial audits) be posted to the City's internet site.

6. No term limits.

7. Delegated authority to council for initiation of process to create an additional council seat.

C. ***Mixed Bag***

The proposed Act has some aspects that appear in some, but not all, of the other cities' charters:

1. Independent citizens' redistricting commission.

2. Requirement that Council adopt a Code of Ethics ordinance.

3. Requirement that Council adopt a "Sunshine Ordinance."

4. Requirement that Council create an ethics committee.

5. Limiting mayoral powers of acting mayor.

6. Voter approval of elected officials' pay raises exceeding five percent.

7. Inclusion of an Independent Budget Analyst in the charter.

2. Legal Issues

Any suggested change in the law, especially changes to a charter, raises legal concerns. The proposed Act is no different. Yet our review of the proposed Act reveals an effort by its drafters and proponents to correct or avoid many of the legal issues previously raised by earlier attempts to change the charter.

The proposed Act is being submitted for City Council's consideration. We conclude the Act, like its predecessor plans, amounts to a revision of the City Charter. However, while charter revisions cannot be accomplished by initiative, they can be proposed by the City Council.

Assuming certain ambiguities are resolved, and excepting the issue of ninth council seat creation, the proposed Act does not appear to harbor any fundamental legal infirmities that would hinder effective adoption by the voters if the City Council submits it the ballot in appropriate form.

The inclusion of the specific legal issues detailed in this report is based upon this office's purpose to (1) respond to the Mayor's request to identify legal issues, (2) , and (3) provide the full City Council an analysis of legal issues that are likely to be of special interest or discussion during the City Council's review of the proposal. The legal issues discussion in Chapter Four reveals some proposed changes raise issues worthy of noting because of legal consequence somewhat different than the status quo, and some proposed changes that simply require clarification to ensure the for the legal consequence is as the drafters intended. The exception is the issue of creating a ninth council seat. This is an interesting and novel legal issue, one that thus far has no clear answer or obvious precedent. So this report provides some suggestions on how to approach the ninth seat creation, but leaves to City Council the policy discussion on the issue.

3. Proposed Language Changes

In Chapter Five, we present *suggestions* for language modifications. We categorize some as "major" and some as "minor." But these are really just labels of convenience.

In making these suggestions, we have attempted to adhere to the drafters' apparent intent. A change listed under "Major Changes" is meant to achieve mundane goals such as greater clarity, structural integrity, consistency with other language, or is a friendly suggestion. No suggestion is meant to effect a change in the fundamental precepts of the specific section, concept, or the intent of the proposed Act.

The suggested changes are not criticisms of the Act's proposed language. Rather, repeated readings, contextual analysis, and plain old experience working with the Charter and with City processes merely suggested to this office that a few tweaks here and there would result in an improved final product. And, of course, different and better suggestions are welcome when the City Council discusses this report.

CHAPTER ONE:
CITY GOVERNANCE FUNDAMENTALS

A. FORMS OF GOVERNANCE

At the request of the Mayor, this report compares the City of Sacramento's current charter and the proposed Act with the five strong mayor cities in California – Los Angeles, San Diego, San Francisco, Fresno, and Oakland – as well as Denver and Seattle. Those cities – the "Comparison Cities"—and their populations are set forth in Table 1.

Each of the Comparison Cities has a unique charter, with a unique history. Each reflects local values, local politics, and historical forces. Although no two charters in the Comparison Cities are exactly alike, it can be stated as a general proposition that a true Mayor-Council system grants its mayor budgetary powers, appointment and removal powers, ultimate executive control over day-to-day city affairs, power to propose legislation, and veto power. Yet the details of these and other mayoral powers vary among the cities.

The government structures of the seven Comparison Cities are often described as Mayor-Council – i.e., "strong mayor" – systems. But that would be an oversimplification. It would be more accurate, for example, to categorize the City of Los Angeles as its City Clerk does: a Mayor-Council-Commission form of governance. That is, there are numerous commissions that have semi-autonomous authority; some commissions' actions are subject to review and veto by the City Council, others (e.g., Ethics Commission) are not. Oakland has occasionally been described as having a "weak strong mayor," in part because the mayor has no veto and is the "chief elective officer" rather than a "chief executive officer." And both San Francisco and Denver are non-traditional cities; they are instead consolidated city-county governments and therefore afford the mayor powers over the panoply of issues subject to the jurisdiction of cities and counties.

The City of Sacramento's charter, on the other hand, has provided for a Council-Manager form of government since 1921, when the Progressive movement supported by former City of Sacramento Corporation Counsel Hiram Johnson, was sweeping the nation and the state in response to political corruption. In 2002, the charter was amended to make the mayor's job full-time. The Act proposes to change the City of Sacramento's form of government to Mayor-Council through a City Charter revision.

B. CALIFORNIA, COLORADO, AND WASHINGTON LAW

It is beyond the purpose of this report, and beyond current expertise of the City Attorney's Office, to give a complete overview of local government organization and authority in sister states. Below, however, is a thumbnail sketch of three states' approaches to local government.

Just as no two city charters are alike, no two state constitutions are alike. Nor are different states' statutory schemes for local governments alike.

Colorado's constitution makes express an intention to provide all of the state's municipalities the full right of self-government through adoption of "home rule" charters. Many cities in Colorado have home rule charters, but like in California the strong mayor system is rare in Colorado.

Washington, on the other hand, has a much more complicated state statutory scheme for municipal governments. Cities can use the mayor-council, council-manager, or commission plans. Also, cities that fully operate pursuant to the Revised Codes of Washington – so-called "optional code cities" – have the fullest scope of local flexibility and power. In Washington, although over 80% of municipalities use the mayor-council form of government as described by statute, only 10 first class cities (i.e., population over 10,000) have charters.

In sum, California and Colorado may be considered "home rule" states. That is, their constitutions expressly afford cities home rule power through the adoption of city charters, which generally means greater autonomy. Washington is more like a "Dillon's rule" state. Dillon's rule narrowly defines the powers of local government: a city has only those powers that are expressly granted, necessarily implied, or indispensable. Although the Washington constitution grants certain cities the ability to adopt a charter, only a county (or consolidated city-county) can adopt a true "home rule" charter.[1]

1. California

Article XI, Section 3 of the California Constitution affords cities the authority to adopt a charter. A charter is a written document, approved by the electorate, that operates as a "constitution" for the adopting city. A city charter represents the supreme law of a city, subject only to conflicting provisions in the state or federal constitutions and preemptive state law on matters of statewide concern. It has the force and effect of state law within the city. And it acts as an instrument of limitation on the broad power of charter cities over municipal affairs.

The California Constitution expressly identifies several charter city powers: creation and regulation of a police force; subgovernment in all or part of the city; conduct of city elections; and plenary authority over the manner, times, terms, compensation, and removal of officers and employees.

In California, the 482 incorporated cities[2] have only two forms of city government: Mayor-Council (i.e., strong mayor) and Council-Manager. The 362 cities without charters – known as general law cities – use the statutorily-mandated Council-Manager form. Of the approximately 120 charter cities in California, five use the true strong mayor form, although there are a few charter cities that give their mayors some additional powers.

All cities in California are required to adopt balanced budgets.

[1] Compare Washington Constitution, art. XI, sections 4, 10, and 16.
[2] Source: League of California Cities.

2. Colorado

Like California, Colorado affords cities the right to become "home rule" cities through voter adoption of a charter. Article XX of the Colorado Constitution sets forth the authority for charter adoption and specifies dozens of powers a city may exercise. Additionally, article XX long ago effectuated a consolidation of the city of Denver with a portion of Arapahoe County. Of the 271 municipalities in Colorado, 100 are home rule.[3]

There are five types of municipalities in Colorado: (1) consolidated city-county (Denver and Broomfield); (2) home rule city; (3) statutory city; (4) statutory town; and (5) territorial charter municipality (only one exists). The default for statutory cities is a mayor-council form, but such cities may choose a council-manager form; statutory towns have a mayor-trustee form of government.[4] Denver's two largest cities – Denver and Colorado Springs – use the mayor-council pursuant to charter, Colorado Springs having changed its charter in November 2010.[5]

In California, a city "may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws."[6] In Colorado, it is stated differently: "Such charter [as a city adopts] and the ordinances made pursuant thereto in [municipal] matters shall supersede . . . any law of the state in conflict therewith. . . . The statutes of the state of Colorado, so far as applicable, shall continue to apply to such cities and towns, except in so far as superseded by the charters of such cities and towns or by ordinance passed pursuant to such charters."[7] Thus, a city's charter and ordinances may supersede conflicting statutes on local and municipal matters, but in matters of statewide concern, state statutes will supersede a conflicting charter or ordinance. Like in California, a charter is not a grant of powers to a city; rather, it is a limitation on powers given the city under the home rule provisions of the Colorado constitution.

3. Washington

Washington's system of local government organization is complex. Only the fundamentals are addressed here.

There are four classes of municipal government in Washington:[8]

(1) first class cities, which have populations over 10,000 and operate under a charter;
(2) second class cities, which have populations over 1,500 and operate without a charter;
(3) towns, which are not authorized to have a charter; and
(4) "optional municipal code cities."

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[3] Source: Colorado Municipal League, 2010-2011 Annual Report.
[4] See Colo Rev. Stats., Title 31, Article 4.
[5] See http://ballotpedia.org/wiki/index.php/Colorado_Springs_Mayoral_Government_Change_(November_2010)
[6] Cal. Const., art. XI, § 7.
[7] Colo. Const., art. XX, § 6.
[8] Similar to Colorado, Washington also has a one "unclassified" city – Waitsburg – that operates under a territorial charter. See http://www.cityofwaitsburg.com/Territorial_Charter.pdf.

The first three classes described above may perform any function specifically granted to them under the Revised Codes of Washington. Optional municipal code cities are afforded the most local control – they can take any action on matters of local concern so long as it is not prohibited by the state constitution nor in conflict with the general law. Most Washington cities are such "code" cities.

While all cities and towns possess the same basic authority to perform general governmental functions, there are differences depending both upon the size of the city and its classification. For example, competitive bidding requirements differ depending upon a city's population and classification. State law provides that the form of the organization and the manner and mode in which first class cities (e.g., Seattle) exercise the powers, functions, and duties conferred upon them by state law, are to be as provided in their charters.[9]

Washington cities are organized under three principal types of government:

(1) "mayor-council," which is the predominant form – noncharter cities may use this form;
(2) "council-manager," under which the councilmembers are the only elective officials and the appointed city manager is responsible to the council for the proper administration of all city affairs;[10]
(3) "commission," in which the legislative powers and duties are exercised by a commission of three, consisting of a mayor, a commissioner of finance and accounting, and a commissioner of streets and public improvements, and in which the executive and administrative powers and duties are distributed among the three departments.[11]

Washington state law requires cities with populations greater than 300,000, such as Seattle, to adopt balanced budgets by December 2 of each year for the fiscal year beginning January 1. Washington state law also allows cities to adopt biennial budgets.

[9] Revised Codes of Washington ("RCW") 35.22.020.
[10] RCW 35.18.010. This is for cities or towns having a population less than 30,000.
[11] RCW 35.17.010. Only one small city – Shelton – has this form.

C. COMPARISON CITY POPULATIONS

Table 1

COMPARISON CITY POPULATIONS[12]

City	Population
Los Angeles	3,792,621
San Diego	1,307,402
San Francisco	805,235
Fresno	494,665
Sacramento	466,488
Oakland	390,724
Seattle, WA	608,660
Denver, CO	600,158

[12] 2010 U.S. Census figures, found at http://quickfacts.census.gov/qfd/index.html.

CHAPTER TWO:
SUMMARY OF THE ACT

A. THE ACT GENERALLY

On December 21, 2011, the Mayor's Office delivered to the City Attorney's Office a packet entitled "The Checks and Balances Act of 2012," which is attached as Appendix A. The packet has several elements, including introductory explanations, a summary, and comparison charts. With limited exceptions, however, this report is only a review and analysis of the potentially operative element (i.e., the substance of the measure potentially placed on a ballot), which is the Act, beginning on page 8 of the packet. This Chapter serves as an overview of the Act prior to the comparisons presented in Chapter 3.

The Act has six sections. Section 1 merely provides the title for the proposed measure. Section 2 sets forth findings and purpose; this section presents no immediate issues for comparison or analysis, although it may serve a limited role in the future should a court ever be faced with a matter of interpretation and application of the proposed changes.

Section 3 contains the actual changes to Charter language. These changes are summarized in Section B, below.

Section 4 sets the operative date for the Charter change, should the Act be approved by the voters. If Section 4(A) remains unchanged, and City Council wishes to place the Act before the voters, the Act must be put on the June 2012 or November 2012 ballot. Section 4 also provides a sunset date for the Act (December 31, 2020), but mandates the City Council place a permanency measure before the voters on or before November 3, 2020. It also leaves open the Council's and the voters' rights to change the Act's effective period.

Section 5 mandates the City take the necessary legal and administrative steps to effectuate the proposed Charter changes.

Section 6 is a severability clause. As evident from the language in Section 6, its purpose is to perpetuate all valid portions and applications of the Act notwithstanding a successful legal challenge to any other portion or application. Although not conclusive, the existence of Section 6 establishes a presumption in favor of severance.[13] However, further analysis of that section is premature as its application depends upon unknown future legal challenges.

[13] California Redevelopment Assn. v. Matosantos, 2011 Cal. LEXIS 13236 (Cal. Dec. 29, 2011). Notwithstanding the presumption, a court may evaluate whether the invalid provision is grammatically, functionally, and volitionally separable. (Id. at *73.)

B. CHARTER CHANGES

The Act proposes changes to five Articles of the Charter. For each section changed, added, or deleted by the Act, a *brief* summary of the result (effect) is provided below.

1. Article III. The City Council

a. § 21 Composition. The Council becomes an eight-member body, with the mayor being removed from the council. The City Council is granted the ability, but not the duty, to "initiate a process to create a ninth council seat," which process would include setting the year of election and redrawing council district boundaries, if required.

b. § 22 Districts. If the Council acts pursuant to revised Section 21 to create a ninth council seat elected by district, the City shall be divided into nine districts. There also is a necessary non-substantive change in the last sentence – to remove a reference to the mayor because it would no longer be applicable, as this section relates only to council members and their respective districts.

c. § 24 Reapportionment of districts. The responsibility for establishing council district boundaries rests with a 9-member "citizens' redistricting commission," which shall follow the Charter standards for redistricting. This responsibility attends after every decennial federal census, as well as upon the creation of a ninth district, should that occur. The members of the commission are not compensated, but the City is required to fund and staff the commission. Within 180 days after the Act is effective, the council, after consultation with the mayor, must pass an ordinance establishing: commission member qualifications; method for member selection assuring independence; prohibition against elected official involvement in member selection; and requirements for disclosure of commission member communications occurring outside of a public meeting.

d. § 25 Redistricting. While council district boundaries are to be changed by a Council-adopted ordinance, that ordinance must follow the boundaries established by the citizens' redistricting commission.

e. § 26 Terms of Office. The phrase "other than the mayor" is deleted, because it would no longer be applicable, as this section relates only to members of the council.

f. § 27 Qualifications of members. The phrase "other than the mayor" is deleted, because it would no longer be applicable, as this section relates only to members of the council. There is a minor word change ("or" to "of"). (For this minor change, see Chapter Five, below.)

g. **§ 28 Vacancies.** The phrases "other than the mayor" and "or mayor" are deleted, because they would no longer be applicable, as this section relates only to members of the council.

h. **§ 29 Compensation.** Should the compensation commission (which sets elected officials' salaries) increase an elected officials' compensation more than five percent over the previous year, the amount in excess of five percent must be approved by the voters.

i. **§ 31 Meetings.** At least two regular City Council meetings must be held at locations in the City other than the Council Chambers, provided those locations accommodate at least as many persons as the Council Chambers. Additionally, all meetings of the city council and its committees must be recorded electronically, with real-time access as well posting to the City's internet site within five days.

j. **§ 32 Ordinances.** A new clause in Subsection (b) includes the veto provisions of Section 47 as a condition of the adoption procedure for ordinances. There is a minor word change ("or" to "of"). (For these minor changes, see Chapter Five, below.)

k. **§ 33 Records.** All permanent records of the council (actions considered and taken, motions and records, ordinances, resolutions, council member votes) must be posted to the City's internet site within five days.

l. **§ 35 Limitations on future employment.** Adds the term "or the mayor" so as to limit the mayor's City employment after leaving office. This is done to ensure comprehensive sweep of the limitation in Section 35 (i.e., to apply to all elected officials), as the mayor is no longer a member of the council.

m. **§ 36 Code of Ethics and Sunshine Ordinance.** Under this new section, the council, having considered the recommendations of the mayor, must adopt two ordinances: (1) a Code of Ethics and Conduct for elected officials and members of City boards, commissions, and committees; and (2) a "Sunshine Ordinance."

2. **Article IV. The Mayor**

a. **§ 40 Mayor – Functions.** The mayor is the City's chief executive officer, and as such has the power to execute and enforce all laws and policies of the City.

The mayor must publicly deliver a "State of the City" address and recommend adoption of measures the mayor deems proper and expedient. The mayor must conduct four publicly-noticed "town hall meetings" per year to solicit and respond to public comments, concerns, and questions.

The mayor must work with council to develop the Code of Ethics and Conduct ordinance and Sunshine Ordinance. The mayor has the right to attend and be heard at regular of special open sessions and closed sessions of the council, but may not vote at those meetings. The mayor must work with the council to develop ordinances

regarding the citizens' redistricting commission and a citizens' ethics committee, which committee conducts a biennial review of the City's compliance with applicable ethics laws and regulations. The mayor may propose to the council additional ethics reforms.

The mayor must propose a budget at least 90 days prior to the start of each fiscal year. The mayor has the power to veto the council's budget resolution. (See proposed Section 111.)

The mayor appoints the city manager, subject to council confirmation.

b. § 45 Acting Mayor; Mayor Pro Tem. The council no longer chooses a "vice mayor," but rather selects a "council president" from among its members. The phrase "other than the mayor" is deleted, because it would no longer be applicable, as the mayor is no longer a member of the council.

The council president is the acting mayor when the mayor is absent from the city and when the mayor is incapable of acting as mayor and incapable of delegating duties. The acting mayor, however, does not have the full power of mayor. The acting mayor may supervise mayoral staff, direct and control the city manager, and exercise other power and authority of the mayor when such exercise is required by law, including when such exercise is necessary to meet a requirement imposed by a court or another governmental entity; but the acting mayor cannot exercise the power of veto "or any other discretionary privilege" of the mayor.

c. § 46 Mayor – Vacancy. The city council shall declare the office of the mayor vacant when: (i) the mayor-elect or mayor-appointee fails to qualify within 10 days of the date their term is to begin; (ii) dies; (iii) resigns; (iv) ceases to be a City resident for more than 30 days without council permission; (v) absents himself or herself from the City for more than 30 days without council permission; (vi) is convicted of a felony; (vii) is judicially determined to be incompetent; (viii) is permanently disabled so as to be unable to perform the duties of the office, with a finding of such disability requiring six votes of the city council after considering medical evidence; (ix) forfeits office under any provision of the Charter; or (x) is removed from office by judicial procedure. Until the vacancy is filled, the council president (or, if council president cannot fill the office, the council-selected mayor pro tem) serves as acting mayor.

d. § 47 Mayor – Approval or Veto of Council Ordinances. Under this new section, the mayor may veto all ordinances, except: (i) an ordinance calling for or relating to an election; (ii) emergency measures; (iii) an ordinance adopted pursuant to state law by virtue of which the ordinance is effective immediately; or (iv) elected official salary ordinances. The mayor could not veto matters under the sole purview of the city council, such as the council's budget, council rules of procedure, and matters that are quasi-judicial. (See discussion of this issue in Chapter Four.)

An ordinance passed by council must be transmitted to the mayor with 48 hours; the mayor then has ten days to approve or veto the ordinance. Failure to act timely amounts to approval. In the case of a timely veto, the mayor must state the reasons for the veto and transmit same to the City Clerk within 48 hours. The council then

has 30 days to reconsider the ordinance. A veto can be overridden by a vote of five members in favor of override (or six, if a ninth seat is created).

3. **Article V. The City Manager**

   a. **§ 60 City Manager – Appointment, qualifications and removal.** The city manager is appointed by the mayor, subject to council confirmation. If the council fails to confirm or reject the mayor's appointment within 30 days, the appointment is deemed approved. Prior to "final selection," the mayor must hold a public meeting where the public can question the executive and administrative qualifications of the city manager. The city manager may be removed by the mayor with or without cause. The mayor must advise the council before removing the city manager.

   b. **§ 61 Functions.** The city manager is now the "chief administrative officer," rather than the chief executive officer. As such, the city manager is to assist the mayor in seeing to the enforcement of all laws and to supervise and control to parts of city government under the jurisdiction of the mayor. The city manager is to assist the mayor in preparing the budget, and to perform duties as prescribed by the mayor. If the city council so requests, the city manager has a duty to act in an advisory capacity to the city council with respect to other parts of city government.

   c. **§ 62 Non-interference with City Manager.** The city manager need no longer endeavor to advise council of the city manager's intention to appoint or remove any head or director of any department or division. Also, the city council must now deal through the mayor or the city manager with respect to the part of city government under the supervision of the city manager.

   d. **§ 63 Removal of City Manager.** This section is deleted, because under revised Section 60 the city manager can be removed by the mayor with or without cause.

4. **Article VI. Other Appointive Officers**

   a. **§ 70 Appointive Officers.** For officers and employees appointed by the city council, there must first be at least one public meeting where members of the public may question the qualifications of the candidates.

   b. **§ 73 City Treasurer.** In addition to keeping the city council informed as to the deposit and investment of funds in the city, the city treasurer must likewise keep the mayor informed.

   c. **§ 76 Duty to inform council and mayor.** In addition to informing the city council of any act of misfeasance or malfeasance of city officers or employees if such act

significantly and adversely affects the finances or operations of the city, appointive officers must likewise inform the mayor.

5. **Article IX. Fiscal Administration**

   a. **§ 111 Budget.** New Subsection(a) creates an Office of Independent Budget Analyst, which assists and advises the city council in conducting budget inquiries and making budgetary decisions. The independent budget analyst provides the council an analysis of the mayor's proposed budget. The council appoints and removes the independent budget analyst. The council establishes the office's qualifications and duties by ordinance.

      The mayor prepares and presents a proposed budget to council at least 90 days prior to the start of the fiscal year. The budget must be posted to the City's internet site with 72 hours of its presentation to the council.

      The city council must hold at least two public hearings on the budget, one being within 15 days of the mayor's presentation of the proposed budget. The council must adopt the budget resolution at least 30 days prior to the end of the fiscal year. That proposed budget shall be posted to the City's internet site within 72 hours of its adoption by council.

      The City Clerk must transmit the council's proposed budget to the mayor within 24 hours. The mayor has ten days to approve or veto the budget. Veto power includes "line item" veto. Those parts not vetoed become effective immediately.

      The council has ten days to reconsider after the mayor's vetoes. It takes five votes to override the mayor's veto of the entire budget. Line item vetoes (which can be reductions or eliminations) must be considered separately. It takes six votes to override each line item veto, or else the line item as modified by the mayor becomes effective immediately.

   b. **§ 117 Annual Audit.** The City's annual independent financial audit must now be available in the City Clerk's office and on the City's internet site within five days of filing with the City Council.

CHAPTER THREE:
COMPARISON WITH SELECTED CITIES

A. EXECUTIVE MAYOR

1. Rights, Duties, and Obligations Generally

a. Current City Charter

- The City Manager is identified as the City's "chief executive officer."
- The City Manager is responsible for the effective administration of city government, i.e., the day-to-day operations.
- The City Council retains contracting authority, except as delegated to the City Manager pursuant to Council-adopted ordinances.
- The Mayor may inform the city of changes in policy or programs, but is not required to present a formal public "State of the City" address, nor to hold periodic "town hall meetings."
- The mayor is a member of the city council, with full rights to attend and vote at all meetings.

b. Strong Mayor Plan

- The Mayor becomes the City's "chief executive officer."
- The Mayor would be required to present publicly an annual "State of the City" address, to recommend adoption of measures the mayor deems expedient and proper, and to conduct four "town hall meetings" per year.
- The contracting authority would not change.
- The mayor would have the right to attend and be heard at any regular or special open session or closed session of the city council, but not the right to vote.

c. Comparison Cities

All Comparison Cities except Oakland identify the mayor as the city's "chief executive officer." The Oakland mayor is identified as the "chief elective officer."

The mayor is required to present "State of the City" information in some cities, although described in varying ways, and usually addressed to the legislative body. For example, in Los Angeles the mayor has the duty to "publicly address the Council on the state of the City, annually prior to the submission of the proposed budget." In Seattle the mayor has the annual duty "at the third regular meeting of the City Council in February, to communicate by message to the Council a statement of the conditions and affairs of the City, and to recommend the adoption of such measures as he or she may deem expedient and proper." San Diego's charter provision is similar. In Oakland the mayor shall "at the time of the submission of the budget, submit a general statement of the conditions of the affairs of the City, the goals of the administration, and recommendations of such measures as he may deem expedient and proper to accomplish such goals." The Denver charter is the least specific, in that the mayor shall "from time to time give to Council information on the condition of the City and County and recommend such measures as he or she may deem expedient."

These obligations are somewhat similar to the President's obligations under Article II, Section 3 of the United States Constitution ["He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient . . . ."] Under the Oakland and Denver charters, a *written* statement appears to be contemplated; that was the practice for the U.S. Presidents' State of the Union addresses throughout the 19th century and on many occasions during the 20th century.

In two cities that do not require a formal "State of the City" address (San Francisco and Fresno) the mayor does, like in all Comparison Cities, have the power and duty to make policy and priority statements to the legislative body.

Only Oakland requires the mayor to conduct periodic public meetings that may be considered "town hall meetings."

Tables 5 and 6, below, compare mayors' rights to attend and be heard at open and closed sessions of the city council . This does not include the right to vote. Notably, in Seattle, Denver, and Oakland, even though the mayor does not have the express right to participate at council meetings, the mayor has the power to call a special meeting of the council. In San Diego, if the mayor attends a closed session, the mayor presides over that closed session.

In strong mayor cities, the mayor is no longer a member of the legislative body, but some cities nonetheless require the mayor to occasionally appear at a public meeting. In San Francisco, the mayor must appear before the board of supervisors monthly. In Oakland and Los Angeles, the mayor must appear before the council in person to deliver the annual "State of the City" address. In Seattle, the mayor must, twice during the year, "communicate by message to the Council" certain information; but the Charter language does not explicitly say the mayor must appear in person to deliver that message.

Table 2

CHIEF EXECUTIVE OFFICER

Is the mayor identified as the city's "chief executive officer?"

City	Yes	No
Los Angeles	X	
San Diego	X	
San Francisco	X	
Fresno	X	
Oakland		X
Denver	X	
Seattle	X	
Sacramento – Current		X
Sacramento – Proposed	X	

Table 3

STATE OF THE CITY ADDRESS

Is mayor required to present a periodic statement regarding the "State of the City?"

City	Yes	No
Los Angeles	X	
San Diego	X	
San Francisco		X
Fresno		X
Oakland	X	
Denver	X	
Seattle	X	
Sacramento – Current		X
Sacramento – Proposed	X	

Table 4

"TOWN HALL MEETINGS"

Is mayor required to hold periodic "town hall meetings?"

City	Yes	No
Los Angeles		X
San Diego		X
San Francisco		X
Fresno		X
Oakland	X	
Denver		X
Seattle		X
Sacramento – Current		X
Sacramento – Proposed	X	

Table 5

MAYOR'S PARTICIPATION AT COUNCIL MEETINGS

Does the mayor have the right to attend be heard (but not vote) at council meetings?

City	Yes	No
Los Angeles		X
San Diego	X	
San Francisco	X[14]	
Fresno		X
Oakland		X
Denver		X
Seattle		X
Sacramento – Current	X[15]	
Sacramento – Proposed	X	

[14] The mayor is required to appear at one regularly scheduled meeting per month to engage in formal policy discussions with the Board of Supervisors.
[15] Includes the right to vote.

Table 5

MAYOR'S OBLIGATIONS TO ATTEND COUNCIL MEETINGS

Must the mayor attend council meetings, at least periodically?

City	Yes	No
Los Angeles		X
San Diego		X
San Francisco	X[16]	
Fresno		X
Oakland		X
Denver		X
Seattle		X
Sacramento – Current	X	
Sacramento – Proposed		X

Table 7

MAYOR'S PARTICIPATION IN CLOSED SESSIONS

Does the mayor have the right to attend and be heard (but not vote) in closed sessions?

City	Yes	No
Los Angeles		X
San Diego	X	
San Francisco	X	
Fresno		X
Oakland		X
Denver		X
Seattle		X
Sacramento – Current	X[17]	
Sacramento – Proposed	X	

[16] The mayor is required to appear at one regularly scheduled meeting per month to engage in formal policy discussions with the Board of Supervisors.
[17] Includes the right to vote.

2. Vacancy and Succession

a. Current Charter

- Annually the City Council elects one of its members as Vice Mayor, who serves as acting mayor if the mayor is absent or incapacitated, or if there is a vacancy in the office of the mayor.

- Because mayor is a member of the council, the acting mayor continues to hold office as a member of the council.

- The Charter describes the method to fill a vacancy in the office of the mayor (i.e., special election, or appointment if vacancy occurs within one year of the next general election for mayor), but does not describe what conditions create a vacancy.

b. Proposed Plan

- Council President assumes mayor's role in case of mayoral vacancy, absence, or incapacity.

- Acting mayor can supervise mayoral staff; direct and exercise control over the city manager; and exercise other power and authority vested in the office of the mayor by law, including circumstances where expeditious action is necessary to meet a legal requirement imposed by a court or another governmental entity.

- Acting mayor cannot exercise veto.

- Acting mayor cannot exercise "any other discretionary privilege" enjoyed by a duly elected or appointed mayor (e.g., fire the city manager).

c. Comparison Cities

The language regarding the limited power of the acting mayor under the proposed Act is almost identical to that found in the San Diego charter.[18]

The new language in the proposed Act regarding what constitutes a vacancy mirrors the language in the Oakland Charter.[19]

[18] See San Diego Charter, § 265(i).
[19] See Oakland City Charter, § 304.

Table 8

SUCCESSION OF POWER

Does the council presiding officer become acting mayor if the mayor is absent or incapable of acting, or if mayor's office becomes vacant?

City	Yes	No
Los Angeles	X[20]	
San Diego		X[21]
San Francisco	X[22]	
Fresno	X	
Oakland	X	
Denver		X[23]
Seattle	X	
Sacramento – Current	X	
Sacramento – Proposed	X	

Table 9

LIMITED POWER OF ACTING MAYOR

Are the acting mayor's powers limited?

City	Yes	No
Los Angeles		X
San Diego	X	
San Francisco		X
Fresno	X	
Oakland		X
Denver		X[24]
Seattle	X	
Sacramento – Current		X
Sacramento – Proposed	X	

[20] Pending appointment and qualification of successor. Vacancy can be filled by either appointment or special election.
[21] Vacancy is filled by Council appointment. The charter describes the Council President's interim assumed authority as "limited."
[22] President serves until Board appoints a successor.
[23] Vacancy is filled by Deputy Mayor, who is a designated member of the Mayor's appointed cabinet.
[24] With one exception: the Deputy Mayor who becomes acting mayor cannot appoint a new Deputy Mayor.

Table 10

MODES OF VACANCY

Does the charter detail multiple modes for effectuating vacancy in the mayor's office?

City	Yes	No
Los Angeles	X	
San Diego		X
San Francisco	X	
Fresno	X	
Oakland	X	
Denver		X[25]
Seattle	X	
Sacramento – Current		X
Sacramento – Proposed	X	

3. Veto Power

a. Current City Charter

- The Mayor is a member of the City Council with the same voting rights as other members, with no veto power. On most matters five votes are required to pass a motion and adopt resolutions and ordinances.

b. Proposed Act

- Mayor has veto power. (Budget veto power includes line item veto. See Subsection 5, below.)
- Mayor can veto ordinances.
- Mayor cannot veto emergency ordinances, ordinances required by state law, election-related ordinances, matters where the Council has acted in a quasi-judicial capacity, the Council's budget, salary ordinances for the city council or mayor, or any matters under the exclusive purview of the Council.

[25] Although multiple modes for councilmember office vacancy are described, for mayor the charter merely discusses mayor succession if "the Mayor, for any cause, to perform the duties of the office." (See Denver Charter, §§ 2.1.1, 3.1.7, and 3.1.8.)

- Mayoral veto must be exercised within ten days. Mayor must state reasons for veto. Failure to veto within ten days amounts to approval.

- For ordinances, Council has 30 days to override mayor's veto. (For the budget, Council has ten days to override the mayor's veto. See Subsection 5, below.)

- Five votes are required for override. Six votes are required if a ninth council seat is created.

c. Comparison Cities

The mayors in strong mayor cities have powers to veto but not vote, except in Oakland, where the mayor has no vote except if the council is evenly divided. Only in Denver and Los Angeles does the mayor's vote not extend to resolutions. In this regard, the proposed Act proposes a veto power not as broad as most other Comparison Cities.

In terms of override, San Diego, Fresno, and Denver specify the number of votes, rather than the usual "two-thirds" ratio. Such would be the case with the proposed Act, which would require five votes to override a veto. (This is the same amount of votes it takes for any Council action. See Charter, § 30.) Typically, if a more-than-majority vote was required in the first instance, the override threshold is at least as high, or higher, than the first vote. For example, in Los Angeles, if the ordinance required a two-thirds vote to pass, the override must be a three-fourths vote.

The most common time period for a mayor's veto is ten days. Days are measured from delivery to mayor. For the mayor's veto, San Diego's charter specifies ten "business days," while council's ordinance/resolution 30-day veto override is specified as "calendar" days. Thirty days is the most common time period for ordinance veto override. For budget veto override, the period is usually shorter – potentially as short as three days in Denver. The proposed Act suggests similar ten-day/30-day time periods for vetoes and overrides, respectively.

Table 11

VETO

What is the scope of mayor's veto?

City	Ordinances	Resolutions	Budget[26]
Los Angeles	X	--	X
San Diego	X	X	X
San Francisco	X	X	X
Fresno	X	X	X
Oakland	--	--	--
Denver	X	--	X
Seattle[27]	X	X	X
Sacramento – Current	--	--	--
Sacramento – Proposed	X	--	X

Table 12

MAYOR'S VETO TIMELINE – ORDINANCES

How many days does mayor have to exercise ordinance veto?

City	Days to veto
Los Angeles	10
San Diego	10
San Francisco	10
Fresno	10
Oakland	--
Denver	5
Seattle	10
Sacramento – Current	--
Sacramento – Proposed	10

[26] Includes line item veto. For more detail on the budget, see Chapter Three, Section 5, *infra*.
[27] In Seattle, "[e]very legislative act of said City shall be by ordinance." (Seattle City Charter, Art. IV, § 7.)

Table 13

COUNCIL'S OVERRIDE TIMELINE – ORDINANCES

How many days does council have to override ordinance veto?

City	Days to override
Los Angeles	45[28]
San Diego	30
San Francisco	30
Fresno	30
Oakland	--
Denver	Not specified
Seattle	30
Sacramento – Current	--
Sacramento – Proposed	30

Table 14

COUNCIL VOTES TO OVERRIDE

How many votes are required to override a mayoral veto of an ordinance?

City	# of Council members	Override votes
Los Angeles	15	10
San Diego	9	6
San Francisco	11	8
Fresno	7	5
Oakland	8	--
Denver	13	9
Seattle	9	6
Sacramento – Current	9	--
Sacramento – Proposed	8 (or 9)	5 (or 6)

[28] Forty-five days after first post-veto council meeting, when mayor's disapproval is presented.

4. Appointment and Removal Authority

a. Current City Charter

- City Council appoints the City Manager, City Clerk, City Treasurer, and City Attorney, and other officers it so designates (e.g., City Auditor, Independent Budget Analyst).
- All such officers are appointed by a majority vote of the City Council.
- City Clerk, City Treasurer, and City Attorney serve and are removed at the pleasure of the City Council (five votes).
- City Manager is removed by six votes of the City Council.
- City Manager appoints and removes subordinate officers and department heads, after endeavoring to advise the Council of intention to do so.
- City employees are appointed and removed by their respective appointing authorities.
- Board and commission members are appointed by Mayor, with concurrence of City Council, and can be removed by City Council.

b. Proposed Act

- Mayor appoints the City Manager with confirmation by a majority of City Council.
- Failure of the City Council to confirm or reject a proposed appointment within 30 days amounts to deemed approval.
- Prior to final selection of the City Manager, the Mayor must hold a public meeting where the public can propose questions regarding the candidate's qualifications.
- City Manager serves at the pleasure of the Mayor. Mayor must advise the City Council before removing the City Manager.
- All other appointment and removal powers remain the same as in the current Charter, except that City Manager need no longer endeavor to advise the Council regarding appointment or removal of department or division heads.

c. Comparison Cities

The hallmark of a strong mayor form of governance is the mayor's authority to appoint and remove the City Manager, sometimes referred to as City Administrator or Chief Administrative Officer. Not surprisingly, all strong mayor cities provide such authority to the mayor, except Los Angeles. Under Los Angeles' complicated and diffuse Mayor-Council-Commission form of government, there is no one "city manager" or "city administrator." Neither Denver nor Seattle has a true city manager or city administrator. Denver is a consolidated city-county; its core administrative power is wielded by the mayor and the mayor's appointed "cabinet," which is comprised of ten department heads. Seattle also has a diffusion of power among the mayor, the president of the council, and department heads identified by the charter.

Except for Fresno, all city manager appointments by the mayor require council confirmation. In San Francisco, the city administrator's term of office is five years, but he or she may be removed by the mayor subject to approval of the Board of Supervisors.

The proposed Act's provisions on selection and removal of the City Manager are roughly consistent with the charter structures of Mayor-Council cities in the Comparison Cities.

The proposed Act has a unique feature: "Prior to the final selection of the city manager, the mayor shall hold a public meeting where members of the public may propose questions regarding the executive and administrative qualifications of the candidate(s) for city manager."

Table 15

APPOINTMENT OF CITY MANAGER

Does mayor appoint the city manager?

City	Yes	No
Los Angeles	--	--
San Diego	X	
San Francisco	X	
Fresno	X	
Oakland	X	
Denver	--	--
Seattle	--	--
Sacramento – Current		X
Sacramento – Proposed	X	

Table 16

COUNCIL CONFIRMATION OF CITY MANAGER

Does council's failure to approve/reject mayor's candidate within specified time result in deemed confirmation of city manager?

City	Yes	No
Los Angeles	--	--
San Diego		X
San Francisco		X
Fresno[29]	--	--
Oakland		X
Denver	--	--
Seattle	--	--
Sacramento – Current		X
Sacramento – Proposed	X	

Table 17

REMOVAL OF CITY MANAGER

Does mayor have unilateral authority to remove the city manager?

City	Yes	No
Los Angeles	--	--
San Diego	X	
San Francisco		X[30]
Fresno	X	
Oakland	X	
Denver	--	--
Seattle	--	--
Sacramento – Current		X
Sacramento – Proposed	X	

[29] No confirmation necessary.
[30] Removal is subject to approval of Board of Supervisors.

Table 18

PUBLIC VETTING OF CITY MANAGER CANDIDATES

Is there a public vetting of city manager candidates' qualifications prior to final selection?

City	Yes	No
Los Angeles	--	--
San Diego		X
San Francisco		X
Fresno		X
Oakland		X
Denver	--	--
Seattle	--	--
Sacramento – Current		X
Sacramento – Proposed	X	

5. Budget Authority

a. Current City Charter

- The City Manager is responsible for preparation and presentation of budget recommendations for the next fiscal year to the City Council no later than 60 days prior to the start of the fiscal year.

- After a public hearing the City Council, of which the Mayor is one member, adopts a budget resolution with proposed expenditures and appropriations for the next fiscal year.

- If the City Council fails to adopt a budget, the appropriations for current operations of the last fiscal year will be deemed effective until budget and appropriations for the current fiscal year are adopted.

- The budget may be amended according to the procedure established by the City Council.

b. Proposed Act

A true strong mayor system grants its mayor some budgetary powers. The proposed plan presents the following budget process.

- The Mayor is responsible for preparation and presentation of budget recommendations to the City Council no later than 90 days prior to the start of the fiscal year.
- The City Council adopts the budget.
- The City Council must hold at least two public hearings on the budget, the first within 15 days of the Mayor's proposal.
- The City Council must return the budget (either as presented or as modified by Council) to the Mayor no later than 30 days prior to the end of the next fiscal year.
- Mayor can veto the budget within ten days. Veto power includes line item veto, which includes reducing or eliminating any line item.
- Council can override veto with six votes; override must occur within ten days of veto. [Special Note: this vote requirement is different than the vote requirement to override ordinance vetoes. See proposed Act, § 47(c)(3).]
- Each vetoed line item must be reconsidered separately by Council.
- If a vetoed line item is not overridden with six votes, the line item as modified by the mayor becomes effective immediately. [See Special Note, above.]
- As under the current Charter, if a budget is not approved prior to the start of the fiscal year, the appropriations for current operations of the last fiscal year will be deemed effective until budget and appropriations for the current fiscal year are adopted.
- The budget may be amended upon request of the mayor or council, subject to the same process described above, but "on a timeline not to exceed 90 days."

c. Comparison Cities

Budgetary power is potentially the most important tool a mayor can use to gain agreement with the mayoral agenda. All strong mayor cities provide their mayors power to prepare the initial budget, in which their mayors lay out their own priorities and set the agenda

for discussion, except Oakland, where the mayor-appointed City Administrator is responsible. In Council-Manager cities approval of the budget lies solely in the hands of the City Council. As expected in Mayor-Council cities (except Oakland), mayors are given veto power in whole or by line item over the City Council adopted budget.

As for the budget process, most charters require the mayor to present the proposed budget at a defined time. Fresno's is the latest – only 30 days before the upcoming fiscal year. In Los Angeles it is much earlier – 71 days before the fiscal year begins. Both the San Francisco and Oakland charters defer the process details to formal council action, i.e., ordinance or resolution. San Francisco's current ordinance requires the mayor to submit some department budgets by May 1, with the remainder by the first workday in June.

Additionally, some cities specify a time when the city council must act on (even if it does not pass) the proposed budget. The cities are split on the number of public hearings required. San Diego's charter specifies two; Oakland's charter does not specify the number, but uses the plural "hearings." Others, including the current Sacramento charter, only mandate one.

The proposed Act suggests a proposed budget presentation earlier than the Comparison Cities; a quicker first response from the City Council; and an increase in the number of mandated public budget hearings.

Table 19

BUDGET PROPOSAL

Does mayor propose the budget?

City	Yes	No
Los Angeles	X	
San Diego	X	
San Francisco	X	
Fresno	X	
Oakland		X[31]
Denver	X	
Seattle	X	
Sacramento – Current		X
Sacramento – Proposed	X	

[31] The mayor is responsible for presenting the budget to council, but the budget is prepared by the City Administrator "under the direction of the Mayor and Council."

Table 20

BUDGET TIMELINE AND HEARINGS[32]

What is the deadline for presentation of the proposed budget; council's initial action on mayor's proposed budget; and how many public hearings must the council hold?

City	Mayor	Council	Min. Hearings
Los Angeles	April 20	June 1	1
San Diego	1st May meeting	June 15	2
San Francisco	Per ordinance	Per ordinance	Per ordinance
Fresno	June 1	--	1
Oakland	Per resolution	--	2
Denver	3rd Mon. in Oct.	1st Mon. in Nov.	1
Seattle[33]	--	--	--
Sacramento – Current	May 2 (City Manager)	--	1
Sacramento – Proposed	April 2	May 31	2

Table 21

COUNCIL'S OVERRIDE TIMELINE -- BUDGET

How many days does council have to override budget veto?

City	Days to override
Los Angeles	5 (excl. Sat., Sun., & holidays)
San Diego	5 business days
San Francisco	10
Fresno	30
Oakland	--
Denver	Variable, potentially 3[34]
Seattle	5-30
Sacramento – Current	--
Sacramento – Proposed	10

[32] All of the California cities commence the fiscal year on July 1. Denver's and Seattle's fiscal years begin January 1.

[33] Seattle's process is not in its charter; state law governs. (See Chapter 1, *supra*.)

[34] That is, at the second regular meeting in November, which potentially follows the mayor's noon Friday veto deadline from the previous week.

6. Term Limits

a. Current Charter

- No term limits.

b. Proposed Act

- No term limits.

c. Comparisons Cities

All of the Comparison Cities, except Seattle, have term limits. The term of office in all Comparison Cities is 4 years. As a general rule (Fresno's charter is silent), partial terms in excess of two years are considered full terms for purposes of determining term limits. Notably, only Los Angeles does not specify the limitation on terms as relating to "consecutive" or "successive" terms. When limits are for "successive" terms, a person can serve again after an intervening period. In San Francisco, Fresno, and Denver the intervening period is 4 years. Without such a qualifier, the limit is a lifetime limit.

Strong mayors generally are capped at two terms. Only Denver allows three consecutive terms for mayor. Los Angeles joins Denver in allowing three terms for council members, but Los Angeles still only allows two terms for mayor.

Table 22

TERM LIMITS -- MAYOR

How many terms may mayor serve? Does charter state limit as "consecutive" (or "successive")?

City	# of Terms	Consecutive?
Los Angeles	2	N
San Diego	2	Y
San Francisco	2	Y
Fresno	2	Y
Oakland	2	Y
Denver	3	Y
Seattle	Unlimited	--
Sacramento – Current	Unlimited	--
Sacramento – Proposed	Unlimited	--

B. INDEPENDENT COUNCIL

1. Current City Charter

- Mayor is a member, and presiding officer, of the City Council.
- Annually the City Council elects one of its members as Vice Mayor, who serves as acting mayor if the mayor is absent or incapacitated, or if there is a vacancy in the office of the mayor.
- Mayor is full member of City Council, with right to participate and vote on Council matters.
- Council fixes meeting dates, times, and places by resolution
- City Manager has right to participate, but not vote, at City Council meetings.
- Appoints and removes the City Attorney, City Clerk, City Treasurer, and other officers and employees of its own body.

2. Proposed Act

- Mayor is no longer a member of the City Council; the City Council elects a Council President.
- Council President assumes Mayor's role in case of mayoral absence, incapacity, or vacancy. If Council President cannot assume that role, Council selects a Mayor Pro Tem.
- Mayor has right to attend and be heard at any regular or special open session and any closed session of the City Council. Mayor cannot vote.
- Council must hold at least two meetings per year outside of its regular council chambers; the meetings must be held within the City at locations with a capacity at least that of council chambers.
- City Manager's role at City Council meetings remains the same.
- Appoints and removes the City Attorney, City Clerk, City Treasurer, Independent Budget Analyst, and other officers and employees of its own body, but before appointment must hold at least one public meeting where the public can question

the candidates' qualifications. (Potential exception to public vetting: Independent Budget Analyst. See Chapter Four, *infra*.)

3. Comparison Cities

The Act is consistent with the practice of the Comparison Cities regarding Council meetings. When the mayor does not preside over council (i.e., in strong mayor cities), city charters provide for the council to select a presiding council officer from among the council members. Under the current charter, the Sacramento City Council selects a Vice Mayor, who only presides at Council meetings if the Mayor is absent.

The council president (or, in Oakland and currently in Sacramento, the council-selected vice mayor) assumes the mayor's duties if the mayor's office becomes vacant. All of the Comparison Cities (as well as Sacramento at present) provide for an election to fill the office of the mayor if the vacancy will last a lengthy period – usually one year (Denver is six months; Seattle is variable, to coincide with an upcoming election).

Table 23

COUNCIL MEETINGS

Does a council select a presiding officer (e.g., Council President, Vice Mayor)?[35]

City	Yes	No
Los Angeles	X	
San Diego	X	
San Francisco	X	
Fresno	X	
Oakland	X	
Denver	X	
Seattle	X	
Sacramento – Current		X[36]
Sacramento – Proposed	X	

[35] Selection is annual, except for biennial selection in San Francisco and Seattle.
[36] The Charter identifies the mayor as the presiding officer, but the Council annually selects a vice mayor, who is the presiding officer only if the mayor is absent.

Table 24

CITY MANAGER PARTICIPATION AT COUNCIL MEETINGS

Does the city manager have the right to participate at council meetings?

City	Yes	No
Los Angeles	--	--
San Diego	X	
San Francisco		X
Fresno	X	
Oakland	X	
Denver	--	--
Seattle	--	--
Sacramento – Current	X	
Sacramento – Proposed	X	

Table 25

PUBLIC VETTING OF COUNCIL APPOINTEES

Is there a public vetting of candidates' qualifications prior to council appointment?

City	Yes	No
Los Angeles		X
San Diego		X
San Francisco		X
Fresno		X
Oakland		X
Denver		X
Seattle		X
Sacramento – Current		X
Sacramento – Proposed	X	

C. ETHICS AND TRANSPARENCY

1. Current City Charter

- No ethics commission, Code of Ethics ordinance, or "Sunshine Ordinance" required.
- Compensation commission has sole authority to set mayor/councilmember compensation.
- City Clerk is required to keep a permanent public record of council proceedings.
- Council meetings must be noticed, agendized, and held according to state law requirements for such meetings (e.g., the Ralph M. Brown Act).
- Charter is silent on ethics, but state law and City Code conflicts of interest restrictions on conduct apply. [37]

2. Proposed Act

- The proposed plan would require the City Council to adopt a "Code of Ethics and Conduct" ordinance.
- Requirement to adopt an ordinance establishing an ethics committee.
- City Council must adopt a "Sunshine Ordinance" for "open government."
- Compensation commission retains authority to set mayor/councilmember compensation, but annual increases in excess of five percent must be approved by the voters.
- Requires prompt posting of the records of council proceedings, plus the budget and annual financial audit, to City's internet site.
- In addition to state open meeting requirements, Council meetings and council committee meetings shall be electronically recorded and available in real time and promptly posted to the City's internet site.
- Council must meet outside its regular council chambers at least two times per year, at locations with capacity at least equal to council chambers.

[37] See Sacramento City Code, Chapter 2.13 (campaign contributions), Chapter 2.15 (lobbyist registration), and Chapter 2.16 (Conflicts of Interest). The City also annually adopts a Conflict of Interest Code by resolution pursuant to state law mandate.

3. Comparison Cities

The Comparison Cities span a spectrum of approaches to ethics programs. Los Angeles has the most detailed provisions, spanning over six pages of the charter and covering such things as duties, regulations, issuance of opinions, investigations and enforcement, and even appointment of a special prosecutor. San Francisco's charter is nearly as detailed, while Oakland's is leaner, leaving the commission's function, duties, and powers to a council-adopted ordinance. The San Diego City Charter does not create a commission or require an ordinance, but formally recognizes the existence of an Ethics Commission that is established by ordinance. And in Denver the charter requires the council to adopt a Code of Ethics by ordinance that also establishes a Board of Ethics with specified functions.

San Francisco's Charter provides that "The Board of Supervisors shall adopt and maintain a Sunshine Ordinance to liberally provide for the public's access to their government meetings, documents and records."[38] Indeed, the board has adopted a very lengthy and detailed Sunshine Ordinance.[39] The San Diego Charter declares that the people have a right of access to information, and makes broad statements about how such right should be interpreted, but it does not specifically require the adoption of a Sunshine Ordinance.[40]

The charter requirement to electronically record council meetings, and to promptly post certain documents and information to the City's internet site appears to be unique, although San Francisco's Sunshine Ordinance has similar requirements. Nonetheless, such electronic recording and internet posting is now standard practice.

Likewise, the requirement that the council occasionally meet at a location other than its council chambers appears to be unique.

About half the Comparison Cities have some salary-setting commission for elected officials: Oakland (the Public Ethics Commission); San Diego (the Salary Setting Commission); and San Francisco (Civil Service Commission). In Denver and Fresno, elected official salaries cannot be increased or decreased during a member's term. Los Angeles elected officials' salaries are pegged to local judges' salaries. Similar to the proposed Act, any portion of an increase in compensation for an Oakland councilmember over five percent must be approved by the voters.

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[38] San Francisco Charter, § 2.108.
[39] See Chapter 67 of the San Francisco Administrative Code.
[40] See San Diego Charter, § 216.1.

Table 26

ETHICS PROGRAM

Does charter establish an ethics commission, require an ethics ordinance, or is it silent?

City	Commission	Ordinance	Silent/Other
Los Angeles	X		
San Diego			X[41]
San Francisco	X		
Fresno			X
Oakland	X		
Denver		X[42]	
Seattle			X
Sacramento – Current			X
Sacramento – Proposed[43]	X	X	

Table 27

SUNSHINE ORDINANCE

Must the city council adopt a "Sunshine Ordinance" for open government?

City	Yes	No
Los Angeles		X
San Diego		X
San Francisco	X	
Fresno		X
Oakland		X
Denver		X
Seattle		X
Sacramento – Current		X
Sacramento – Proposed	X	

[41] The San Diego City Charter does not create a commission or require an ordinance, but formally recognizes the existence of an Ethics Commission that is established by ordinance.
[42] The mandated ordinance ("Code of Ethics") must establish a Board of Ethics.
[43] The mayor is required to "work cooperatively with the city council in the development and adoption of an ordinance by the city council to establish a citizens' ethics committee," but does not expressly require the city council to adoption such an ordinance. This is discussed further in Chapter Four.

Table 28

VOTER APPROVAL OF CERTAIN COMPENSATION INCREASES

Must the voters approve any mayor/councilmember compensation annual increase in excess of a specified amount?

City	Yes	No
Los Angeles		X
San Diego		X
San Francisco		X
Fresno		X
Oakland	X (>5%)	
Denver		X
Seattle		X
Sacramento – Current		X
Sacramento – Proposed	X (>5%)	

Table 29

ELECTRONIC RECORDING OF COUNCIL MEETINGS

Does the charter require council meetings be electronically recorded and available in real time on the internet?

City	Yes	No
Los Angeles		X
San Diego		X
San Francisco		X
Fresno		X
Oakland		X
Denver		X
Seattle		X
Sacramento – Current		X
Sacramento – Proposed	X	

Table 30

CITY COUNCIL MEETINGS AT ADDITIONAL LOCATIONS

Must the city council hold public meetings at locations other than its regular council chambers?

City	Yes	No
Los Angeles		X
San Diego		X
San Francisco		X
Fresno		X
Oakland		X
Denver		X
Seattle		X
Sacramento – Current		X
Sacramento – Proposed	X	

D. REDISTRICTING

a. Current Charter

- Within six months of the federal decennial census, the council adopts an ordinance setting council district boundaries.
- Council districts are set according to constitutional standards and other criteria listed in the Charter.
- Boundaries can be changed by ordinance, provided equipopulousness is respected; provide, however, that territory annexed to the city shall be added to the adjacent district(s).

b. Proposed Act

- Establishes a "citizens' redistricting commission."
- The city council must adopt an ordinance reflecting the redistricting commission's final adopted plan, without alteration.
- The commission has six months to adopt its final plan and transmit it to council.
- Council districts are set according to the same constitutional standards and other criteria listed in the Charter.
- The city council, in consultation with the mayor, must adopt an ordinance establishing commission member qualifications; method for member selection; prohibition against elected official involvement in member selection; and addressing disclosure of commission member communications outside of a public meeting
- Annexed territory still must be added to the adjacent district(s).

c. Comparison Cities

In Los Angeles the redistricting commission advises the council on drawing district boundaries, but the council adopts an ordinance and is not bound by the commission's proposal. The members are appointed as follows: one by each council member except the Council President, who appoints two; three by the mayor; one by the city attorney; and one by the controller.[44]

[44] See Los Angeles Charter, § 204.

The San Diego Charter creates a redistricting commission, which has sole and exclusive authority to established district boundaries; the commission's plan is not adopted by the city council . However, the plan is subject to referendum like an ordinance. The seven commission members are appointed by the Presiding Judge, or another judge or judges if the Presiding Judge declines to appoint.[45]

In San Francisco, the Board of Supervisors must convene, by ordinance, an "elections task force" (although the current ordinance calls it the "Redistricting Task Force") if the districts are not in compliance with legal requirements. Such noncompliance typically results when U.S. Census data reveals population disparities. The mayor appoints three members, the Board of Supervisors appoints three members, and the Elections Commission appoints three members. The Board of Supervisors may not revise the district boundaries established by the Task Force.[46]

In Fresno, Oakland, and Denver the city council has full authority to adopt council district boundaries by ordinance, with no input from a redistricting commission. Seattle does not undergo redistricting because all councilmembers are elected at-large.

Table 31

REDISTRICTING COMMISSION

Does charter create a redistricting commission?

City	Yes	No
Los Angeles	X[47]	
San Diego	X	
San Francisco	X[48]	
Fresno		X
Oakland		X
Denver		X
Seattle		X[49]
Sacramento – Current		X
Sacramento – Proposed	X	

[45] See San Diego Charter, § 5.1.
[46] See San Francisco Charter, § 13.110(d).
[47] Commission is advisory only.
[48] Known as the "Task Force." If the census reveals districts are no longer balanced, the Board of Supervisors is required to convene the Task Force.
[49] All councilmembers are at-large.

Table 32

REDISTRICTING COMMISSION MEMBERSHIP

Does charter describe how members are selected? And may mayor/council directly participate in selection?

City	Member selection described?	Direct mayor/council participation?
Los Angeles	Y	Y
San Diego	Y	N
San Francisco	Y	Y
Fresno	--	--
Oakland	--	--
Denver	--	--
Seattle	--	--
Sacramento – Current	--	--
Sacramento – Proposed	N[50]	N

[50] Exact methodology for selection not described, but charter proposal describes minimum attributes of the effectuating ordinance.

E. EFFECTIVE DATE AND REAPPROVAL

1. Effective Date

The Mayor has expressed his intention to have the Act placed before Sacramento voters on June 5, 2012. Section 4 of the Act provides that the Act, if approved, becomes operative "on the same date that the City officials elected in 2012 take office pursuant to section 153 of this Charter or on December 15, 2012, whichever date is earlier."[51]

Section 153 provides that elected officials "shall take office the fourth Tuesday following the first Monday in the month of November in the year of their election." However, the canvass of the vote need not be completed until the fourth Friday after the election.[52] With the Presidential election and the potentially large number of statewide and local ballot measures on the November 2012 ballot, it is quite likely the Section 153 deadline will be missed this year, just as it was for the Mayor in 2008.

Table 33

EFFECTIVE DATE OF CHANGE

For the changes affecting mayoral power, what was the effective date of the new charter provisions?

City	Election	Effective Date
Los Angeles	June 8, 1999	July 1, 2000
San Diego	November 2, 2004	January 1, 2006
San Francisco	November 7, 1995	July 1, 1996
Fresno	April 27, 1993	January 7, 1997
Oakland	November 3, 1998	January 1999
Denver	--	--
Seattle	--	--
Sacramento – Current	--	--
Sacramento – Proposed	June 5, 2012[53]	December 15, 2012 (no later than)

2. Timeline for Reapproval

[51] A charter amendment or revision cannot become operative until the vote iscertified and the changes are accepted and filed by the Secretary of State.
[52] Cal. Elec. Code, § 10262.
[53] If Council chooses to place the Act on the ballot, Council has discretion to place the Act either on the June primary election ballot or the November general election ballot, to comport with the terms of the Act.

Two of the Comparison Cities – San Diego and Oakland – offered the voters a chance to vote on extending the strong mayor system.

In March 2004 – five and one-half years after the charter was changed – the voters of Oakland approved the permanency of the strong mayor system. San Diego voters had four and one-half years under the strong mayor system before going to the polls for a permanency vote on June 8, 2010. It is interesting to note that in both cases the vote occurred before the last allowable date. In Oakland, the vote was to occur on or before November 2004; in San Diego the original timeframe was November 2010 or sooner. Voters in Oakland and San Diego passed their respective reapproval measures.

The proposed Act would have the reapproval submitted to the voters on or before November 3, 2020.

Table 34

REAPPROVAL REQUIREMENT

If a date for voter reapproval was stated in the measure, what was the latest date for that vote?

City	Effective Date	Re-approval vote
Los Angeles	July 1, 2000	None
San Diego	January 1, 2006	November 2010[54]
San Francisco	July 1, 1996	None
Fresno	January 7, 1997	None
Oakland	January 1999	November 2004
Denver	--	--
Seattle	--	--
Sacramento – Current	--	--
Sacramento – Proposed	December 15, 2012 (no later than)	November 3, 2020 (no later than)

[54] Originally, the date was "November 2010 or sooner." In June 2008, by ballot measure, the re-approval date was made June 2010. The June 2010 election vote made the changes permanent effective January 1, 2011. (San Diego City Charter, § 255(b),(c).)

CHAPTER FOUR:
LEGAL ISSUES

1. Introduction

Our review of the proposed Act reveals an obvious attempt by the drafters to (1) address many of the substantive legal issues present in the Strong Mayor Initiative , and (2) keep changes as simple and broad as possible to avoid the creation of new legal issues.

In this section, we discuss several legal issues that are either (1) salient, or (2) are likely to be of special interest to the reader or to the City Council during its review of the proposal. Of course, many legal issues may arise in the future –should the proposed Act be adopted by the voters – based on the exercise of powers under the revised Charter. But we do not endeavor here to create hypotheticals to ferret out all potential future legal issues. So this discussion should by no means be considered a complete or definitive discussion of all legal issues hidden within the proposed revised Charter. Nor should it be considered a final and definitive interpretation of the terms of the proposed Act (or the Charter generally).

Assuming certain ambiguities are resolved, and excepting the issue of ninth council seat creation (as discussed below), the proposed Act does not appear to harbor any fundamental legal infirmities that would hinder effective adoption by the voters if the City Council submits it the ballot in appropriate form.

2. Amendment or Revision?

Students of recent Sacramento history will remember the 2009 Charter change proposal – popularly known as the Strong Mayor Initiative (SMI) – was not put on the ballot because the Sacramento Superior Court found the SMI unconstitutionally sought to "revise," rather than "amend," the Charter. It is thus understandable if the attentive student then asks "Is the Act a revision?" and "Can the City Council even put this on the ballot?"

The short answer: for the same fundamental reason the SMI was a revision, this office concludes the Act is a revision. However, while the SMI – as an initiative – could not be on the ballot, the City Council may place its own Charter revisions on a ballot.

In September 2009, the City Attorney's Office presented to Council an analysis of the SMI, concluding the SMI *revised* the Charter.[55] The following edited excerpt from that analysis reveals the basis for the conclusion that the proposed Act is a Charter revision.

[55] At the time that report was written, of course, there was no legal challenge to the SMI. But a challenge came shortly thereafter. In Camp v. City of Sacramento (Sacramento Superior Court Case No. 34-2009-00065404), the plaintiff sought an injunction to prevent the SMI from appearing on the June 2010 ballot. Judge McMaster ruled in favor of plaintiff, following the same legal analysis presented by the City Attorney's Office, concluding the SMI was a constitutionally prohibited attempt to revise the City Charter by initiative.

The California Constitution, and statutes enacted pursuant to the Constitution, govern the procedures for adoption, repeal, revision, and amendment of city charters. Constitution article XI, section 3, grants to the electorate the power to propose *amendments* of a city charter by initiative, but grants power to propose charter *revisions* only to the city governing body or an elected charter commission.[56] Under the California Constitution, charter "revisions" may not be made through the initiative process.

The text of the Constitution does not define the terms "amendment" or "revision." However, the California Constitution's proscription against revision of a charter by initiative generally mirrors the California Constitution's proscription against revision of the Constitution by initiative.[57] It follows that for guidance on the meaning of the terms "amendment" and "revision" under article XI for city charters we must turn to court cases discussing the distinction between amendment and revision of the Constitution itself.

The California Supreme Court has established the following test for determining whether a change to the Constitution is an amendment or a revision.

> [I]n resolving the amendment/revision question, a court carefully must assess (1) the meaning and scope of the constitutional change at issue, and (2) the effect--both quantitative and qualitative--that the constitutional change will have on *the basic governmental plan or framework* embodied in the preexisting provisions of the California Constitution.[58]

In an effort to resolve the amendment/revision question we apply these same principles to the SMI.

Meaning and Scope of the Proposed Charter Change

The Findings and Purpose section of the Act explains, among other things, that the City currently has a "system that blurs accountability for distinct executive and legislative powers, and denies voters the protection of basic checks and balances on power;" that some current problems are caused by the "outdated governance system;" that the proposed "series of reforms" will "establish clear lines of accountability and adequate checks and balances between executive and legislative functions."

The changes proposed by the Act encompass the essential Articles of the Charter that address distribution of powers and duties of the three central figures in Sacramento's government structure-- the Mayor, City Council, and City Manager.

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[56] The governing body may also propose charter amendments. (Hernandez v. County of Los Angeles (2008) 167 Cal. App. 4th 12, 21.)

[57] Cal. Const. art. XVIII, § 1 (Legislature by two-thirds vote of each house may propose an amendment or revision of the Constitution); § 2 (Legislature by two-thirds vote of each house may submit at a general election the question whether to call a convention to revise the Constitution. If the majority vote yes on that question, within 6 months the Legislature shall provide for the convention.); § 3 (electors may amend the Constitution by initiative).

[58] Strauss v. Horton (2009) 46 Cal.4th 364, 387 [initiative process may not be used to revise constitution].

Effect on Basic Governmental Plan or Framework in Existing Charter

Quantitative

Quantitatively, the proposed Act adds, deletes, or changes five of the Charter's 19 articles and 26 of the charter's 151 sections. While these ratios may seem moderate, they must be viewed in the context of the total number of articles that frame the basic power balance of city government. Furthermore, even if the quantitative effect is arguable, the qualitative effect, we believe, leads inexorably to the conclusion that the Act amounts to a charter revision.

Qualitative

"[I]n order to constitute a qualitative revision, a constitutional measure must make a far reaching change in the fundamental governmental structure or the foundational power of its branches as set forth in the California Constitution."[59]

Although the Act does not appear as extensive as previous plans, we nonetheless conclude the proposal changes "the fundamental government structure [and] the foundational power" of the City's government branches. Simply put, there are only two form of city government in California: council-manager and mayor-council. Moving from one to another, as the Act would accomplish, is a fundamental restructuring of the City's government.

Furthermore, the far-reaching change in the foundational powers of the City's government actors can be seen by looking at some of the Act's qualitative changes. The Act:

- Removes the Mayor from the City Council, and thus creates separately elected legislative and executive branches.
- Creates mayoral veto power.
- Displaces the City Council's legislative authority to set council district boundaries.
- Grants the Mayor power to appoint and remove the City Manager, powers currently held by the City Council.
- Gives Mayor power to propose city budget and veto changes to budget made by City Council, powers formerly held by the city manager and City Council.

Based on such fundamental qualitative changes to the basic governmental plan for the exercise of legislative and executive powers, we conclude the Act amounts to a revision. This is so nothwithstanding the repeated use of the term "amendment" within the proposed Act itself.

[59] Strauss v. Horton (2009) *supra*, 46 Cal.4th 364, 444.

3. Creation of Ninth District

The Act proposes to change Charter section 21, to allow the City Council to "initiate a process to create a ninth council seat." Notably, the language leaves open the possibility that such a seat could be either at-large or by district.[60] This interpretation is supported by the proposed changes to Section 22, which, by explaining one possibility – a "ninth council seat elected by district, in which case there shall be nine council districts" – assumes the other possibility.

The proposed changes to Section 21 are unique, not only in relation to the Comparison Cities, but in all California city charters so far researched. That is, we are not aware of any city charter that allows the council discretion to initiate a process for the creation of a new council seat.

If this provision is merely an expression of the council's ability to propose a charter amendment to create a ninth seat, it seems unnecessary as the council always has such an ability.[61] If, on the other hand, it purports to empower the city council to have a ninth seat created by ordinance, then we cannot say at this time whether that is a lawful means to do so.

If a council seat were to be created by ordinance, that councilmember would, in effect, hold office more tenuously than the other councilmembers. An ordinance adopted by city council can be repealed by city council. Thus, the ninth councilmember would hold office at the pleasure of council colleagues. The possibility of that person's removal by ordinance repeal, when no other councilmember could be so removed, raises serious Equal Protection issues.[62] One potential way to solve the repeal problem is to add a provision that prohibits council elimination of the ninth seat once it is created.[63]

But there is a more fundamental concern. The voters may amend a charter. However, the legislative itself cannot amend a charter, nor can a charter amendment authorize the legislative body to adopt legislation changing the charter.[64] Thus, authorizing the City Council to initiate a process (other than submitting a charter amendment measure to the voters) for creation of a council seat – which fundamentally changes the structure of the city's legislative body – raises concerns.

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[60] As a matter of comparison, the Oakland City Council has seven members elected from districts and one member elected at-large.

[61] Cal. Const. art. XI, § 5.

[62] It raises issues not only for the councilmember, but potentially also for the voters supportive of that councilmember. See Anderson v. Celebreeze (1980) 460 U.S. 780, 787 ["the rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters"].

[63] An additional complicating factor is that a council-adopted ordinance is always subject to referendum. (See Sacramento City Charter, § 162.) This fundamental voter power of referendum cannot be diminished through charter amendment. Rubalcava v. Martinez (2007) 158 Cal.App.4th 563, 571.

[64] See Lucchesi v. City of San Jose (1980) 104 Cal.App.3d 323, 328 [a city charter may be amended by the majority vote of the electorate but not by ordinance].

On the one hand, it is arguable that the proposal does not allow the council to amend the charter. Rather, the council, in adopting such an ordinance, would simply be effectuating the very terms of an existing charter provision. An opposing view is that such a provision runs contrary to the constitutional grant of authority to charter cities. The California Constitution provides, "It shall be competent in all city charters to provide, . . . [for] conduct of city elections and (4) plenary authority is hereby granted, subject only to the restrictions of this article, to provide therein or by amendment thereto, the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed, and for their removal . . . ."[65] So the opposing view would be that under this constitutional rubric, it is competent to put those things in the charter, but it is not competent to put in the charter that the City's legislative body may add an elected office for its legislative body and also provide the manner, method, timing and term, even if that power is restricted. In other words, the manner, method, timing and terms for elected officers must be in the charter; and if the charter does not say a seat shall be elected, the legislative body may not declare so by ordinance.

This is a novel legal issue. As stated above, we have thus far identified no other cities that have a similar charter provision. Additional legal research and analysis will be needed to fully explore this issue.

However, we present some other options: (1) decide now whether to have eight or nine seats; (2) have the ninth seat automatically created on a date certain, for example on the date the Act becomes permanent, if at all; or (3) have another explicit condition precedent to the automatic creation of the ninth, as Fresno has done in its charter.[66] These are just some options the council may want to consider and that this office can explore. Depending on direction from City Council, we can suggest Charter language changes to match the preferred option.

4. Ethics Committee

The proposed change to Section 40(b)(5) requires the mayor to "work cooperatively with the city council in the development and adoption of an ordinance by the city council to establish a citizens' ethics committee." However, there is no similar express obligation on the council to adopt such an ordinance. While the obligation might be implied, the ambiguity would best be resolved. (See Chapter Six, below.)

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[65] Cal.Const., art. XI, § 5(b).

[66] See City of Fresno Charter sec. 1504 (Expansion of Council Membership), which describes how two new council members will be added when a population threshold is reached. Subsection (b) of section 1504 states: "The two seats shall be initially filled in the next regular municipal election held in which City offices are filled. Both Councilmember seats 8 and 9 shall be filled at said next regular municipal election. Thereafter, Councilmember seat number 8 shall be filled in the same electoral cycle as even-numbered Council seats and Councilmember seat number 9 shall be filled in the same electoral cycle as odd-numbered Council seats. Depending on when the election cycle for filling Councilmember seat numbers 8 and 9 falls, the initial term for one of the two seats shall be a two-year term."

Additionally, Section 40(b)(5) references an "ethics committee." All other similar bodies created – or to be created – through the Charter (i.e., compensation commission; redistricting commission; civil service board; Administration, Investment and Fiscal Management Board; and retirement hearing commission) are either boards or commissions, rather than committees.[67] Additionally, boards and commissions are created by ordinance,[68] while committees – being of lesser stature – are normally created by council resolution. And so, council may wish to consider clarifying the nature of the ethics review body as a committee or commission.

5. Independent Budget Analyst

The proposed Act adds a new Subsection (a) to Section 111 (Budget). Subsection (a) creates the Office of the Independent Budget Analyst (IBA) as a City department. The subsection describes the function of the IBA, the means for appointment and removal of the IBA, and grants the City Council authority to adopt an ordinance setting forth the qualifications and duties of the IBA. Subsection (b) of Section 111 also states that the "city council may request the assistance of the independent budget analyst, who shall provide to the city council independent analysis of the budget."

In 2010, the City Council adopted Ordinance 2010-006, which ordinance established the Office of Independent Budget Analyst. The ordinance originated as an initiative known as the "Independent Budget Analyst Act of 2009." The initiative received a sufficient number of signatures to qualify for placement on a regular election ballot. However, pursuant to the Charter and state law, the City Council instead adopted the ordinance without alteration.

Ordinance 2010-006, which is codified in Chapter 2.33 of the Sacramento City Code, states the IBA is a "city department whose designated function is to assist in the conduct of budgetary inquiries and in the making of budgetary decisions."[69] That is the same function described in proposed Charter section 111(a). The ordinance makes the IBA subject to appointment and removal by the city council, as does the proposed Charter section 111(a); and the current ordinance sets forth the qualifications and duties of the IBA.[70] Thus, the proposed Charter language regarding an IBA mirrors the major components of Ordinance 2010-066. On the other hand, the ordinance, unlike the Charter change proposal, also allows the city council to abolish the office after nine years.

As a later-enacted Charter change that provides a new and complete scheme – indeed, one that matches the functional components of the Ordinance – for the existence and function of the IBA, the grant of authority in Section 111(a) will supersede the provisions in the previously

[67] See Sacramento City Charter, §§ 29, 80, 381, 388, and proposed revised § 24.
[68] See Sacramento City Charter, § 230.
[69] Sacramento City Code, § 2.33.010.
[70] See Sacramento City Code, §§ 2.33.020, 2.33.030.

adopted Independent Budget Act of 2009.[71] The two could not exist simultaneously without a potential conflict, because the proposed Section 111(a) grants the city council to adopt an ordinance, and the city council could adopt a new ordinance with IBA duties and qualifications different from that in Ordinance 2010-066; but under proposed Section 111, unlike the Ordinance, the city council could not abolish the office altogether. And an initiative *ordinance* must give way to a voter-approved *charter* provision, as a charter is superior to an ordinance .

6. Residual Powers

In past iterations of strong mayor proposals, there was potential ambiguity concerning the locus of the residual powers. Section 20 of the current City Charter states: "All powers of the city shall be vested in the city council except as otherwise provided in this Charter." This is commonly referred to as the "residual powers" clause. There are many instances in the Charter where specific powers and duties are explicitly conferred upon the Mayor, City Manager, City Treasurer, City Clerk, City Attorney, Police Chief, Fire Chief, Boards and Commissions and others. However, the Charter cannot and does not exhaustively detail all possible powers that could be exercised by the City. The powers not otherwise explicitly delegated in the Charter are the "residual powers" of the City.

The Act proposes to leave Section 20 as is, leaving the City's residual powers with the City Council. Thus, if under the proposed revised Charter, there is a potential ambiguity about the powers distributed between the Council and the Mayor, the residual powers clause resolves the ambiguity in favor of the City Council.

7. Votes to Pass an Item

Other than as described in the next paragraph, the Act proposes no change to the number of votes required to pass a Council item. Generally, five votes are required, but there are exceptions. For example, under Charter section 32, emergency ordinances require six votes; and under Charter section 203, suspension of competitive bidding requires a two-thirds vote (which, for an eight-member body, is six votes).

Since the mayor would have veto power, new provisions must address the override vote. The Act proposes five votes to override an ordinance veto (or six if a ninth council seat is created), and six votes to override a budget veto.

[71] See *Penziner v. West American Finance Co.* (1937) 10 Cal.3d 160, 175-176, and cases cited therein. It is arguable that those provisions of Ordinance 2010-066 not relating directly to the IBA (i.e., the minor language changes regarding the duties of the director of finance) could remain in effect.

8. Scope of Veto

The discussion of this issue is somewhat a mixed legal and drafting issue. The discussion is put in this section only because the exercise of a veto, and the interpretation and application of the proposed Charter language, has legal consequences.

There is no legal problem with granting the mayor veto power over ordinances. But the proposed language appears to combine concepts of ordinance veto with previous concepts of ordinance and resolution veto (which exists in several other Comparison Cities). The materials in the proposal packet, as well as the evolution of the various strong mayor proposals, reveal an intent to limit the mayor's veto power to ordinances and the budget resolution – other resolutions and council actions are not to be subject to veto. The first complete sentence in proposed in Section 47(a) confirm this intent.

Given the intent to only extend the Section 47(a) veto power to ordinances, much of the language in Section 47(a) after the first sentence is unnecessary and confusing. There are various reasons: (i) matters within the purview of the council, such as selection of the council president and rules of council procedure, are adopted by resolution and so would be beyond the veto power; (ii) where the council has acted in a quasi-judicial capacity, it is not acting through an ordinance; (iii) "ordinances fixing dates of election" are already covered under Section 32(g), which ordinances are excepted from veto under the first sentence; and (iv) mayor and council salaries are not set by council ordinance, but by action of the compensation commission under Section 29. That leaves the reference to the council budget. If the intent is to disallow mayoral veto over the council's budget, it seems more logical to place that exception in Section 111, where the budget veto is discussed.

To ensure to scope of the mayor's veto authority is appropriately delineated, and to avoid legal issues down the road, we recommend Section 47(a) be modified. Revised language is discussed in Chapter Five, below.

9. Meetings Outside Regular Council Chambers

If city council meets at locations other than the regular council chambers, it still must comply with applicable state and federal law regarding public participation and accessibility (e.g., Brown Act and Americans with Disabilities Act).

10. Ambiguities and Clarifications

a. **§ 29 Compensation.** When Section 29 was added, it included the provision that "[w]ithin one hundred eighty (180) days of passage of this measure, the commission shall set compensation . . . ." The measure referred to is Measure S (November 2002), and has no real continuing effect. However, if the proposed Act is passed, retention of that language could create unintended confusion, as the new "measure" would affect Section 29. We presume to Act's drafters did not intend the commission to once again act under the 180-day mandate. (And in fact, the

commission is currently in the process of resetting mayor/councilmember salaries.) But this should be clarified – perhaps by deleting that sentence.

b. **§ 33 Records.** The current charter requires the City Clerk to keep a permanent record of all council actions "considered and taken." The proposed Act would require posting on the internet a record of "any action of any kind *proposed*, considered, or taken by the city council." (Emphasis added.) It is unclear whether this addition of "proposed" is purposeful, and if so, what is intended. Would it include mere statements of possible intention that never materialize on a council agenda? The ambiguity is cause by its inconsistency with the phrase used earlier in the Section.

c. **§ 47 Mayor – Approval or Veto of Council Ordinances.** This section gives some timelines for transmittal, but does not indicate whether the mayor's ten days for action are the timeline for the mayor to transmit the approval or veto decision to the City Clerk within that ten day period.

d. **§ 60 City Manager – Appointment, qualifications and removal.** The second sentence describes what happens if the council "withholds confirmation" of the city manager appointee. It is unclear what amounts to "withholding confirmation" in light of the next sentence, which explains that a "fail[ure] to confirm or reject" an appointment amounts to confirmation. Also, the mayor must hold a public meeting to vet a potential appointee "[p]rior to final selection." It is unclear what "final selection" means, and how the meeting would fit into the time structure for council confirmation. For example, does "final selection" refer to the mayor's referral of a candidate to the city council, or the council's approval of that candidate. Presumably, since the mayor significantly controls the process, final selection means the mayor's decision to recommend appointment. But clarification would be welcome.

e. **§ 70 Appointive Officers.** The proposed language change to Section 70 includes a public input process for council appointees. The apparent intent is to have for the listed Charter Officers the same public vetting as is proposed for the City Manager under proposed Section 60. But in addition to the well-known "Charter Officers," lower-level staffers are included in Section 70 – "such other officers and employees of its own body as it deems necessary." Clarification is requested as to whether the vetting process was meant to include such persons (e.g., if council, as a body, selects an operations manager). More importantly, there is uncertainty as to the application of the vetting process to the Independent Budget Analyst (IBA). As currently drafted, Section 111(a) of the proposed Act makes the IBA a council-appointed officer, but does not clarify whether that person is one of the "officers and employees" covered by Charter section 70(d). A minor language change can fix these potential oversights.

f. **§ 111 Budget.** The last sentence in Subsection (b)(1) states, "The council may request the assistance of the independent budget analyst, who shall provide to the city council independent analysis of the city budget." Not only is the first clause arguably

unnecessary as a statement of the obvious because Subsection(a) already states the function of the IBA and the city council's direct and indirect authority over the IBA's duties , there is a potential ambiguity created by the use of "may" in the first clause and "shall" in the second clause, which is a relative clause. That is, the second clause describes who the IBA is – i.e,. a person who has a duty to provide an independent analysis of the proposed budget, regardless of the council's request for such an analysis. If the intention is to place a specific duty upon the IBA, then the entire sentence can be redrafted, as described in Chapter Five, below. If, on the other hand, the intent of the sentence is just to provide a further explanation of the IBA's possible benefit to the council during the budget process, then the sentence probably can be eliminated.

g. **§ 111 Budget.** Subsection (c) provides that the budget may be amended pursuant to a process like that for initial adoption "on a timeline not to exceed 90 days." It is unclear when that 90-day timeline begins – when the council "requests" it, when an amendment is first presented to council, or otherwise? – and what happens if the 90-day timeline is not met. Also, it is unclear if, by allowing the budget amendment process to begin "upon request . . . of the council," this grants power to the council to prepare and present (to itself) a proposed amended budget for adoption – as opposed to the normal budget, which is within the sole purview of the mayor and the city manager. Or, if the council makes such a request to the mayor, who then, if so inclined, transmits a proposed amended budget back to the council.

11. **References to Public Meetings.** There are several proposed requirements for meetings or presentation to be made in public (see proposed Sections 40(b)(2), 60, and 70). As the mayor would no longer be a member of the legislative body, mayoral "public meetings" would not need to comply with the Brown Act. Also, proposed Section 70 requires the council's proposed candidates to be vetted at least one "public meeting." If that were a council meeting – or a meeting of a council subcommittee – it must comply with the Brown Act; if, on the other hand, the "public meeting" is not held by a city legislative body, then the notice and conduct of the meeting need not comply with the Brown Act. Clarification of this term is suggested.

12. **Mayor's Attendance at Council Meetings.** Proposed Section 40(b)(4) grants the mayor the right to "attend and be heard" at council meetings. On the other hand, Section 30(a) of the Charter grants the City Council the authority to adopt its own rules of procedure. Thus, there is some minor tension between these provisions. While the Mayor would have the right to attend, the Council could potentially limit, through its rules, the manner of the Mayor's participation (e.g., the mayor could not take a spot on the dais).

CHAPTER FIVE:
PROPOSED LANGUAGE CHANGES

A. Introduction

The mayor requested the City Attorney propose corrective language if the proposed Act presented legal issues. We have taken the liberty of extending that request to encompass proposed Act language that, while not presenting a patent legal problem or infirmity, could cause confusion. We have also taken the liberty of suggesting language changes that simply improve the grammar, flow, and structure of the Charter.

In making these suggestions, we have tried to hew to the intent of the drafters. Any change listed under "Major Changes" is meant to achieve mundane goals such as greater clarity, structural integrity, consistency with other language, or is a friendly suggestion; and no suggestion is meant to effect a change in the fundamental precepts of the specific section, concept, or the intent of the proposed Act.

The number of changes, and the reasons stated, should in no way be interpreted as a criticism of the Act's proposed language. Rather, repeated readings, contextual analysis, and plain old experience working with the Charter and with City processes merely suggested to this office that a few tweaks here and there would result in an improved final product.

B. Major Changes

1. **§ 21 Composition.** As discussed in Chapter Four, there are some potential legal concerns about the proposed language for council's discretion to initiate the process for creation of a ninth council seat. Depending upon the policy discussion by city council, we will recommend some language to achieve the desired result. If a definitive direction is given on the creation (or not) of a ninth seat, there a few other places in the proposed Act where ninth-seat contingency language would need to be eliminated or modified. (See, e.g., proposed Sections 24(a), 47(c)(3).)

2. **§ 24 Reapportionment of Districts.** We suggest changing "establish the qualifications of applicant to the commission," to "establish the qualifications of commission members."

3. **§ 25 Redistricting.** The apparent intent of the revisions to Sections 24 and 25 is to take away city council discretion in adopting council district boundaries. Leaving unchanged the clause in Section 25 starting "provided that . . ." cause potential confusion. As it currently reads, the City Council is theoretically allowed to change district boundaries in between censuses, so long as the population standard is maintained. The subject clause, requiring compliance with such standard, acts as a check on council's ability to change the boundaries between censuses. With a redistricting commission, and the other change to Section 25, restricting council's redistricting authority, this clause no longer seems required . Additionally, Section 25 should be slightly changed to either more expressly

state council's authority – without redistricting commission involvement – to add annexed territory to adjacent district, or to affirmatively require redistricting commission involvement even for annexations or consolidations.

4. **§29 Compensation.** For the reason described in Paragraph 10 of Chapter 4, we suggest deleting the following sentence: "Within one hundred eighty (180) days of passage of this measure, the commission shall set the compensation for the mayor and members of the city council."

5. **§ 36 Code of Ethics and Sunshine Ordinance.** Under the proposed Act, a reference is made to council's adoption of an ethics committee ordinance under a Charter section applicable to the mayor. It seems better, if the intent is to obligate the council to adopt an ethics committee ordinance, to place it in the Article applicable to the city council. So we suggest making the current proposed language in Section 36 Subsection (a), and adding the following subsection (b): "Within 180 days of the operative date of this Subsection (b), the city council shall adopt an ordinance establishing a citizens' ethics committee empowered to oversee a biennial review of the City's compliance with any and all ethics ordinances, resolutions, regulations, or other ethics rules then in effect."

6. **§ 40 Mayor -- Functions.** Subsection (b)(5)concerns the mayor, but appears to impose an obligation on the city council. In conjunction with the change suggested for Section 36(b), as described above, we suggest changing Subsection (b)(5) to read: "Shall submit proposals and work cooperatively with the city council in the development and adoption of the ethics committee ordinance required by Section 36(b); and shall have the right to propose additional ethics reforms for consideration and adoption by the city council."

7. **§ 45 Acting Mayor; Mayor Pro Tem.** Solely for structural reasons, we suggest moving the first paragraph to Article III (in a new section, e.g., § 37), as this provision deals with the council, rather than the mayor. The other paragraphs of Section 45 could remain as is.

8. **§ 46 Mayor –Vacancy.** The proposed new first paragraph provides numerous methods by which the mayor's office becomes vacant, but to be more comprehensive should include one additional method: recall.

9. **§ 47 Mayor – Approval or Veto of Council Ordinances.** We suggest simplifying Subsection (a) to read: "(a) The mayor shall have veto power over all ordinances passed by the council except those described in Section 32(g), ordinances required by state law, rezonings, or development agreements." But this suggestion assumes the true intent of the drafters, and can be modified as needed.

10. **§ 47 Mayor – Approval or Veto of Council Ordinances.** We suggest a slight change to the structure of Subsection (c). As currently drafted, subparagraphs (2) and (3) do not follow syntactically the introductory language of Subsection (c). A simple change could be: "(c) Except as otherwise provided in this Charter: [¶] (1) An ordinance adopted by the

city council shall be transmitted to the mayor within 48 hours by the City Clerk for the mayor's approval or veto." Also, it may be appropriate to include in subparagraph (2) a clarification on the mayor's duty to deliver the approval or veto to the City Clerk within the ten day period. This would provide timely certainty as to the mayor's action. It could read: "The mayor shall have ten days from the date of the transmittal by the City Clerk to approve or veto the ordinance and inform the City Clerk in writing of the action taken."

11. **§ 60 City Manager – Appointment, qualifications and removal.** We suggest modifying the language to harmonize the phrases "withhold confirmation" and "fails to confirm or reject," and the meaning of "final selection," as discussed in Paragraph10 of Chapter Four . The scope of these changes will depend on the underlying intent and direction provided.

12. **§ 70. Appointive Officers.** As described in Chapter Four, clarification is suggested regarding the type of public meeting to be held for vetting of Charter Officers. If the meeting is to be one before the city council, then we suggest changing "public meeting" to "open council meeting."

13. **§ 111 Budget.** We suggest deleting the final sentence of Subsection (b)(1) ("The council may request the assistance of the independent budget analyst, who shall provide to the city council independent analysis of the city budget."), for the reasons explained in Paragraph 10 of Chapter Four, above. If, however, the sentence's basic concept of Charter-prescribed IBA duty finds support, we suggest the following: "Upon request of the city council, the independent budget analyst shall provide to the city council an independent analysis of the proposed budget."

14. **§ 111 Budget.** If the intent is to disallow mayoral veto of the council's budget, as indicated in proposed Section 47(a), it seems appropriate to add a sentence or clause to Subsection (b)(2), so that the subsection reads, in part: "The mayor shall within ten days of receipt of the proposed budget, either approve the budget as proposed by the city council, veto the entire proposed budget, or veto any part of the proposed budget by reducing or eliminating any line item while approving other portions of the proposed budget; provided, however, that the mayor cannot exercise the line item veto on the council's budget."

15. **§ 111 Budget.** We recommend that the beginning, end, and consequence of the 90-day timeline in Subsection (c) should be better defined. Additionally, since the council is given some authority to initiate budget amendments, some process timeframes in Subsection (b) would not apply. We recommend clarification of the proposed timelines for budget amendment. Once a direction is provided, we can recommend specific language.

C. Minor/Grammatical Changes

1. **Capitalization of "Section."** The Act adds text referencing different sections or subsections of the Charter. [72] Those references should be capitalized, to comport with the preferred capitalization convention used in the Charter.[73]

2. **Correction of reference to a Charter Subsection.** In Section 25, there remains a reference to "Paragraph (a) of Section 24." Because a new subsection is being added to Section 24, the reference should be to "(b)," rather than "(a)."[74]

3. **Insert Subsections.** Two proposed sections (§§ 45, 46) result in sections with multiple paragraphs. It may be helpful to label each paragraph as a lettered subsection, which would be consistent with other Charter sections.

4. **"Of" for "or."** In Sections 27 and 32(g)(3), the proposal seeks to change "or" to "of." That proposal is understandable, but unnecessary. Unfortunately, in the electronically-available copy of the Charter there are sporadic typographical mistranslations from the printed version. However, the official copy of the Charter, which is kept by the City Clerk, uses the correct word ("of") as proposed.

5. **Consistent reference to adoption of measure provisions.** Pursuant to the terms of the proposed Act, the council must take certain actions within a specified period of time. But the verbiage used is inconsistent ("within one hundred eighty (180) days of the operative date of this section" [§ 24(a)]; "no later than 180 days after adoption of this Charter Amendment" [§ 36]) and "section" is sometimes used instead of the more appropriate "Subsection" (see §§ 24(a), 40(b)(3),(5)).

6. **Redundant but inconsistent language.** In Section 40(b)(9), we suggest deleting "at the pleasure of the mayor." It is unnecessary, as Section 60 states the city manager "can be removed from office by the mayor at will with or without cause." The use of differing language in different sections is not recommended. Also, unless it was purposeful and serves a specific (but explained) objective, we recommend deleting the addition of "proposed" in the last sentence of Section 33, as it is inconsistent with the phrase used earlier in the section to describe the council's permanent public record.

7. **Grammar changes in Section 46.** The final paragraph of Section 46, which explains the limited authority of the acting mayor, is modeled after a like provision in the San Diego Charter. But it could use some grammatical adjustment, to read: "This limited authority includes circumstances where the expeditious action is necessary to meet a legal

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[72] See proposed §§ 21, 24, 32(b), 36, 40(b)(3), 40(b)(7), 46, 47(c)(3), 111(c).
[73] See e.g., current Charter §§ 22, 25, 27, 28, etc.
[74] Additionally, notwithstanding its existence in the current version of the Charter, "Paragraph" could be more appropriately labeled "Subsection," as is the convention in other parts of the charter. (See, e.g., §§ 32, 85(b)(2), 92(b).) Admittedly, the Charter is inconsistent on this point.

requirement imposed by a court or another governmental agency. Such limited authority does not include the exercise of the power of any veto or any other discretionary privilege that is enjoyed by a person appointed or elected to the office of mayor."

8. **Gender neutrality.** In the proposed new first paragraph of Section 46, the term "his" is used twice, in reference to the mayor. It would be appropriate to make those terms gender neutral by changing "his" to "the," a definite article modifying "office [of the mayor]." Also in that paragraph, the grammatically disfavored term "himself/herself" is used. That can be fixed by rephrasing the clause ". . . or is continuously absent from the City . . . ." In the same vein, in Section 40(b)(2), "he/she" is used. That can be fixed by rephrasing the clause ". . . such measures as the mayor may deem . . . ."

9. **"Start" rather than "end."** In Section 111(b)(1), the mayor presents to the city council a proposed budget no later than 90 days prior to the "commencement of each fiscal year." But the council must adopt the budget resolution 30 days "prior to the end of the fiscal year." Thus, under basic principles of interpretation, the two referenced years would be different – the mayor's timeline is based upon the start of an *upcoming* fiscal year, while the council's timeline is based upon the end of the *current* fiscal year. The time reference for city council's action should be changed to match the earlier language, so as to read "prior to commencement of the fiscal year."

10. **"Sacramento Municipal Code."** In Section 5 of the proposed Act, there is a reference to the "Sacramento Municipal Code." The official title of the code is the "Sacramento City Code."[75]

11. **Serial commas.** It is preferable to place a comma after each item in a series – rather than omitting the last comma before "and" or "or."[76] Although there are numerous places in the proposed Act where such a rule could be applied, detailing them here would be overly pedantic and tiresome.

12. **Numbers (number parentheticals).** The proposed Act has many new references to time periods (days and hours). In some instances, the periods are expressed solely with Arabic numerals; in other instances (sometimes in the same section), both words and Arabic numerals in parentheses are used. (See e.g., § 111(b)(1),(2).) Although some long-standing sections in the charter still use this latter method, the preferred modern practice is to simply spell out numbers of 10 or less, and use Arabic numerals for numbers of 11 or more.[77]

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[75] See Sacramento City Code, § 1.01.040.
[76] See Garner's Modern American Usage (3d ed. 2009) p. 676.
[77] See Garner's Modern American Usage (3d ed. 2009) p. 579.

APPENDIX A: "THE SACRAMENTO CHECKS AND BALANCES ACT OF 2012 (Draft for Public Input and Dialogue, December 21, 2011)"

[Starts on Next Page]

THE SACRAMENTO

CHECKS AND BALANCES ACT OF 2012

DRAFT FOR PUBLIC INPUT AND DIALOGUE

December 21, 2011

ABOUT THE PLAN

The Sacramento Checks and Balances Act of 2012 is a new proposal to reform the Sacramento City Charter, our city's constitution and guiding document.

The Act aims to improve how city government works for the people of Sacramento by making city officials more directly accountable to voters, creating stronger checks and balances on the powers of key city officials, and establishing higher standards for ethical and transparent behavior.

The Act is the culmination of three years of civic debate and discussion on how best to reform and modernize our city charter. Concepts are drawn from several sources, including prior charter reform proposals, the work of a Charter Review Committee, the Citizen's Redistricting Committee, and feedback drawn from City Council Meetings, community town halls, public comments, and media.

Supporters are currently seeking City Council and public support to place the measure before voters on the June 5, 2012 ballot and take effect upon the start of the new terms of the Mayor and Council in November 2012.

THE NEED FOR CHANGE

At the core of the Checks and Balances Act is a belief that the City of Sacramento has the potential to become known as one of the most accountable, ethical, transparent, and citizen-friendly governments in the state.

To reach Sacramento's full potential, our City Charter must be updated and improved for the 21st century. The city's current governance structure was first established over 90 years ago for a far smaller, less diverse and less complex city.

Since that time, city leaders have periodically updated the Charter at key moments when the evolving needs and realities of the city demanded fundamental change.

Today is one of those moments. We are the capital city of the 10th largest economy of the world, the hub of a region of over two million residents, and one of the most diverse communities in the country. And yet, on a variety of issues, from our city budget to public safety, job creation to the livability of our neighborhoods, the limitations of our current system leave problems unsolved, and potential unrealized.

We need a new model of city government that truly reflects to the will of the people: one that holds leaders directly accountable to residents, provides clear checks and balances, empowers citizens to play an active role in their democracy, and assures them that the leaders they entrust always act in an ethical and transparent manner.

PLAN COMPONENTS

The Act centers around five components:

EXECUTIVE MAYOR

- Elected Mayor is chief executive, rather than unelected City Manager
- Proposes budget
- Nominates/removes City Manager
- No appointment/removal of other charter officers or city employees
- Limited veto authority
- Convenes State of the City and minimum four public town halls each year

INDEPENDENT COUNCIL

- Council President presides over Council Meetings *(Mayor steps down)*
- Amends and approves budget with support of Independent Budget Analyst
- Confirms Mayor's nomination of City Manager
- Appoints/removes Clerk, Attorney, Treasurer, Auditor and Budget Analyst
- Overrides Mayoral vetoes
- Convenes minimum two Council Meetings in community per year

ETHICS AND TRANSPARENCY

- Sunshine Ordinance to promote open government
- Code of Ethics for city officials
- Citizens' Ethics Committee to lead biennial ethics review
- Voter approval for major salary raises for Mayor and Council
- Prompt posting of key public records (votes, meetings, budgets, audits)

REDISTRICTING

- Independent Redistricting Commission established
- Commission members not selected by Mayor or Council
- Commission decisions are binding
- Option to add ninth district

VOTER RE-APPROVAL

- Effective with start of new Mayor and Council terms in November 2012
- Citizens must vote to re-approve by November 3, 2020 or sooner
- If not re-approved, sunsets on December 31, 2020

ADVANTAGES OVER THE CURRENT CHARTER

The Sacramento Checks and Balances Act of 2012 offers the city of Sacramento and its residents four main advantages over the current governance structure.

DIRECT ACCOUNTABILITY TO VOTERS

- Voters elect the Chief Executive of the city
- Voters elect all Council Members, ensuring policies reflect voter priorities
- Mayor and Council meet regularly in community to ensure voters direct access
- Public input required in hiring of all major city officials

CLEAR SEPARATION OF POWERS

- Clear lines of accountability for key executive and legislative functions
- Mayor oversees executive branch, including city management and implementation of laws and policy
- Council acts as legislative branch, responsible for providing oversight and passing laws and policies governing the city
- Mirrors structure in major California cities, and state and federal governments

STRONG CHECKS AND BALANCES

- Limits power and authority of individual city officials
- Mayor proposes the budget, but Council amends and approves it
- Mayor nominates City Manager, but Council must confirm appointment
- Council appoints/removes other city officers, but must seek public input
- Mayor may veto Council actions, but Council may override

ROBUST ETHICS AND TRANSPARENCY REFORMS

- Explicitly holds city officials accountable for high ethical standards
- Establishes new policies and procedures for regular ethics reviews
- Improves public's access to critical records on fiscal and policy matters
- Limits ability of elected officials to increase personal salaries

• COMPARISON OF CHARTER PROPOSALS

	CURRENT CHARTER	2008 "STRONG MAYOR INITIATIVE"	2012 CHECKS AND BALANCES ACT
Executive duties			
Chief Executive selected by	CITY COUNCIL	CITIZENS OF SACRAMENTO	CITIZENS OF SACRAMENTO
Chief Executive Officer	City Manager	Mayor	Mayor
Chief Administrative Officer	N/A	City Manager	City Manager
Contracting Authority	Council; City Manager per ordinance	Council; City Manager per ordinance	Council; City Manager per ordinance
State of the City required?	No	Yes	Yes
Public town halls required?	No	No	Minimum four per year
Maximum number of terms as Mayor	None	None	None
Council duties			
City Council composition	Mayor + 8 Council Members elected by district	9 Council Members elected by district	8 Council Members elected by district (can add 9th)
Presiding officer at council meetings	Mayor	Council President	Council President[78]
Assumes role of Mayor in case of absence or vacancy	Vice Mayor	Council President	Council President with limited authority[79]
Mayor's role in open session	Participate[80] and vote	Pre-9th district: Participate and vote Post 9th district: May not participate or vote.	May not participate or vote.
Mayor's role in closed session	Participate and vote	Pre-9th district: Participate and vote Post 9th district: May not participate or vote.	May participate, no vote
City Manager's role at Council Meeting	Participate, no vote	Participate, no vote	Participate, no vote
Council Meetings in community required?	No	No	Minimum two per year
Minimum votes needed to pass Council item	5 votes	5 votes	5 votes
Maximum number of terms as Council Member	None	None	None
Residual Powers	Council	Not specified	Council
Appointment Responsibilities			
City Manager	Appoint: Council (5 votes) Remove: Council (6 votes)	Appoint: Mayor w/Council concurrence (5 votes) Remove: Mayor	Appoint: Mayor w/Council concurrence[81] (5 votes) Remove: Mayor w/Council notification
Assistant City Managers and Department Heads	Appointed/removed by City Manager	Appoint: Mayor w/Council concurrence (5 votes) Remove: Mayor	Appointed/removed by City Manager
Other city employees (unrepresented and represented)	Appointed/removed by appointing authority[82]	Appointed/removed by Mayor	Appointed/removed by appointing authority
Boards & Commissions	Appoint: Mayor w/Council concurrence (5 votes) Remove: Council (5 votes)	Appoint: Mayor w/Council concurrence (5 votes) Remove: Council (5 votes)	Appoint: Mayor w/Council concurrence (5 votes) Remove: Council (5 votes)
Other Charter and City Officers (Clerk, Treasurer, Attorney, Auditor)	Appointed/removed by Council (5 votes)	Appoint: Mayor w/Council concurrence (5 votes) Remove: Mayor	Appointed/removed by Council (5 votes)
Mandatory public input in Charter Officer hiring?	No	No	Yes. Minimum one hearing during hiring process
Independent Budget Analyst	N/A	Appointed/removed by Council (5 votes)	Appointed/removed by Council (5 votes)

[78] Council President will be elected by Council, similar to how the Vice Mayor is currently selected. The Council President may be re-elected to successive terms.
[79] Excludes exercise of veto power or any other discretionary privilege.
[80] Participate in this sense means to speak alongside the Council from the dais. The Mayor, as with any other member of the public, will always be able to attend and speak as a citizen.
[81] Appointment automatically confirmed in 30 days if no Council action taken.
[82] Currently, the Mayor, Council, City Clerk, City Treasurer, City Attorney, City Auditor and Independent Budget Analyst have appointing authority over their respective staffs.

• COMPARISON OF CHARTER PROPOSALS *(CONTINUED)*

	CURRENT CHARTER	2008 "STRONG MAYOR INITIATIVE"	2012 CHECKS AND BALANCES ACT
Budget			
Propose and present preliminary budget	City Manager	Mayor with City Manager support	Mayor with City Manager support
Deadline to present budget	May 1	April 1	April 1
Amend and adopt budget	Mayor and Council	Council (5 votes)	Council (5 votes)
Required number of public hearings	One hearing	Two hearings	Two hearings - first within 15 days of proposal
Council deadline to return modified budget to Mayor	N/A	N/A	June 1
Contingency if budget not adopted on time	Prior budget effective until new budget passed	Mayor's proposed budget deemed approved	Prior budget effective until new budget passed
Mandatory posting of budget details online	N/A	N/A	Within 72 hrs of proposal and 30 days of adoption
Budget amendments and modifications	Same process as for adoption	Same as current	Same as current
Veto			
Scope of veto	N/A	Budget (line item) and Ordinances only	Budget and Ordinances only[83]
Mayoral veto timeline	N/A	Veto within 15 days or automatically approved	Veto within 10 days or automatically approved
Council override timeline	N/A	Budget: Override (6 votes) within 5 days Ordinances: Override (6 votes) within 15 days	Budget: Override within 10 days[84] Ordinances: Override within 30 days
Ethics and Transparency Reforms			
Sunshine Ordinance and Code of Ethics	N/A	N/A	Established per ordinance within 180 days
Citizens' Committee to oversee biennial ethics review	N/A	N/A	Established per ordinance within 180 days
Voter approval for >5% Mayor and Council raises?	No	No	Yes
Post Council votes, records, and audit online	N/A	N/A	Within 5 days
Independent Redistricting Commission			
Creation of Commission	N/A	N/A	Established per ordinance within 180 days
Selection of members	N/A	N/A	9 members selected independently of Council
Commission decisions binding?	N/A	N/A	Yes – Council may not modify
Voter Re-approval			
Effective Date	N/A	Within 30 days of voter approval	November 27, 2012 (start of new term of office)
Timeframe to place re-approval measure on ballot	N/A	N/A	No later than November 3, 2020
Sunset Date if not re-approved	N/A	N/A	December 31, 2020

[83] Budget veto includes line items. Exceptions where Mayor may not veto include: emergency ordinances; ordinances required by state law; election-related ordinances; re-zoning; development agreements; land use decisions/actions; Council budget; and any other matters under the exclusive purview of the Council.
[84] Override for both budget and ordinances requires 5 votes for 8 member Council and 6 votes if 9 member Council established

DRAFT: THE CHECKS AND BALANCES ACT OF 2012

The proposed language below was prepared by the law firm of Nielsen Merksamer Parrinello Gross & Leoni LLP, whose specialties include government, political and initiative law, civil and constitutional rights, and voting rights and redistricting.

The City Attorney's Office will present an independent analysis and review of this language at the January 17, 2012 City Council Meeting. This draft will serve as the basis for the proposed charter amendment intended for voter consideration on the June 5, 2012 ballot.

The Sacramento Checks and Balances Act of 2012

Section 1. Title.

This charter amendment is titled and may be cited as the "Sacramento Checks and Balances Act of 2012" (hereinafter, the "Act").

Section 2. Findings and Purpose.

A. Findings.

1. Voter distrust and dissatisfaction with government is at historic levels.

2. Voters consistently express a desire for more accountability and transparent checks and balances in city government.

3. Currently, voters have a limited ability to hold key decision-makers clearly, directly, and consistently accountable for how they spend taxpayer dollars, make major decisions of city management, and administer city programs and services.

4. Currently, all powers are concentrated exclusively in a single entity, the City Council, which results in a system that blurs accountability for distinct executive and legislative powers, and denies voters the protection of basic checks and balances on power that are hallmarks of the American democratic system.

5. Voters expect and deserve higher standards for ethical behavior, transparency, and citizen engagement in all aspects of city government, including but not limited to the oversight of city officials and the determination of boundaries for city council districts.

6. The root cause of these problems is an outdated city governance system established nearly 100 years ago for a far smaller, less diverse and less complex city.

7. Modernizing the City Charter is an essential step in the City's evolution to meet the challenges and opportunities of the 21st Century.

8. Voters will demonstrate greater trust and support for a city government that ensures the mayor, city council and City departments are held accountable to the will of the voters through reforms that establish clear lines of accountability and adequate checks and balances between executive and legislative functions, including strong provisions for ethical and transparent behavior.

9. This Act, therefore, amends the City Charter to include a series of reforms to create more accountability and transparent checks and balances, on a trial basis, so that the people of Sacramento may assess the Act's effectiveness and affirmatively vote to make the amendments permanent, if they so desire.

B. Purpose.

The purpose of this measure is to establish greater accountability and stronger checks and balances, including more robust ethics and transparency provisions, on a trial basis, to better ensure that the agenda, budget, leadership and day to day management of the City of Sacramento are directly informed by and aligned with the will of the voters, and effectively communicated to the residents of Sacramento by their elected representatives.

Section 3. City of Sacramento Charter Amendment.

The Sacramento City Charter is amended as follows (deletions shown in ~~strikethrough~~ and new text shown in *italics*; sections of the Charter not being amended by the Act are not duplicated below):

Article III. The City Council

§ 21 Composition.

The legislative body of the city shall be a city council of ~~nine~~*eight* members, ~~consisting of the mayor and eight other members. Each council member other than the mayor shall be~~ nominated and elected by the electors of the district in which such person resides as provided in Article X. *The city council may at any time initiate a process to create a ninth council seat, to redraw the council districts in accordance with the law, if required, and to determine whether the primary and general elections for that council seat shall be held at the same time as the even numbered or the odd numbered council district seat elections pursuant to section 152 of this Charter.*

§ 22 Districts.

The city is hereby divided into eight council districts, designed First through Eighth Districts, respectively*, unless the city council acts, pursuant to section 21 herein, to create a ninth council seat elected by district, in which case there shall be nine council districts*. Council districts in existence upon the effective date of this Charter shall continue to exist until altered as provided in Section 24. The Title of the office of each member of the council ~~other than the mayor~~ shall bear the number accorded the district of such member.

§ 24 Reapportionment of districts.

(a) There shall be established an independent citizens' redistricting commission of 9 members whose function shall be to establish the boundaries of the city council districts in accordance with section 23 following each decennial federal census and to redraw the city council districts if the city council acts pursuant to section 21 to create a ninth council seat elected by district. The members of the independent citizens' redistricting commission shall serve without compensation. The City shall fund the expenses of the commission and provide meeting facilities and staff to assist the commission. Within one hundred eighty (180) days of the operative date of this section, the city council, in consultation with the mayor, shall pass an ordinance to establish the qualifications of applicants to the commission and specify those factors that are disqualifying to

ensure independence. The ordinance shall also provide for a method to select the persons to serve on the commission that ensures independence, including but not limited to a prohibition against any involvement by the mayor or members of the city council in the selection or appointment of the commission members, and for disclosure of communications with commission members that occur outside of a public meeting.

(~~a~~*b*) Within six months after a regular United States census, the ~~city council~~ *independent citizens' redistricting commission, using a public, transparent and accessible process,* shall examine the boundaries of each council district for compliance with the population standard set forth in Section 23 and ~~by ordinance~~ shall *adopt and transmit to the city council for its enactment by ordinance, a plan to* modify the boundaries of districts, if necessary, to bring all district boundaries into compliance with said standard*, and with the other criteria set forth in section 23*. The term a "regular United States census" shall mean a comprehensive population census which is held at regular intervals prescribed by Congress and produces population data equivalent to that described as "Block Data" in the 1970 decennial census.

(~~b~~*c*) For purposes of this section the six-month period shall begin upon the availability or population data equivalent to that described as "Block Data" in the 1970 census.

§ 25 Redistricting

District boundaries ~~may~~ *shall only* be changed by ordinance of the city council, *which ordinance shall reflect, without alteration, the final adopted boundaries of the independent citizens' redistricting commission*, provided that any such revised district boundaries shall comply with the population standard set forth in Section 23 except that territory annexed or consolidated with the city shall at the time of such annexation or consolidation be added by ordinance to an adjacent district or districts pending the examination of district boundaries as provided in Paragraph (a) of Section 24.

§ 26 Terms of office.

Each member of the city council ~~other than the mayor~~ shall serve for a term of four years and until a successor qualifies.

§ 27 Qualifications of members.

Each member of the council or candidate therefore, ~~other than for the office of mayor,~~ at the date of candidacy and election or appointment, shall be an elector

and a resident in such member's district for not less than 30 days preceding the date of candidacy and election or appointment, as the case may be, and must continue to reside in such district during the term of office, except that no boundary change under Section 24 or 25 shall disqualify a member from serving the remainder of the term. The term "elector" means a person who qualifies to vote at either a state election or federal election held in the State of California. "Date of candidacy" shall mean the date of filing nominating papers or equivalent declaration ~~or~~*of* candidacy.

§ 28 Vacancies.

A vacancy on the city council ~~other than the office of the mayor~~ shall be filled by special election to be called by the council as provided in Section 154 of this Charter, unless such vacancy occurs within one year of the next general election at which such office would normally be filled, in which case the vacancy shall be filled by appointment by a majority of the remaining members of the council. A person elected or appointed to fill a vacancy shall hold office for the unexpired term of the former incumbent.

Absence from five consecutive regular meetings of the city council, unless excused by resolution of the council, shall operate to vacate the seat of the ~~mayor or~~ council member so absent.

§ 29 Compensation.

There shall be established a compensation commission whose function shall be to establish the compensation for the mayor, members of the city council, and public members of city boards and commissions. The commission shall be comprised of five members selected pursuant to Section 230 of Article XV of this Charter for staggered four-year terms. The chair of the commission shall be a retired judicial officer and all members shall be residents of the City of Sacramento. The commission shall meet at least once a year and shall serve without compensation. The city shall fund the expenses of the commission. Within one hundred eighty (180) days of passage of this measure, the commission shall set the compensation for the mayor and members of the city council. Compensation shall be reasonable and consistent with other cities similar in size and structure~~.~~*, however, any portion of an increase in compensation from the prior year that would result in an overall increase for that year in excess of five percent must be approved by the voters.*

§ 31 Meetings.

(a) The city council shall hold regular meetings at such times and places as may be fixed by resolution, except that the council shall meet after 5 p.m. not less than one evening each week; provided, however, that the city council may, in its discretion, designate up to four weeks per year during which a regular council meeting need not be held. *In order to improve citizen involvement and accessibility to meetings, the city council shall hold at least two regular meetings per year outside of its chambers, but within the City limits and at locations with a maximum capacity that meets or exceeds that of council chambers.*

(b) All meetings of the city council and its committees shall be called and conducted in the manner prescribed by State laws regarding matters of statewide concern which are in effect at the time of the meeting. *All open meetings of the city council and its committees shall be recorded electronically, either by audio or video with audio, and made available on the City's website for public viewing in real time and shall be posted to the City's website for public access within five days of the meeting.*

§ 32 Ordinances.

(a) Every proposed ordinance shall be introduced in writing. The enacting clause of each ordinance enacted by the council shall be "Be it Enacted by the Council of the City of Sacramento." The enacting clause of each ordinance enacted by the initiative or referendum process shall be "Be it Enacted by the People of the City of Sacramento." Each ordinance shall contain a title which shall state in general terms the subject or subjects contained in the ordinance.

(b) *Subject to section 47 of this Charter, and* except as otherwise provided elsewhere in this Charter, and with the exception or ordinances which take effect immediately upon adoption, ordinances shall be adopted in compliance with either the procedure set forth in Subsection (c) or Subsection (d) of this section .

(c) The ordinance shall be first passed by the council for publication of title. At least six days shall elapse between the date the ordinance was passed for publication of title and the date it is adopted by the council. The title of the ordinance shall be published by printing said title in a newspaper of general circulation published within the City designated by the council as the official newspaper of the City, no later than the third day immediately preceding the date

of the adoption of the ordinance. No part of any ordinance, or proposed ordinance, other than its title, need be published.

(d) In lieu of the procedure set forth in Subsection (c) of this section, ordinances shall be published in the official newspaper of the City within ten days after adoption by the council.

(e) Ordinances which take effect immediately upon adoption, may be adopted without compliance with Subsections (b), (c) or (d) of this section.

(f) Except as otherwise provided in this Charter, each adopted ordinance shall become effective at the expiration of thirty (30) days after adoption or at any later date specified therein.

(g) The following ordinances shall take effect immediately upon adoption or at such later dates, of less than thirty (30) days after adoption, as may be specified in the ordinances:

(1) An ordinance calling for or otherwise relating to an election;

(2) An ordinance adopted as and declared by the city council to be an emergency measure, containing a statement of the facts constituting such emergency, if adopted by the affirmative votes of at least six members of the council; provided, that no measure making a grant, renewal or extension of a franchise or other special privilege or regulating the rate to be charged for its service by a public utility, other than one operated by the city, may be so enacted; and

(3) An ordinance adopted pursuant to a state law by virtue ~~or~~*of* which such ordinance shall be effective immediately.

(h) Nothing contained in this section shall be deemed to require an ordinance when an ordinance is not otherwise required**.**

§ 33 Records.

The city council shall require the city clerk to keep a permanent public record of its proceedings showing all action considered and taken, motions and records, the text of ordinances and resolutions introduced or adopted and all amendments thereto proposed or adopted, and the vote of each council member regarding any matter before the city council or any committee thereof. *The above-described permanent public record must be posted and updated on the City's website by the city clerk within five days of any action of any kind proposed, considered or taken by the city council.*

§ 35 Limitation on future employment.

No member of the council *or the mayor* during the term for which such person shall have been elected or appointed or for one year after such person ceases to hold office, shall be eligible for any appointive office or position in the city, carrying compensation, and created by this Charter, by ordinance or by resolution. An elective office which has been filled by appointment by reason of a vacancy in that office shall not be considered an appointive office under this section.

§ 36 Code of Ethics and Sunshine Ordinance.

To assure public confidence in the integrity of elected and appointed officials in local government, the city council shall no later than 180 days after adoption of this Charter Amendment, and taking into consideration the recommendations of the mayor pursuant section 40(b)(3) of this Charter: (1) by ordinance, adopt a Code of Ethics and Conduct for elected officials and members of appointed boards, commissions, and committees; and (2) adopt a Sunshine (open government) Ordinance.

Article IV. The Mayor

§ 40 Mayor—Functions.

(a) The ~~presiding~~*chief executive* officer of the city shall be the mayor, *who shall have the executive authorities, powers and responsibilities of the city as provided herein, including but not limited to the power and duty to execute and enforce all laws, ordinances and policies of the City*.

(b) The mayor:

(1) Shall be recognized as the official head of the city for the performance of all duties lawfully delegated to the mayor by this Charter, by action of the council or by other laws.

(2) Shall provide leadership within the community in the sense that the mayor shall have the primary, but not exclusive, responsibility of interpreting the policies, programs and needs of city government to the people, and as the occasion requires, may inform the people of any change in policy or program*, and (a) shall appear before the public to deliver a general address on the State of the*

City, and to recommend the adoption of such measures as he/she may deem expedient and proper; and (b) shall also conduct four additional public town hall meetings during the year to solicit and respond to comments, concerns, or questions from the public, which meetings shall be noticed to the public not less than two weeks in advance, and shall be scheduled approximately three months apart;

(3) Shall have the right but not the exclusive power to make recommendations to the city council on matters of policy and programs that require council decisions*, and shall, within 90 days of the operative date of this section, submit a proposal and thereafter work cooperatively with the city council in the development and adoption by the city council, pursuant to section 36 of this Charter, of a City Code of Ethics and Conduct and a Sunshine (open government) Ordinance*;

(4) Shall *have the right, but not the obligation, to attend and be heard at any regular or special open session or closed session meeting of the city council, but not the right to vote at such meetings*~~be a member of the city council and shall be entitled to make and second motions on matters before the city council and vote on city council actions, but shall possess no veto power over actions of the city council~~;

(5) ~~Shall be included within the terms "council" and "city council" used in this Charter unless otherwise expressly *provided*~~*Shall, within 180 days of the operative date of this section, submit proposals and work cooperatively with the city council in the development and adoption of an ordinance by the city council to establish a citizens' ethics committee empowered to oversee a biennial review of the City's compliance with any and all ethics ordinances, resolutions, regulations or other rules then in effect, with the right to propose additional ethics reforms for consideration and adoption by the city council*;

(6) May propose ordinances and resolutions which shall be considered by the city council;

(7) Shall propose a budget to the council not later than 90 days prior to the commencement of each fiscal year, and shall have the power to veto the budget resolution adopted by the city council pursuant to section 111 of this Charter;

(8) May approve or veto ordinances passed by the council pursuant to section 47 of this Charter;

(9) Shall appoint the City Manager subject to confirmation by a majority vote of the city council, and may remove the City Manager at the pleasure of the mayor, pursuant to section 60 of this Charter;

~~(7)~~*(10)* Shall appoint and may remove members of the boards and commissions and advisory agencies in accordance with Article XV except as otherwise provided in this Charter;

(~~8~~*11*) Shall have and exercise such other powers and duties as *delegated to the mayor by the city council and as* provided in this Charter, the laws of the state, and ordinances and resolutions of the city.

§ 45 ~~Vice-~~*Acting* Mayor; Mayor Pro Tem.

At the first council meeting in January of each year, the city council shall elect one of its members~~, other than the mayor,~~ to serve as ~~vice-mayor~~ *council president* during the ensuing calendar year.

During any absence of the mayor from the city~~ or a meeting of the city council~~, the ~~vice-mayor~~ *council president* shall be the acting mayor until the mayor returns. In addition, if the mayor becomes incapable of acting as mayor and incapable of delegating duties, ~~or if a vacancy exists in the office of mayor,~~ the ~~vice-mayor~~ *council president* shall become the acting mayor.

In the event of the absence, vacancy in office or inability of both the mayor and ~~vice-mayor~~ *council president* to perform their duties, the council may appoint one of its members to serve as mayor pro tem. The mayor pro tem shall temporarily act in the capacity of an acting mayor. Any person serving as an acting mayor under this section shall continue to hold office as a member of the city council.

~~An acting mayor shall possess all powers of the office of mayor and shall be subject to all prescribed duties for such office.~~ *Any person serving as acting mayor under this section shall be vested with the authority to supervise the staff remaining employed in the office of the mayor, to direct and exercise control over the city manager in managing the affairs of the City under the purview of the mayor and to exercise other power and authority vested in the office of the mayor when the exercise of such power and authority is required by law. This limited authority would include circumstances where the expeditious action is necessary to meet a legal requirement imposed by a court or another governmental agency. Such limited authority would not include the exercise of*

the power of any veto or any other discretionary privilege which is enjoyed by a person appointed or elected to the office of mayor.

§ 46 Mayor—Vacancy.

The office of mayor shall be declared vacant by the city council when the person elected or appointed thereto fails to qualify within ten days after his or her term is to begin, dies, resigns, ceases to be a resident of the City or absents himself/herself continuously from the City for a period of more than thirty days without permission from the city council, is convicted of a felony, is judicially determined to be an incompetent, is permanently so disabled as to be unable to perform the duties of his office, forfeits his office under any provision of this Charter, or is removed from office by judicial procedure. A finding of disability shall require the affirmative vote of at least six members of the city council after considering competent medical evidence bearing on the physical or mental capability of the mayor.

A vacancy in the office of the mayor shall be filled by special election to be called by the city council as provided in Section 154 of this Charter, unless such vacancy occurs within one year of the next general election at which the office of mayor would normally be filled, in which case the vacancy shall be filled by appointment by a majority or the members or the city council then in office. A person elected or appointed to fill a vacancy in the office of mayor shall hold office for the unexpired term of the former incumbent.

During the period of time when an appointment or election is pending to fill a vacancy in the office of mayor, the provisions in section 45 herein shall control.

§ 47 Mayor—Approval or Veto of Council Ordinances.

(a) The mayor shall have veto power over all ordinances passed by the council except as provided for in Section 32(g). The mayor shall have no veto power over matters that, pursuant to this Charter, are the exclusive purview of the council such as selection of the council president and rules and procedures for the conduct of council meetings; the council budget; matters where the council has acted as a quasi-judicial body and where a public hearing was required by law implicating the due process rights of individuals affected by the decision and where the council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; ordinances

required by state law; ordinances fixing the dates of elections; or salary ordinances for the city council or mayor.

(b) Except as otherwise provided in this Charter, each ordinance adopted by the city council shall become effective at the expiration of thirty days after adoption and approval by the mayor, or the override of a mayoral veto pursuant to this Charter, or at any later date specified therein.

(c) Except as otherwise provided in this Charter, an ordinance adopted by the city council shall:

(1) Be transmitted to the mayor within 48 hours by the City Clerk for the mayor's approval or veto.

(2) The mayor shall have ten (10) days from the date of transmittal by the City Clerk to approve or veto the ordinance. If the mayor fails to act within such period, the ordinance shall be deemed approved.

(3) If the mayor vetoes the ordinance, the mayor shall state the reasons for such veto which shall be transmitted to the city council by the City Clerk within 48 hours. The city council shall have thirty days from the date of transmittal by the City Clerk to reconsider the ordinance. If after such reconsideration, at least five council members vote in favor of passage of the ordinance, that ordinance shall become effective notwithstanding the mayor's veto. If, however, the city council acts pursuant to section 21 of this Charter to create a ninth council seat, then notwithstanding the foregoing sentence, it shall take the affirmative votes of at least six council members to override the mayor's veto. If the vetoed ordinance does not receive the applicable minimum number of affirmative votes after reconsideration, the ordinance shall not be approved or enacted and shall have no legal effect.

Article V. City Manager

§ 60 City Manager—Appointment, qualifications and removal.

There shall be a city manager who shall be appointed by the ~~city council~~*mayor subject to confirmation by a majority vote of the city council. The mayor shall reinitiate the appointment process if, within 30 days of the appointment being made, a majority of the council votes to withhold confirmation of the appointment. If the city council fails to confirm or reject an appointment within 30 days of the appointment being made by the mayor, the appointment of the city manager shall be deemed approved by the city council.* The city manager shall be selected solely on the basis of executive and administrative qualifications.

Prior to the final selection of the city manager, the mayor shall hold a public meeting where members of the public may propose questions regarding the executive and administrative qualifications of the candidate(s) for city manager. The city manager shall be appointed by and shall serve at the pleasure of the ~~city council~~*mayor and can be removed from office by the mayor at will with or without cause. The mayor shall advise the city council before removing the city manager*.

§ 61 Functions.

The city manager shall be the chief ~~executive~~ *administrative* officer of the city and shall be responsible for the effective administration of the city government. The city manager shall have the power and it shall be the city manager's duty:

(a) To *assist the mayor in* see*ing* that all laws and ordinances are enforced;

(b) To administer and exercise supervision and control over all offices, departments and services of the city government under the jurisdiction and control of the ~~city manager~~*mayor*;

(c) *To the extent requested by the city council, t*~~T~~o act in an advisory capacity to the city council with respect to officials not under the jurisdiction and control of the city manager *or mayor*;

(d) Except as otherwise provided in this Charter, to appoint all heads or directors of departments of the city and all subordinate officers and employees with power to discipline and remove any officer or employee so appointed, subject to the civil service provisions of this Charter; provided, further, that all officers and employees of the city appointed by the city manager who are exempt from the rules and regulations of the civil service board pursuant to Charter Section 83 may be suspended or removed at the pleasure of the city manager.

(e) To make such recommendations to the mayor and city council as the city manager shall deem appropriate concerning the operation, affairs and future needs of the city;

(f) To attend all regular and special public meetings of the city council with the right to participate in the discussion of matters pending before the council but without the right to vote on such matters;

(g) To see that all terms or conditions imposed in favor of the city or the people of the city in any contract franchise, lease or permit are faithfully kept and

performed; and upon knowledge of any violation thereof to notify the city council of such violation;

(h) When authorized to do so by the provisions of this Charter or by ordinance or resolution, to execute, on behalf of the city all contracts, franchises, lease or permits or any other document requiring the execution of which is required by an officer of the city;

(i) To keep the *mayor and the* city council fully advised as to the operations, financial conditions and needs of the city;

(j) To *assist the mayor in* prepare*ing* the annual budget in accordance with Charter Section 111.

(k) To perform such other duties consistent with this Charter as may be prescribed by the ~~city council~~ *mayor*.

§ 62 Non-interference with City Manager.

No member of the city council shall directly or indirectly coerce or attempt to coerce the city manager relative to the appointment or removal of any city officer or employee which is made by the city manager~~, but prior to the making of any appointment or removal of any head or director of any department or division of the city, the city manager shall endeavor to advise the city council of his intention to do so~~.

The city council and its members shall deal solely and directly through the *mayor or the* city manager with respect to the part of city government under the direction and supervision of the city manager; provided, that nothing herein shall limit the power of the city council, or members thereof, to do the following:

(a) to conduct investigations as provided in Section 34 of this Charter, or

(b) to contact officers and employees of the city for the purpose of inquiry or obtaining information that is a public record, or

(c) to contact officers and employees designated by the city manager for the purpose of advising said officers and employees or citizen complaints relating to the operation of city government.

~~§ 63 Removal of City Manager~~

~~The city manager cannot be removed from office except by a vote of six members of the city council. The city manager shall not be subject to removal from office~~

~~within twelve months of the date that the city manager first assumes the duties of office except for incompetence, malfeasance, misfeasance or neglect of duty. If the removal is proposed within the first twelve months, the city manager may demand written charges and a public hearing before the city council prior to the date upon which his removal becomes effective; but the decision of the city council shall be final, conclusive and binding upon the city manager, and pending such hearing the council may suspend the city manager from duty without loss of normal compensation.~~

Article VI. Other Appointive Officers

§ 70 Appointive Officers

The following other city officers shall be appointed by the city council *following at least one public meeting where members of the public may propose questions regarding the qualifications of the candidate(s) for each appointive office*:

(a) City Clerk;

(b) City Attorney;

(c) City Treasurer; and

(d) Such other officers and employees of its own body as it deems necessary.

§ 73 City Treasurer.

The city treasurer shall be responsible for the deposit and investment of all funds of the city treasury not made subject to the control of others pursuant to this Charter. The city treasurer shall keep the city council *and the mayor* fully advised as to the deposit and investment of funds subject to his control. The city council shall prescribe the qualifications, additional duties, and compensation of the city treasurer. The city treasurer shall appoint, subject to the civil service provisions of this Charter, such deputies and employees as the council may by resolution prescribe.

§ 76 Duty to inform council *and mayor*.

Each appointive officer specified in Section 70 shall have the duty to promptly and fully inform the city council *and the mayor* of any act of misfeasance or malfeasance known to said appointive officer to have been committed by any officer or employee of the city if such act might significantly and adversely affect the financed or operations of the city. The city council, by ordinance or

resolution, may further define the procedures and provisions determined to be necessary to implement and operate under this section.

Article IX Fiscal Administration

§ 111 Budget.

(a) The Office of Independent Budget Analyst shall hereby exist as a city department whose designated function is to assist and advise the city council in conducting budgetary inquiries and in making budgetary decisions. The independent budget analyst is the administrative head of the department and shall be appointed by a majority vote of the city council. The city council may remove the independent budget analyst from office by a majority vote of the members of the city council at any time, with or without cause. The qualifications and duties of the independent budget analyst shall be established by the city council by ordinance.

(b) All budgets shall be adopted pursuant to the following process:

(1) Each department, office and agency of the city shall provide in the form and at the time directed by the city manager all information required by the city manager to *assist the mayor to* develop a budget conforming to modern budget practices and procedures as well as specific information which may be prescribed by the council. Not later than ~~60~~ *90* days prior to the commencement of each fiscal year or such greater period as the council may prescribe, the *mayor, with the assistance of the* city manager*,* shall prepare and present to the city council, in such form and manner as it may prescribe, budget recommendations for the next succeeding fiscal year*, which recommendations must also be posted to the City's website within 72 hours of being provided to the city council. The council shall hold a minimum of two public hearings on the proposed budget, the first of which shall occur no later than fifteen (15) days after the mayor's budget recommendations are presented to the council. No later than thirty (30) days prior to the end of the fiscal year and* ~~F~~*f*ollowing *at least two* public budget hearings*,* the city council shall adopt by resolution a budget of proposed expenditures and appropriations necessary therefore for the ensuing year, *and shall cause the proposed budget to be posted to the City's website within 72 hours of adoption. The council may request the assistance of the independent budget analyst, who*

shall provide to the city council independent analysis of the proposed budget.

(2) *The City Clerk shall immediately and within 24 hours transmit the budget resolution to the mayor. The mayor shall within ten (10) days of receipt of the proposed budget, either approve the budget as proposed by the city council, veto the entire proposed budget or veto any part of the proposed budget by reducing or eliminating any line item while approving other portions of the proposed budget. The mayor shall append to the proposed budget a statement identifying any items reduced or eliminated and the reasons for the action. Any and all portions of the proposed budget approved by the mayor shall become effective immediately. If the mayor vetoes all or any line item within such proposed budget, those portions shall not be effective, and the City Clerk shall transmit the vetoed proposed budget, together with the veto statement from the mayor, to the city council immediately and within 24 hours. The city council shall thereafter and within ten (10) days of such transmittal reconsider the proposed budget and mayor's vetoes. If the mayor vetoes the entire proposed budget, and at least six council members vote to override the mayor's veto, the proposed budget as approved by the city council shall become effective immediately. Line items reduced or eliminated by the mayor shall be separately reconsidered and, if at least six council members vote to override the mayor's veto of that line item, the line item as proposed by the city council shall become effective immediately, notwithstanding the mayor's veto. If at least six council members do not vote to override the mayor's veto of a line item after reconsideration, the line item as modified by the mayor shall become effective immediately.*

(3) *If a budget is not approved prior to the start of the fiscal year,*~~failing which~~ the appropriations for current operations of the last fiscal year shall be deemed effective until the new budget and appropriation measures are adopted.

(c) The budget may be amended*, revised or modified* during the fiscal year ~~in accordance with the procedure established by the council~~ *upon the request of the*

mayor or the council and approved by the council and mayor pursuant to the process set forth above in subsection (b) on a timeline not to exceed 90 days.

§ 117 Annual audit.

The city manager upon approval of the city council shall engage each year an independent certified public accountant who shall examine and report to the council on the annual financial statement of the city. The accountant shall have free access to the books, records, inventories and reports of all officers and employees who receive, handle or disburse public funds, and of such other officers, employees, or departments as the city council may direct. The accountant shall submit an audit as soon as practicable after the closing of the books for the fiscal year for which he is engaged. Copies of such audit reports shall be filed with the city council, and shall be available for public inspection and review~~.~~*, in the office of the city clerk and posted on the City's website within five days of filing with the city council.*

Section 4. Operative Date; Trial Period and Reauthorization by Voters.

A. If this Act is approved by a majority of the voters voting on the issue, the Act shall become operative on the same date that the City officials elected in 2012 take office pursuant to section 153 of this Charter or on December 15, 2012, whichever date is earlier.

B. In order to assess their effectiveness, the provisions of the Act shall remain in effect until December 31, 2020, at which time the Act shall be automatically repealed and removed from the Charter. To ensure the people have an opportunity to consider the permanency of this Act before it is automatically repealed, the city council shall place a measure on the ballot at an election no later than November 3, 2020 to consider amendments to the Charter to make this Act permanent effective January 1, 2021. However, the city council and the people reserve the right to propose changes to the Charter at the November 3, 2020 election or sooner to extend, make permanent, shorten or repeal the effective period of this Act.

C. If the voters do not make the provisions of this Act permanent on or before December 31, 2020, or shorten the operative period or repeal this Act prior to December 31, 2020, such that this Act ceases to be operative, the mayor shall become a member of the council, serving as an at-large member, effective January 1, 2021.

Section 5. Implementation.

Upon the effective date of this Act, the City shall proceed as expeditiously as possible to implement this Act, including but not limited to promptly updating the City of Sacramento Municipal Code, Ordinances and Resolutions to conform to the Charter amendment set forth in Section 3 herein.

Section 6. Severability.

If any portion, section, subsection, paragraph, subparagraph, sentence, clause or application of this Act is held invalid or inapplicable by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity or applicability of any other part of this Act. Consistent with that, the provisions and applications of this Act shall be deemed severable, and each portion, section, subsection, paragraph, subparagraph, sentence, clause or application of this Act would have been enacted irrespective of the fact that one or more other parts or applications is found to be invalid or inapplicable.

APPENDIX B: Select Additional Resources

Charters

The city charters reviewed for this report are available online:

Sacramento: http://www.qcode.us/codes/sacramento/

Los Angeles: http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:laac_ca

San Diego: http://www.sandiego.gov/city-clerk/officialdocs/legisdocs/charter.shtml

San Francisco: http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco_ca

Fresno: http://library.municode.com/index.aspx?clientId=14478

Oakland: http://library.municode.com/index.aspx?clientId=16308

Seattle: http://clerk.seattle.gov/~public/charter/charter.htm

Denver: http://library.municode.com/index.aspx?clientID=10257&stateID=6&statename=Colorado

City Attorney's Office Reports

"Strong Mayor Initiative: A Comparison and Analysis," presented as agenda item 16 at the City Council's February 3, 2009, meeting, available at http://sacramento.granicus.com/MetaViewer.php?view_id=8&clip_id=1801&meta_id=169247.

"Strong Mayor Initiative Legal Issues and Options," agenda item 14 at the City Council's September 15, 2009, meeting, available at http://sacramento.granicus.com/MetaViewer.php?view_id=8&clip_id=2085&meta_id=184461.

"2010 Strong Mayor Plan: A Comparison With Selected Cities," presented as agenda item 7 at the City Council's June 22, 2010, meeting, available at http://sacramento.granicus.com/MetaViewer.php?view_id=22&clip_id=2337&meta_id=202074.

2009 Sacramento Charter Review Committee

In 2009, the City Council created a Charter Review Committee (see Resolutions 2009-095 and 2009-559). The committee met 20 times in 2009 and once in 2010. City staff prepared some excellent reference materials on city governance for the Charter Review Committee. The committee's agendas and meetings, and as well as the materials presented to the committee, can be found at http://sacramento.granicus.com/ViewPublisher.php?view_id=24.

The Charter Committee issued three reports, all of which were presented to the City Council:

Final Report (November 2009), available at http://sacramento.granicus.com/MetaViewer.php?view_id=22&clip_id=2134&meta_id=186650

Supplemental Report No. 1 – Full-Time Mayor/Full-Time City Council (December 2009), available at http://sacramento.granicus.com/MetaViewer.php?view_id=22&clip_id=2161&meta_id=188559

Supplemental Report No. 2 – Ranked Choice Voting/Ethics Commission (January 2010), available at http://sacramento.granicus.com/MetaViewer.php?view_id=22&clip_id=2183&meta_id=190164

Additional archived material can be found at http://www.cityofsacramento.org/charter/.