



City of Sacramento City Council

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

Meeting Date: 2/7/2012

Report Type: Staff/Discussion

Title: Elected Charter Commission

Report ID: 2012-00101

Location: Citywide

Recommendation: Review and provide direction.

Contact: Matthew Ruyak, Supervising Deputy City Attorney, (916) 808-5346, Office of the City Attorney

Presenter: Matthew Ruyak, Supervising Deputy City Attorney, (916) 808-5346, Office of the City Attorney

Department: City Attorney

Division: City Attorney

Dept ID: 03001011

Attachments:

1-Description/Analysis
2-Background

City Attorney Review

Approved as to Form
Matthew Ruyak
2/2/2012 10:57:03 AM

Approvals/Acknowledgements

Department Director or Designee: Eileen M. Teichert - 2/2/2012 10:32:27 AM



Description/Analysis

Issue: On January 17, 2012, the City Council by motion directed the City Attorney's Office to return with a report detailing the procedures for a potential elected charter commission.

Policy Considerations: This report concerns the potential election of a commission to amend or revise the city's charter or to propose a new charter.

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. If there is a charter commission election there will be a cost to the City for that election, in an amount not yet fully determined.

Emerging Small Business Development (ESBD): N/A

Background

On January 17, 2012, the City Council by motion directed the City Attorney’s Office to return with a report detailing the procedures for a potential elected charter commission.

The procedures for the election and operation of an elected charter commission are set forth in the California Government Code. These procedures are a matter of statewide concern, and thus the City cannot create any conflicting requirements or procedures.¹

Yet the Government Code provisions governing charter commissions are sparse; no detail is provided for how a charter commission is to operate between its election and the submission of its proposals. Additionally, there are few precedents for elected charter commissions in cities already organized under a charter. To our knowledge, the 1997-1999 City of Los Angeles elected charter commission is the only elected charter commission in California in the last 15 years. San Francisco also had an elected charter commission from 1978-1980.

Nonetheless, we present below a primer on the creation, operation, and other details of an elected charter commission.

A. Establishing a Charter Commission

1. Placing Measure on Ballot. “An election to determine whether to draft or revise a charter and elect a charter commission may be required by initiative or by the governing body.”²

a. The City Council. The City Council calls an election for a charter commission in the same way it calls for other city elections – i.e., by filing with the County Board of Supervisors, at least 88 days prior to the date of the election, a resolution requesting consolidation with the statewide election, and setting forth the exact form of any question, proposition, or office to be voted upon at the election, as it is to appear on the ballot.³

¹ See Cal. Gov. Code, § 34450; *District Election Etc. Committee v. O’Connor*, 96 Cal.App.3d 261, 274 (1978) [“Accordingly, we hold that in enacting general laws dealing with charter amendment procedures (Gov. Code, § 34450 et seq.), the Legislature was properly acting upon a matter of statewide concern with the intention of preempting that field of regulation to the exclusion of any attempted municipal regulation in the same field”]; see also Stats. 2011, ch. 692, § 10 (AB1344), which amended a couple sections covering charter commissions [“Therefore, the Legislature finds and declares that to ensure the statewide integrity of local government, the provisions of this act are a matter of statewide concern”].

² Cal. Const., art. XI, § 3(c).

³ Cal. Gov. Code, § 34452(a); Cal. Elec. Code, § 10403; see also Sacramento City Code, § 1.16.020 [“Elections are called by resolution of the city council pursuant to Elections Code Section 10403 and/or City Charter Sections 154 and 160 through 163 relating to special elections.”].

- b. Initiative.** The charter commission process also can be started by a voter petition. Such a petition must be signed by at least 15 percent of the registered voters in the City.⁴

2. Candidates.

- a.** Must be a registered voter of the City.⁵
 - b.** Candidates can be nominated in two ways: in the same manner as for other City officers, or by petition as provided by general law for the nomination by petition of candidates for public office.⁶
 - i.** Nomination as for other City officers. Candidates for council member and mayor must submit no less than 20 and no more than 30 voter-signed nomination petitions.⁷ The voters signing council members' nomination papers must reside in that candidate's district; for the mayor, the voters must simply be residents of the City.⁸ As charter commission members would be elected at-large like the mayor, a reasonable application of the City's code would allow nomination petitions to come from any city resident.⁹ The time for filing papers is set forth in the table under Section 4 (Timelines), below.
 - ii.** Nomination by petition. The California Elections Code also allows for nominations by petition, to allow candidates to avoid a filing fee.¹⁰ But since the City does not require a filing fee for nominations,¹¹ going the petition route is unnecessary.
 - c.** See Section D of this report for a brief discussion of electing charter commissioners by district or at-large.
- 3. Election.** If an initiative petition is certified, or if the City Council votes to have such an election, the City Council must call for a two-part election.

⁴ Cal. Gov. Code, § 34452(a).

⁵ Cal. Gov. Code, § 34451.

⁶ Cal. Gov. Code, § 34454.

⁷ See Cal. Elec. Code, § 10220.

⁸ Sacramento City Code, § 1.16.030(C)(1).

⁹ But see Section D, *infra*.

¹⁰ See Cal. Elec. Code, § 8106.

¹¹ Sacramento City Code, § 1.16.030(C)(2).

- a. **First Question:** “Shall a charter commission be elected to propose a new charter?”¹²

- b. **Second Question:** The ballot would contain a section for the elective office of “Charter Commissioner.” The section would include the instruction, “vote for no more than 15.”¹³ Below would be the names of all duly qualified candidates. There would also be room for write-in candidates.¹⁴ Obviously, if the first question (establishment of a charter commission) fails, the candidates would not take office as charter commissioners.

- c. **Winning Candidates.** Charter commissioners are elected at-large (i.e., citywide). The 15 candidates receiving the highest number of votes are elected and then organize as the charter commission.¹⁵

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¹² That is the express language in the Government Code, but it may need to be more appropriately phrased. See 25-302 California Forms of Pleading and Practice--Annotated § 302.25 [“Presumably, the first question is worded differently if the proposal is to revise an existing charter rather than to adopt a new charter.”]. In San Francisco, the question was: “Shall a Charter Commission be elected to propose a new charter or to revise the charter?” See San Francisco Voter Information Pamphlet (November 7, 1978), Proposition X, available at http://sfpl.org/pdf/main/gic/elections/November7_1978short.pdf.

¹³ Cal. Elec. Code, § 13210(e). See also Elec. Code, § 13233 for ballot design in case the number of candidates “will not fit in one column of reasonable length.”

¹⁴ Cal. Elec. Code, § 13207(a)(2).

¹⁵ Cal. Elec. Code, § 34453. See Section D, *infra*, regarding at-large election of commissioners.

4. Timelines

The City Clerk's Office has prepared the following chart of relevant dates leading up to a potential November 2012 charter commission election.

Date	Description
06/19/12	Council to adopt intent motion to direct measure and offices relating to an "elected charter commission" to November ballot
06/26/12	Council approves Clerk's report calling and consolidating "elected charter commission" issues to ballot
06/26/12	Council approves Clerk's report establishing cost and regulations for submission of candidate statements
06/27/12	Prepare and forward Notice of Election (measure and offices) to newspaper
07/06/12	Notice of Election/Measure published in newspaper [1st publication]
07/13/12	Notice of Election/Measure published in newspaper [2nd publication]
07/16/12	Nomination period opens [Monday]
08/09/12	Nomination period closes [Thursday]
08/06/12	Publication of Notice of Measure/Argument and Rebuttal Deadlines
08/08/12	Argument submittal deadline for all measures
08/08/12	Impartial analysis deadline for all measures
08/15/12	Rebuttal submittal deadline for all measures

5. Cost.

According to the Clerk's Office, the County is currently unable to provide a cost estimate for the "candidate" portion of the issue, given uncertainty about the potential number of candidates. However, the "question" portion of the issue is estimated at \$127,100 if it is the first citywide contest.

B. Operation of a Charter Commission.

- 1. Scope of Work.** The purpose of a charter commission is to propose a charter and/or propose revisions or amendments to a charter.¹⁶ The City Council cannot expand, restrict, or otherwise direct the commission's work.
- 2. Funding and Operations.** As previously stated in this office's June 15, 2010, report to City Council (presented on June 22, 2010), neither

¹⁶ Cal. Const. art. XI, § 3(b); Cal. Elec. Code, § 34455.

the Constitution, state statutes, nor any City law requires the City to fund an elected charter commission's work.¹⁷ In fact, the Charter provides that "No expenditure of city funds shall be made except for the purposes and in the manner specified by an appropriation of the city council[.]"¹⁸ The City could, however, choose to fund the commission.

3. **Staffing.** The Charter provides that the City Clerk shall act as secretary to all commissions of the city. The Charter also provides that the City Attorney shall serve as legal counsel to all commissions of the city. And *Council-created* commissions get staffed with City personnel.¹⁹ However, an elected charter commission is created by the voters, not by the City Council. It is, in effect, "outside the Charter." Thus, we conclude the provisions discussed above would not apply to an elected charter commission, and those city officers would not be obligated to serve an elected charter commission.
4. **Meetings.** As previously discussed in this office's June 15, 2010, report to City Council, we conclude an elected charter commission would be subject to the Ralph M. Brown Act, thereby requiring its meetings to be properly noticed, agendaized, and openly conducted. Presumably, the commission, like any deliberative body, would adopt its own rules and elect its own officers.
5. **Vacancies.** Any vacancy is filled by mayoral appointment.²⁰
6. **Timelines.** A charter commission has two years to submit its proposal(s) to City voters. A charter commission ceases to exist two years from the date of the charter commissioners' election, by operation of law.²¹
7. **Commission Proposals.** Although the voters, when electing a charter commission, are asked if a charter commission should be elected to "propose a new charter," the commission can submit charter revisions or amendments as well as a proposed new charter.²² And it can submit to the voters its proposals piecemeal and in periodic fashion.²³

¹⁷ Cf. Sacramento City Charter, § 29, which states the city shall fund the compensation commission.

¹⁸ Sacramento City Charter, § 116.

¹⁹ Some of the creating ordinances also specify that the subject commission is staffed by City Manager designees. (See, e.g., Sacramento City Code, § 2.62.040 [Parks and Recreation Commission]; § 2.110.080 [Community Racial Profiling Commission].)

²⁰ Cal. Gov. Code, § 34452(b).

²¹ Cal. Gov. Code, § 34462(a).

²² Cal. Const. art. XI, § 3(b); Cal. Gov. Code, §§ 34455, 34462.

²³ Cal. Gov. Code, § 34462(b).

8. **Submission of Proposal.** Once a majority of the charter commission has signed its proposal, the commission files the proposal with the City Clerk.²⁴ That triggers an obligation of the City Council to cause copies of the charter proposal to be printed, and to submit the proposal to the voters.²⁵ The City Council cannot change the proposal submitted by the charter commission.

C. Vote on Charter Commission's Proposal.

1. **When.** The charter commission's proposal "shall be submitted to the voters:"
 - a. At the *next* established statewide general, statewide primary, or regularly scheduled municipal election date pursuant to Election Code section 1200, 1201, or 1301;²⁶ *provided, however,*
 - b. When the election is called, there must be at least 95 days before the election.
 - c. Examples: if a charter commission is elected in November 2012, then begins meeting in December 2012 and presents to the City Clerk a proposal after 14 months of work (i.e., early February 2014), the proposal would appear on the June 2014 ballot; if the commission presents to the City Clerk a proposal after 15+ months of work (i.e., March 2014 or later), the proposal would appear on the November 2014 ballot.
2. **Ballot Description Requirements.** Effective January 1, 2012, any proposal to adopt or amend a charter must include in the ballot description "an enumeration of new city powers as a result of the adoption."²⁷
3. **How Approved.** Charter changes are adopted by a majority of the voters who vote on the issue.²⁸

²⁴ Cal. Gov. Code, § 34455.

²⁵ Cal. Gov. Code, § 34456, 34457.

²⁶ Section 1200 is the usual November general election date (even years); Section 1201 is the usual June primary election date (even years); and Section 1301 provides that general municipal election dates shall be held on an "established" election date pursuant to Elections Code section 1000, which sets those dates as (a) the second Tuesday of April in each even-numbered year, (b) the first Tuesday after the first Monday in March of each odd-numbered year, (c) the first Tuesday after the first Monday in June in each year, and (d) the first Tuesday after the first Monday in November of each year. In any case, the City current holds its "regular municipal elections" on the statewide primary and statewide general election dates. (Sacramento City Code, § 1.16.020(A).)

²⁷ Cal. Gov. Code, § 34458.5.

²⁸ Cal Const., art. XI, § 3(a); see also *Howard Jarvis Taxpayers Assn. v. City of San Diego*, 120 Cal.App.4th 374 (2004) [city charter cannot alter vote requirement for charter amendments].

4. **Certification and Filing.** If ratified by the voters, the complete text of the charter changes must be certified by the City Clerk and the Mayor, and attested by the City Clerk. One copy must be filed with the Sacramento County Recorder; one copy must be filed in the City archives; and one copy must be filed with the California Secretary of State.²⁹
5. **Effective Date.** Charter changes become effective when accepted and filed with the California Secretary of State.³⁰

D. At-large versus District-based Election of Charter Commissioners.

The Government Code provides that if the voters approve the formation of a charter commission, “the 15 candidates for the office of charter commissioner receiving the highest number of votes shall forthwith organize as a charter commission.”³¹ In other words, commissioners are elected at-large.

In 1978, San Francisco voters elected 15 at-large charter commissioners from over 100 citywide candidates. In Los Angeles, however, a federal judge ruled that “an at-large election of charter commissioners in the City of Los Angeles would dilute the Hispanic-American population’s voting power in violation of section 2 [of the federal Voting Rights Act].”³² Ultimately, the 15 commissioners were elected from the 15 council districts.

We currently have no factual basis to conclude an at-large election in Sacramento presents a Voting Rights Act problem. Los Angeles in 1996 is not Sacramento in 2012. However, the City Attorney’s Office can present further research and analysis if Council pursues the charter commission concept.

²⁹ Cal. Gov. Code, § 34460.

³⁰ Cal. Gov. Code, § 34459.

³¹ Cal. Gov. Code, § 34453.

³² Memorandum of Decision (January 3, 1997), U.S. District Court, Central District of California, Case No. CV 96-7661, p. 49 [copy on file in City Attorney’s Office].