



STAFF REPORT

Office of the City Manager

DATE: May 3, 2022

TO: Honorable Mayor and City Council

FROM: Dominic Lazzaretto, City Manager
By: Michael Bruckner, Deputy City Manager
Michael Maurer, Assistant City Attorney

SUBJECT: REPORT, DISCUSSION, AND DIRECTION REGARDING PROPOSED CHARTER AMENDMENTS AND BALLOT MEASURES FOR THE NOVEMBER 8, 2022, GENERAL MUNICIPAL ELECTION

Recommendation: Provide Direction

SUMMARY

The City is in the process of reviewing and updating its Charter document in order to ensure it remains relevant and to comply with the spirit and intent of SB 415 and Ordinance No. 2352, which changed election dates and moved the City to by district elections. This process will conclude with a Charter Amendment being submitted to the voters for ratification at the November 8, 2022, general municipal election.

In order to achieve the City Council's goals, the City Council empaneled an Ad Hoc Charter Review Committee ("the Committee") consisting of Arcadia residents to review the City's Charter and make recommendations for amendments. The Committee met regularly and transmitted a draft amended Charter and proposed ballot measures to the City Council for further consideration.

At the March 18, 2022, Special Joint Meeting of the Charter Review Committee and Arcadia City Council, the City Council adopted most of the Committee's recommendations ("Attachment A"), but requested additional time and information regarding the following items: (1) ability to transition back to at-large voting; (2) district residency requirements for City Council Members; (3) term limits; and (4) changes to the elected City Clerk position.

It is recommended that the City Council provide direction on outstanding Charter Amendment questions, and direct staff to bring forward the documents necessary to adopt the proposed Charter amendments and/or ballot measures for voter ratification at the November 8, 2022, General Municipal Election.

BACKGROUND

The City of Arcadia Charter was adopted at a special election held on April 24, 1951, and became effective on May 15, 1951, upon being certified by the California Secretary of State.

At the March 3, 2021, Study Session, the City Council voted to hold its next regularly scheduled election on November 8, 2022, to comply with the spirit and intent of SB 415 and Ordinance No. 2352, affirming the same. In order to avoid any potential legal challenges to future elections, the City Council requested that the City Manager prepare a Charter amendment for the November 8, 2022, general municipal election asking Arcadia voters to ratify moving the City's municipal elections from April to November in even numbered years, beginning with the 2024 election cycle. In addition, the City Manager shared that the City's Charter has not been updated since 1998 and the City Council may wish to revisit several of the provisions that are outdated.

In order to assist the City Council with recommendations for updating and modernizing the City's Charter, at the July 6, 2021, City Council Meeting, the City Council adopted Resolution No. 7356 empaneling an Ad Hoc Charter Review Committee consisting of Arcadia residents to review the City's Charter and make recommendations for amendments.

The Committee held its first meeting on October 14, 2021, and established a regular meeting schedule of twice per month. All meetings for the Committee were duly noticed in accordance with the Ralph M. Brown Act. All copies of the Committee's agendas and minutes can be found at ArcadiaCA.gov/Charterreview. On February 18, 2022, the Committee concluded its review and made its formal recommendations on Charter amendments to the City Council.

At the March 18, 2022, Special Joint Meeting of the Charter Review Committee and Arcadia City Council ("Joint Meeting"), the City Council reviewed, discussed, and agreed with most of the Committee's recommendations, but requested additional time and information regarding the following items: (1) ability to transition back to at-large voting; (2) district residency requirements for City Council Members; (3) term limits; (4) timing of City elections; and (5) changes to the elected City Clerk position. The remainder of this report will largely focus on these issues.

DISCUSSION

Below is a summary of the outstanding items that the City Council requested additional time and information to review and consider.

Section 400. City Council

The section was edited to reflect the change from at-large to by-district voting in Arcadia. The Committee unanimously approved this amendment.

At the Joint Meeting, the City Council requested further discussions about the ability to transition back to at-large voting, or another voting system, should there be changes in State law that would allow the reversion. The Charter could be amended to allow the City Council to change its election process by Ordinance if an alternative election process becomes lawful, rather than requiring a full Charter amendment and citizen voting process. There is currently no imminent change to the California Voting Rights Act (“CVRA”) or other laws that would enable the City to move back to the at-large voting. Though unlikely, at least in the near-term, it is theoretically possible that constitutional, statutory, or case law ultimately changes the considerations for at-large voting or allows for other alternative systems. Thus, the question is whether to enable or restrict a future City Council, without voter approval, to modify the City’s election process.

The City Council had previously asked whether the Charter could restrict a future change in the election process to occur *only* in the event of a change in law. While practically this would be the intent, it may create a difficult nuance. If the change is the result of case law, whether a different mechanism is lawful may be unclear and involve an analysis of legal risks. Therefore, if the City Council wishes to give future bodies flexibility in this area, it may be necessary to write the authority quite broadly.

One additional option the City Council could consider is a supermajority requirement for a future City Council vote to return to at-large voting.

Section 401. Eligibility

This section contains two outstanding items, which will be described separately below.

District Residency

Section 401 was edited by the Committee to reflect that a Council Member must reside in the district for which they seek election or appointment. At the Joint Meeting, the City Council requested additional information regarding residency requirements for district-based voting, specifically if it would be possible to allow someone residing outside of the district to stand for election in the district. This could either be allowed at any time – as is done with the US House of Representatives, where residency is not required – or only when no candidates or just one candidate from within the district submitted nomination papers for a given election. The reasoning given for this would be to provide the greatest opportunity for contested elections in every district.

The City Attorney has researched the question regarding the residency requirement for district-based representation by election or appointment. The California Voting Rights Act

(“CVRA”) under Elections Code Section 14026(b) mandates “district-based elections” which are defined as, “a method of electing members to the governing body of a political subdivision in which the candidate **must reside** [emphasis added] within an election district that is a divisible part of the political subdivision and is elected only by voters within that election district.”

Further, under the Fair Maps Act, which applies to Charter cities, Government Code Section 34882 states that, “a person is not eligible to hold office as a member of a municipal legislative body unless he or she is otherwise qualified, **resides in the district** [emphasis added] and both resided in the geographical area making up the district from which he or she is elected and was a registered voter of the City at the time the nomination papers are issued to the candidate...”

The City Attorney has also concluded based on applicable State laws that in the event no individual seeks election from a particular district, the seat cannot be filled from someone who resides outside of the district. Based on the forgoing, it is recommended that the City Council adopt the Committee’s original recommendation regarding residency.

Term Limits

The Committee also discussed the issue of term limits. The current Charter allows for two consecutive four-year terms, after which a Council Member must sit out at least one election cycle before running again. The Council Member could repeat this cycle indefinitely. The Committee has provided two recommendations for the City Council to consider.

1. Modify the limit to be a hard cap of three terms, which may be served consecutively; or,
2. Create a total limit of three terms; however, only two terms may be in consecutive order. Under this proposal a Council Member can serve a maximum of eight years and will be required to wait at least one election cycle before they can run for their final term.

Under either scenario, the Committee recommends that no past or current Council Member duly elected or appointed be able to serve more than three terms. The Committee unanimously approved the first recommendation; however, the alternate recommendation was approved by a 4-1 vote.

If the City Council elects to propose a lifetime cap, staff will need direction as to how the lifetime cap will apply to persons who have already served terms as Council Members. The Government Code requires term limits to be prospective only, but there is also case law stating that the setting of term limits is a municipal affair, meaning that a Charter City can set its own rules in this arena. If the City Council intends for the Charter to differ from statutory requirements, the City Council should clearly state that intent and how it would

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apply to current Council Members or those that may run and be elected in November 2022.

Another point of discussion at the Joint Meeting was the idea of placing multiple term limit options on the ballot and to allow the voters to decide. While this is possible, it is not a recommended approach. In order to keep the election as simple as possible and to give voters clarity, it is recommended that the City Council choose a single desired term limit and submit it to the voters as part of the overall Charter amendment. This would also provide substantial cost savings for the election process.

Article V. City Clerk

The Committee recommended that the elected City Clerk position be eliminated upon the expiration of the current term in 2024 or upon any vacancy in the current office. The City Manager would then have the authority to appoint a City Clerk to perform the powers and duties outlined in the Charter. Due to changes to the role of the City Clerk over time, the position has become largely ceremonial, with the vast majority of traditional City Clerk duties already being performed by professional staff in the City Manager's Office. The elimination of the elected City Clerk position would save the City money over time as the position is the only seat still elected citywide. The Committee unanimously approved this amendment.

At the Joint Meeting, City Clerk Glasco shared his thoughts about the importance of the role of an elected City Clerk. At this meeting, Mr. Glasco requested additional time to gather his thoughts about the implications of eliminating the position upon the conclusion of his term. The City Council proposed as an option having the elected City Clerk sunset in 2028, or upon vacancy, to enable Mr. Glasco to run for an additional term if desired.

In subsequent conversations with staff, Mr. Glasco has indicated that he agrees with the Committee's recommendation to eliminate the elected City Clerk position upon a vacancy in the current term or its expiration in 2024. Therefore, it is recommended that the City Council adopt the Committee's recommendation.

Section 1100. General Municipal Elections.

Commencing with the November 8, 2022, General Municipal Election, all future City elections will be held on the first Tuesday after the first Monday in November, to coincide with statewide general elections. The Committee approved this change on a 3-1 vote. The dissenting vote was principled on the notion of home rule and that the state should not be dictating to the City about when our elections should occur.

At the Joint Meeting, the City Council, by a 3-1 margin, agreed with the Committee's recommended language; however, the Council agreed to carry this item forward for further discussion. Similar to the districting question, a Council Member had proposed to allow the City Council to change the election date back to April in even numbered years

if it made sense at a future date. Cities throughout the state have moved their elections to coincide with general elections to the point that no private companies exist any longer to assist with local elections. As a result, if the City chose to revert to an off-cycle election date, elections would be far more expensive due to the County's pricing structure on one-off elections. In addition, it is likely that the state will provide high levels of scrutiny to cities that have off cycle elections and modest turnout figures, since their stated goal is to lift voter turnout by mandating local elections on general election dates. Therefore, it is recommended that the City Council adopt the Committee's recommendation and permanently shift the election date to November.

Section 1208. Donations.

At the Joint Meeting, staff requested direction from the City Council to add a section of the Charter specific to donations. Specifically, the new section would clarify the procedures for accepting Citywide donations and not just those for Library purposes. In consultation with the City Attorney, it is recommended that the City Council approve the following proposed language for Section 1218:

"The Council may accept money, personal property, or real estate donated, devised, or bequeathed to the City and authorize the City Manager to carry out the terms and conditions of the donation, devise, or bequeathment. If no terms or conditions are attached to the donation, devise, or bequeathment, the Council may designate its use for any municipal purpose. The Council may establish procedures for the administrative acceptance of donations, devises, and bequeathments by ordinance or resolution."

The idea here would be to specifically allow for the acceptance of donations generally, and to provide the City Council with a mechanism for setting limits on the City Manager's authority to accept them prior to needing City Council approval, which would be done by ordinance or resolution and could be updated easily over time.

Next Steps

The City Council should provide direction on these outstanding items or any other recommendations made by the Charter Review Committee and staff.

Once a final series of Charter amendments has been selected, two public hearings must be held to receive public input on the proposed amendments. The public hearings require posting notices for 21 days and publishing notices 14 days prior to the hearings. There is sufficient time before the mid-August deadline to place a measure on the ballot to conduct the City Council review and required public hearings. Below is a proposed timeline of events:

March 18, 2022 – City Council Study Session (Completed)

May 3, 2022 – City Council Discussion (Completed)

May 17, 2022 – First Public Hearing

June 21, 2022 – Second Public Hearing

July 16, 2022 – Last Day to Call for an Election (E-114)

August 11, 2022 – Last Day to Place Measure on Ballot (E-88)

ENVIRONMENTAL ANALYSIS

The proposed action does not constitute a project under the California Environmental Quality Act (“CEQA”), and it can be seen with certainty that it will have no impact on the environment. Thus, this matter is exempt under CEQA under Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines.

FISCAL IMPACT

The costs of placing the Charter amendment on the November 8, 2022, ballot is estimated at \$119,600. For two measures, the estimated cost is \$136,000 or \$68,000 per measure. For three measures, estimated cost is \$144,000 or \$48,000 per measure. The costs for the November 8, 2022, election will be included in the Fiscal Year 2022-23 budget.

RECOMMENDATION

It is recommended that the City Council provide direction on outstanding Charter Amendment questions and direct staff to bring forward the documents necessary to adopt the proposed Charter amendments and/or ballot measures for community ratification at the November 8, 2022, General Municipal Election.

Attachments: “A” - Study Session Staff Report

“B” - Charter Amendments – Red Line