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REPORT TO THE COMMITTEE ON RULES, OPEN GOVERNMENT AND
INTERGOVERNMENTAL RELATIONS

PROPOSED CHARTER AMENDMENTS RELATING TO THE MAYOR-COUNCIL FORM
OF GOVERNANCE.

INTRODUCTION

On October 14, 2009, the Committee on Rules, Open Government, and Intergovernmental Relations [Committee] began discussions of the June 2010 ballot measure to continue the Mayor-Council form of governance. During the meeting, questions were raised about other possible amendments to the Charter relating to the relationship between the Mayor and the Council. This report answers these questions as more fully set forth in an October 14, 2009 memorandum from Council President Ben Hueso.

DISCUSSION

I. HOUSEKEEPING

The Committee suggested that the Charter be amended to change "City Manager" to "Mayor" as appropriate. This suggestion was raised in our October 9, 2009 report to the Committee. This would require an integrated version of the ballot measure that would remove Article XV from the Charter and move its provisions into other sections of the Charter.

The "short version" provided to the Committee contains a provision that states: "All executive authority, power, and responsibilities conferred upon the City Manager in Article V, Article VII, and Article IX shall be transferred to, assumed, and carried out by the Mayor during the period of time this Article is operative." If the "short version" is used, it is not necessary to make the suggested housekeeping changes. On the other hand, an integrated version of the ballot measure would make changes to replace "City Manager" to "Mayor" throughout the Charter. Our Office will provide an integrated version of the ballot measure to the Committee if requested to do so.

II. TITLE

The Committee has suggested that the title of Article XV be changed from "Strong Mayor Form of Governance" to "Strong Mayor/Strong Council Form of Governance." The purpose of Article XV was to: "modify the existing form of governance for a trial period of time to test implementation of a new form of governance commonly known as a Strong Mayor form

of government.” Charter § 250.¹ The Charter requires the Council to place a measure on the ballot to make Article XV permanent. Charter § 255(c). Currently, the “short form” ballot measure shows the title of Article XV as: “Strong Mayor Trial Form of Governance.” In order to fulfill the direction in the Charter, we recommend that the title of Article XV remain as suggested in the “short version.”

There are two options to resolve this issue. First, if the Council decides to use an integrated ballot measure, Article XV would be removed and there would be no title to modify. The provisions in Article XV would be moved to other portions of the Charter. Second, a separate ballot measure may be placed before the voters in June 2010 or at a later time to amend the title of Article XV.

III. APPOINTMENTS

The Committee has suggested that the Charter be amended to give the Council power to make appointments of Councilmembers to outside organizations. With respect to appointments to these non-City boards, Charter section 265 states:

(b) . . . [T]he Mayor shall have the following additional rights, powers, and duties:

(12) Sole authority to appoint City representatives to boards, commissions, committees and governmental agencies, unless controlling law vests the power of appointment with the City Council or a City Official other than the Mayor.

An amendment to section 265(b)(12) would need to be presented in a ballot measure separate from the measure considering the continuance of the current form of government. Although additional research may be necessary, the following language is provided for discussion:

(12) Sole authority to appoint City representatives to boards, commissions, committees and governmental agencies, unless controlling law vests the power of appointment with the City Council or a City Official other than the Mayor. If the controlling law requires the appointee to be a Councilmember, the Council shall make the appointment unless the controlling law vests the power in the Mayor or a City Official other than the Council.

This language provides that the Council will make appointments when the controlling law requires the appointee to be a Councilmember, unless the appointment authority is otherwise provided for by law. The Mayor will have the authority to veto a resolution making these

¹ The “Strong Mayor” form of government is also commonly referred to as a “Mayor-Council” form of government. See 2A McQuillin Mun. Corp. § 9:20 (3rd ed.) (2009).

appointments if it is determined that the appointment is not exclusively within the purview of the Council and does not affect the administrative service of the City under the control of the Mayor. Charter § 280(a).

IV. COMMUNICATION

The Committee has asked for guidance on the Mayor's obligation to provide information to the Council under Charter sections 28 and 32.1. The relevant portion of Charter section 28 requires the City Manager to: "keep the Council advised of the financial condition and future needs of the City; to prepare and submit to the Council the annual budget estimate and such reports as may be required by that body." Charter section 32.1 is less specific about the type of information the Manager must provide to the Council:

The City Manager and all non-managerial officers of the City shall *inform the Council of all material facts or significant developments relating to all matters under the jurisdiction of the Council as provided under this Charter except as may be otherwise controlled by the laws and regulations of the United States or the State of California.* The Manager and all non-managerial officers shall also *comply promptly with all lawful requests for information by the Council.* [Emphasis added].

The responsibility of the Manager to provided information under sections 28 and 32.1 has been transferred to and assumed by the Mayor during the 5 year trial period of the Mayor-Council form of governance. Charter § 260(b).

The Committee has asked various questions about these sections: (1) how long after learning of all material facts or significant developments should the Council be informed of such information; (2) how long after Council makes a lawful request should the Mayor and/or department heads be required to provide the information; and (3) can the Council require that information be given to the Council within a reasonable time before the information is disseminated to outside parties.

As discussed below, we cannot recommend any specific time period for the Mayor to provide information to the Council. In each case, the length of time to respond or provide information will be dependent on the specific facts and circumstances.

One of the circumstances that could affect the Mayor's obligation to provide information is whether the matter is within the Council's jurisdiction. The separation of powers doctrine applied to federal and state governments is not generally applicable to mayor-council plans of government. *Casamasino v. City of Jersey City*, 158 N.J. 333, 343, 730 A.2d 287, 293 (1999) However, *principles* of separation of powers are applicable where the source of the powers, in our case the City Charter, has specifically delegated to the Mayor and to the Council separate functions. Where one branch of government has been specifically vested with the authority to act in a prescribed manner, neither of the other branches may usurp that authority. *Ibid*.

The Mayor is in charge of the day to day activities of the City. He is required to prepare the budget and other financial information for Council consideration. He also supervises the administration of the City's affairs. Charter § 28. While the Council has oversight and makes final decisions on legislative and budgetary matters, the requests for information must be within the Council's jurisdiction.

Another factor to consider is whether the information is "material." "Material" is defined as: "[o]f such a nature that knowledge of the item would affect a person's decision-making; significant; essential." Blacks Law Dictionary 1066 (9th ed. 2009). Applying this definition to section 39.1, it appears that the Mayor must inform the Council of material facts or significant developments when the Council is making a decision where knowledge of such facts would affect the decision. To apply a broader interpretation would place the Mayor in the difficult position of constantly determining whether an event is significant enough to disclose to the Council even though there may be no decisions pending at that time. Nonetheless, we recommend that the Mayor use his best judgment to keep the Council informed of significant matters as appropriate, even if no decision is contemplated at that time.

Second, Blacks Law Dictionary states that the meaning of "promptly" depends largely on the facts in each case. What is "prompt" in one situation may not be considered such under other circumstances or conditions. Blacks Law Dictionary 1214 (6th ed. 1990). We note that the California Public Records Act requires that an agency "make records promptly available". Cal. Gov't Code § 6253(b). However, the Act allows 10 days to respond to a request for records, which timeline may be extended up to 14 days in unusual circumstances. Cal. Gov't Code § 6253(c). Accordingly, it would not be appropriate to specify a particular length of time for the Mayor to provide requested information. Instead, the obligation to "promptly" comply with a request for information will depend on the nature and circumstances of the request.

Third, the question of the timing of the release of information to the public and the Council may also depend on the circumstances. There may be situations where the nature of the matter is such that simultaneous release of information to the Council and the public may be necessary or appropriate.

The Charter gives the Council the ability to request information from the Mayor. In addition, Council committees may request any City official or department head to provide information or answer any questions. Charter § 270(h). Accordingly, we do not recommend any changes to the Charter. However, the Mayor and Council may wish to discuss a mutually agreeable policy or procedure to handle the dissemination of information.


CONCLUSION

The Committee has suggested amendments to the Charter relating to the current Mayor-Council form of government. It is also suggested that these amendments be included in the ballot measure required under Charter section 255(c). As we noted in our October 9, 2009 report, this provision is intended to have the voters determine whether to continue the Mayor-Council form of government, add a Council district, and increase the veto override. It does not authorize

additional amendments to the Charter in the ballot measure. Accordingly, if the Council wants the voters to consider further alterations or refinements to this form of governance, a second companion ballot measure would be necessary.

Respectfully submitted,

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