



CITY OF POMONA

COUNCIL REPORT

June 7, 2021

To: Honorable Mayor and Members of the City Council

From: James Makshanoff, City Manager

Submitted By: Linda Matthews, Human Resources/Risk Management Director and Staff Liaison to the Charter Review Commission

SUBJECT: PROPOSED CITY CHARTER AMENDMENTS BEING CONSIDERED BY THE CHARTER REVIEW COMMISSION REGARDING REALIGNMENT OF DISTRICT ELECTIONS; FILLING OF COUNCIL VACANCIES; COMMISSIONS PROCEDURES; ADDING AN ETHICS COMMISSION; AND OTHER VARIOUS UPDATES

RECOMMENDATION:

It is recommended that the City Council review and provide feedback regarding amendments to the City Charter being considered for placement on the ballot in November 2022 by the Charter Review Commission regarding:

- 1) Realigning the years of District elections so that elections for Districts 1, 2, and 3 and the Mayor will coincide with Presidential elections and Districts 4, 5, and 6 will coincide with Gubernatorial elections; and
- 2) General updates to the entire City Charter, including changes to City Commissions, adding an Ethics Commission, and other various updates and clarifications.

EXECUTIVE SUMMARY: The Charter Review Commission 2020 (CRC) directed Staff Liaison Linda Matthews to present all remaining proposed Charter Amendments to the City Council for the purpose of obtaining feedback from both the City Council and the public. The first proposed amendment to be discussed will realign district elections so that elections for Districts 1, 2, and 3 Councilmembers and the Mayor will be conducted together and will coincide with Presidential election years; and Districts 4, 5, and 6 will be conducted together and will coincide with Gubernatorial election years (Attachment 1). The second amendment to be discussed is various updates to the entire Charter, which includes procedures related to Commissions; adding an Ethics Commission; modifying language related the filling of Council vacancies, and various other changes (Attachment 2).

FISCAL IMPACT: The proposal to realign district elections may include some undetermined one-time administrative costs associated with the one time realignment. The proposal to add an Ethics Commission is estimated to result in an on-going General Fund cost of \$50,000 to \$150,000

annually depending on the type of staff and legal support required to support the commission. To the extent that the other proposals increase administrative requirements upon staff, there may be additional costs associated with increasing staff positions and/or overtime costs in order to meet with increased administrative requirements.

PREVIOUS RELATED ACTION:

- December 16, 2019 - the City Council appointed the Charter Review Commission for 2020.
- July 6, 2020 - Resolution 2020-104 was passed to extend the CRC timeframe due to COVID and clarify procedures.
- January 4, 2021 - the Council provided feedback regarding CRC proposals related to primary elections and the creation of an independent redistricting commission.
- April 5, 2021 - the Council provided feedback on CRC proposals related to term limits for elected officials, modifications to the language related to amending the Charter and formation of the CRC, and adding a preamble.
- May 3, 2021 – the Council provided feedback on CRC proposals related to campaign finance, resign to run, agenda posting deadlines, and creation of a Police Commission.

DISCUSSION:

General Charter Review Commission Procedures and Deadlines

In accordance with Article XVII, Section 1701 of the Pomona City Charter, the City Council appointed the Charter Review Commission 2020 (CRC) on December 16, 2019 to consider and propose amendments to the existing Charter. The term of the CRC began on January 9, 2020 and was expected to last twelve months. However, due to the impact of the COVID-19 pandemic, the City Council extended the term of the CRC through June 30, 2021. The CRC has the ability to place charter amendments directly on the ballot in November 2022. While the CRC may request and receive feedback from the City Council, the CRC makes the ultimate determination of what amendments are placed on the ballot. The City Council may also place charter amendments on the ballot independent of the CRC. The CRC is seeking feedback from the City Council and members of the public regarding these proposals.

This is the last set of proposals to be presented to the City Council for feedback. The CRC will subsequently submit its report to the City Clerk by June 30, 2021. The City Clerk will present the final report to the City Council after June 30, 2021 and at the appropriate also submit the resolutions calling for the election and other necessary actions. However, the City Council's role for the actions subsequent to June 30, 2021 will be ministerial only; the City Council will not be able to make any recommendations for changes to the CRC proposals at that time.

Proposed Charter Amendments for Feedback

The CRC is reviewing a wide variety of proposals and amendments. Several proposed Charter amendments have been presented to the Council, as shown in the Previous Council Action section of this report. Below are the remaining proposals and concepts that have not been presented to the City Council previously for feedback. More information about these proposals is included below.

I. Realignment of District Elections

The CRC is considering a measure to realign District elections so that Districts 1, 2, and 3 and the Mayor will be conducted during the same election cycle and will coincide with the Presidential election and Districts 4, 5, and 6 will be conducted together at a different election cycle, which will coincide with Gubernatorial elections. Currently, elections for Districts 1, 4, and 6 and the Mayor coincide with the Presidential election cycle and Districts 2, 3, and 5 coincide with the Gubernatorial election cycle. This change will require a transitional period, described in more detail below.

1. In 2024, Districts 1, 4, and 6, along with the Mayor, will be subject to election, consistent with the current Charter provision. However, in order to realign the districts, the term for Districts 4 and 6 would only be two years, instead of four years, and will expire in 2026.
2. In 2026, Districts 2, 3, 4, 5, and 6 will all be subject to election. However, the terms for Districts 2 and 3 will only be two years instead of four years, and expire in 2028.
3. By 2028, the realignment will be complete and District 1, 2, and 3 (along with the Mayor) will be subject to election for four year terms. Similarly, in 2030, District 4, 5, and 6 will be subject to election for four year terms.

Members of the Charter Review Commission observed that there is typically lower voter turnout in certain Districts and that voter turnout is typically higher during Presidential elections. The chart below, based upon data pulled from the County of Los Angeles, demonstrates this observation. Note that 2020 and 2016 were the Presidential election years.

District	Voter Turnout			
	2020 Election		2018 Election	
	Voted/ Registered	Percent	Voted/ Registered	Percent
1	7,475/11,466	65%	n/a	
2	n/a		3,747/9,003	42%
3	n/a		3,824/8,604	44%
4	9,222/13,081	71%		
5			6,223/10,518	59%
6	12,069/15,947	76%		
Mayor	50,482/72,301	70%		

District	Voter Turnout			
	2016 Election		2014 Election	
	Voted/ Registered	Percent	Voted/ Registered	Percent
1	5,823/9,759	60%	n/a	
2	n/a		1,637/7,766	21%
3	n/a		1,614/7,630	21%
4	7,399/10,897	68%		
5			3,392/10,420	33%
6	9,510/13,399	71%		
Mayor	39,728/61,466	65%		

The goal of realigning the election cycles is to try to increase voter turnout in some districts that are perceived to have lower voter turnout historically. It cannot be known if such realignment will actually change voting patterns. Citywide election voter turnout, however, appears to be significantly higher citywide in presidential election years. Overall City of Pomona voter turnout in the mid-term election in 2018 was 50% as compared to 70% in the 2020 presidential election year. Similarly, overall turnout in the mid-term elections in 2014 was 25% as compared to 65% in the 2016 presidential election year.

The change in timing of elections for each District and the Mayor is summarized below:

1. There is no change in the election year for Districts 1 and the Mayor. These offices currently are and will remain in the year that coincides with the Presidential election (2024, 2028).
2. There is no change for District 5. District 5 is and will remain in the year that coincides with the Gubernatorial election (2026, 2030).
3. Districts 2 and 3 will change from the election cycle that coincides with the Gubernatorial election to the election cycle that coincides with the Presidential election.
4. District 4 and 6 will change from the election cycle that coincides with the Presidential election to the cycle that coincides with the Gubernatorial election.
5. Districts 2, 3, 4, and 6 will all have a two-year term to achieve the realignment.

II. General Charter Update

Many of the proposals being submitted by the Charter Review Commission will likely be presented to the voters as a separate measures, including primary elections, term limits, Redistricting Commission, and Police Oversight Commission. However, a number of the proposals are being included in one general Charter update. This includes a variety of technical clean-up language to update terms, realign election timeframes with current requirements, website posting requirements, among others. It also includes additional amendments that the Charter Review Commission have preliminarily determined would be best submitted to the voters together. The entire draft proposal is included in Attachment 2. The staff report will describe some of the key concepts or changes included in the general Charter update that have not previously been submitted to City Council for feedback.

- A. Redistricting (Section 203) – Council shall not change any boundaries within 180 days (instead of 120 days) prior to any election, to meet current election deadlines. Note, this section may be superseded if the Independent Redistricting Commission measure passes.
- B. Filling of Council Vacancies (Section 403)
 - Updates timeframes to better align with current State law and Los Angeles County procedures. Within 60 days, the City Council must either appoint a candidate or call for a special election. If the City Council does not act within 60 days, then the City Clerk will call for a special election. The special election shall not occur sooner than 114 days after the call of the election.
 - As a new provision, a person appointed to fill a vacancy is precluded from seeking election to that office in the next general or special election.

- If a Councilmember resigns while subject to a recall election, the office cannot be filled by appointment. It must be filled by the recall election called pursuant to the California Elections Code.
 - Adds a provision to ensure that a vacancy occurring between a primary and general election, if any, would be filled by the winning primary candidate, if there is one, and not by appointment of another person.
- C. Council Compensation and Expenses (Section 404)
- Updates the Consumer Price Index used for these adjustments to reflect the current practice, as the ones included in the Charter have been superseded.
- D. Absence from Meetings (Section 405)
- If any member of Council has been absent from all regular meetings for 60 days, instead of 30 days, the office becomes vacant. It retains the ability for the City Council, with the consent of a majority of a quorum, to extend the timeframe before the Council office is declared vacant.
- E. Role of the City Council (Section 501)
- Adds language describing the role of City Councilmembers, including to conduct business in a manner that benefits the entire City, not just the individual district; report to the Council regarding activities or other commissions and board of which the Councilmember is a member; meet annually to establish goals; and communicate with the commissioners and board members that they have appointed.
- F. Composition – Voting (Section 502)
- Clarifies that members of the City Council cannot vote on matters that constitute an impermissible conflict of interest under Section 513 of the Charter or otherwise violate State law.
- G. Meetings (Section 503)
- As previously presented to City Council, requires City Council regular meeting agendas to be posted earlier than required by the Brown Act, but revises the posting deadline to six (6) days prior to the meeting instead of seven (7). This change was made based upon feedback from staff that it would be better to post on a Tuesday than a Monday for processing and preparation purposes, and will avoid posting deadlines conflicting with Monday holidays. It continues to require 72 hours for non-emergency special meetings.
- H. Office and Appointment (Section 601)
- Eliminates terminology requiring that the City Manager be appointed “for an indefinite term,” which will provide greater discretion to the City Council to negotiate terms for the City Manager.
- I. Report Regarding Residency of City Employees (Section 701)
- The Charter currently requires that Council encourage officers, deputies, and employees of the City be or become residents of the City. It is proposed to add a requirement that the City Manager prepare a report for the City Council every five years that describes the number of employees who are residents of the City, efforts made to recruit within the City, incentives for residency within the City, and projected costs of any proposed incentives the Council should consider.

J. Combined the Director of Finance and City Treasurer (Section 701, 705, and Article X)

- Currently the Charter includes both a City Treasurer and a Director of Finance as specific offices within the Charter. The CRC is recommending that the positions be combined to the Director of Finance/City Treasurer to reflect the current practice.

K. Nepotism (Section 710)

- Clarifies that a relative by adoption, not just by blood or marriage, is subject to the nepotism policy.

L. Political Activity and Prohibitions (713 and 714)

- Clarifies which language applies to elected officials and which applies to employees. It also better draws the distinction between an official's/employee's private political advocacy (which enjoys First Amendment protection like other citizens) and their public activities (where there are limits on political advocacy and similar activities).

M. Appointive Boards and Commissions (Article VIII)

- Currently the Charter requires that Boards and Commission have the same number of members as the Council and shall serve four years. The CRC is proposing to return to language to something similar to a previous Charter that gives the Council flexibility regarding commissions, including terms, numbers, and duties.
- It specifies that the Council shall provide for adequate funding, staffing, training, and resources for each board and commission.
- It retains the requirement for the members of Council to appoint new commissioners within 60 days of assuming office. However, it also allows for existing commissioners to serve until the new appointment is made, to allow commissions to function more smoothly during the transition.
- If no appointment is made within 60 days, it provides that the Mayor shall have 30 days to appoint a member. It further adds that if the seat is vacant for more than 90 days, the Council shall fill the seat by a majority vote of its membership. It allows any member of the Council, and the applicable board or commission on a majority vote, to recommend qualified candidates for Council consideration.
- It sets general standards for qualifications (commitment, talent, and geographic and demographic diversity). It requires each member to be a resident of the City and it precludes any voting member of a board or commission from holding any other office or position in the City government for which compensation is paid.
- It provides for regular meetings, allows the board and commission to prescribe its own rules and regulations consistent with the Charter and applicable City ordinances. It also authorizes each board or commission to request subpoena power from the City Council.
- It requires each regular agenda be posted six days prior to the meeting and any non-emergency special meeting agenda posted 72 hours prior to the meeting. This concept was previously presented to City Council as seven days but was changed to six days based upon additional feedback.

N. Add an Ethics Commission (Section 805)

- The CRC is proposing that the Charter include an Ethics Commission. The Ethics Commission will have the responsibility to: 1) monitor and advise on applicable governmental ethics laws contained in the City Charter, State statute or City ordinance, regulation or policy including but not limited to campaign finance limits

and disclosure, nepotism, lobbying, conflict of interest, open meeting laws; 2) education and responding to issues regarding aforementioned laws, regulations, and policies; and impartial and effective administration and implementation of programs to accomplish the goals and purposes of the Commission.

- A very rough estimated General Fund cost to adequately fund and staff such an advisory commission is \$100,000 to \$150,000. It was noted that both Oakland and San Diego Ethics Commission have a current budget of approximately \$1.4 million, but these cities are significantly larger and the Ethic Commissions have an enforcement function, while the proposed Ethics Commission for the City of Pomona is more advisory and a forum for residents to express concerns.

O. Financial Procedures (Article 1003)

- Updates reference to the Director of Finance/City Treasurer, to reflect the merging of the positions as previously discussed in this report.
- Changes dates of publication for the public hearing related to the budget to 10 days prior to the hearing instead of 14 days. This timeframe was also changed for other public hearings, such as the CIP and franchises. This allows better timing between Council meetings and newspaper deadlines.
- Specifies that capital improvement projects will be abandoned if five years pass with less than ten percent (10%) of the projected budget expended or encumbered.
- Clarifies that increases in City taxes must follow State law (versus just a simple majority). This language better aligns with the growing body of law than now governs how both general and special taxes are implemented.
- Allows the contract with an independent auditor be extended for an additional two years as an option, for a total of five years.

There are also other minor changes not described above to clarify language or procedures. The full text is included as Attachment 2 with all additions underlined and deletions struck through with a line.

Conclusion

In summary, it is requested that the City Council provide feedback regarding the proposals described herein. More information and documentation regarding these proposals and can be found on the City's website under the Charter Review agendas:

[City of Pomona - Calendar \(legistar.com\).](http://legistar.com)

Prepared by: Linda Matthews, Human Resources/Risk Management Director and Staff Liaison to the Charter Review Commission

ATTACHMENTS:

Attachment No. 1 – Realignment of District Elections Proposal

Attachment No. 2 – General Charter Update Proposal