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January 24, 2006

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

EXPANDING NUMBER OF COUNCIL SEATS

INTRODUCTION

Although the "Strong Mayor" form of government has been in effect for less than one month, a shortcoming in the system already has become apparent: The council now has an even number of members, increasing the likelihood of deadlock in votes on substantive city issues.

One way to remedy this shortcoming is to add a seat to the City Council, allowing for a nine-member panel and an odd number of council members that may avoid deadlock on critical votes. The Charter already contemplates that the council be expanded to nine members at the time of the next City Council district reapportionment, following the national decennial census in 2010. (Article XV, Section 255(b).)

This report discusses expanding the number of council seats as a way to resolve problems created by the new Strong Mayor form of government, earlier than contemplated by the Charter. This report also identifies Charter sections that would need to be reviewed and amended in order to expand the size of the panel.

HISTORICAL BACKGROUND

Until January 1, 2006, the San Diego City Council had an odd number of members: nine, including the Mayor and eight members representing individual council districts. Under the City Manager form of government that was in effect until this month, the Mayor sat on the City Council, led council meetings and enjoyed the same voting rights as other council members.

Voter approval of Proposition F on the November 2, 2004 ballot created the Strong Mayor form of government that took effect January 1, 2006. The Strong Mayor system will remain in effect as long as the voters intend, with the trial period ending December 31, 2010. Under the new system, the Mayor no longer sits as part of the City Council and thus does not and cannot vote on issues that come before it. The new system reduced the number of voting council

members to eight, thus creating the strong likelihood that votes on substantive city issues could end in deadlock. There is no provision in the Charter for a "tie-breaking" event.

Community members have discussed several options that would increase the size of the City Council:

- The first option is to redistrict immediately and combine the election for a representative of District 9 with the next scheduled election for odd-numbered districts (1, 3, 5 and 7) in 2008. This option is a compromise between the expansion plan the Charter already contemplates (Article XV, Section 255(b)) and the political reality that the panel cannot wait five years for an additional council vote to avoid deadlock.

- The second option is to wait for the next City Council district reapportionment, following the national decennial census in 2010, at which point voters will have decided whether the Strong Mayor system is to remain in effect. However, waiting this long to expand the council would not resolve the tie votes that are certain to occur with an even-numbered panel in power for the next five years.

Community members have alternatively discussed increasing the number of council seats to eleven, providing for even greater proportional representation of city residents.

DISCUSSION

I. Legislative Panels Routinely Have an Odd Number of Members or a Tie-Breaking Process for Votes on Legislative Matters

Legislative panels routinely have an odd number of members, ensuring that a vote of the panel does not regularly deadlock in a tie. (Note, for example, the following panels in California cities: the San Jose City Council [eleven members, including the mayor]; San Francisco Board of Supervisors [eleven members]; Los Angeles City Council [fifteen members], Long Beach City Council [nine council members]; Chula Vista City Council [five members, including the mayor] and Oceanside City Council [five members, including the mayor].)

Similarly, the San Diego City Council, and its predecessor entities, always had an odd number of members before the Strong Mayor system of government took effect this month. The 1931 Charter created a council with seven members, including the mayor; the number of council members was increased to nine in 1963.

Legislative panels with an even number of members generally have a mechanism in place to break tie votes. For example, the Vice President of the United States, sitting as presiding officer of the U.S. Senate, casts votes only to break ties of its 100 members. The Oakland City

Council has eight members (seven council members representing individual districts, plus one at-large member), but allows the mayor to vote when necessary to break a tie.

The San Diego City Charter does not provide a mechanism for a "tie-breaking" event to occur in the event of a deadlocked vote on an eight-member City Council.

II. Adding a Council Seat Would Give People Greater Representation on the Council

The number of seats on the San Diego City Council has not been increased since 1963. In those 43 years, the city's population has increased exponentially, diluting representation.

A simple comparison of U.S. Census figures for the city makes the point: In 1960, the city's population was 573,224. (See City of San Diego Official Website, *Important Events in the City of San Diego's History*). If one were to assume an even split of residents among the city's districts, each council member represented an average of 71,653 residents.

In 2000, the city's population reached 1,223,400, according to the U.S. Census. (*Id.* and www.demographia.com.) Thus the number of residents represented by each council member has increased to an average of 152,925 per district.

By comparison, the City of Chula Vista, with a 2000 population of 173,556 – just slightly more than the number of residents represented by a single council member in San Diego – is represented by *four* council members, not including the mayor. Similarly, the City of Oceanside, with a 2000 population of 161,029, is represented by *four* council members, not including the mayor. (See www.demographia.com.)

The call to increase the number of council seats to keep pace with the city's population is not new. The Charter Review Commission of 1989 called for an increase in the number of council seats from eight to ten. Increasing the number of council seats also may serve to empower certain constituencies that have not previously been represented on the panel.

RELEVANT CHARTER SECTIONS

Charter sections involving redistricting would need review and potential revision in order to allow for an earlier redistricting and expansion of the council than that presently contemplated.

a. Redistricting Sections

Council district reapportionment is generally done in conjunction with the decennial census. Decennial reapportionment is a rational approach to readjustment of legislative representation in order to take into account population shifts and growth. Decennial reapportionment meets the "minimal requirements for maintaining a reasonably current scheme of legislative representation." *Reynolds v. Sims,* 377 U.S. 533, 583-84 (1964). The *Reynolds*

case instituted a requirement of periodic reapportionment based upon current population data and set a floor below which such frequency of redistricting may not constitutionally fall. *Garza v. County of Los Angeles*, 918 F.2d 763, 772 (9th Cir. 1990).

Article II, Sections 5 and 5.1 of the City Charter set forth the procedure for the redistricting of the City Council in conjunction with the Decennial Census.

Section 5 states in relevant part:

". . . The City shall be redistricted pursuant to Section 5.1 of this Charter **at least once** in every ten (10) years, but no later than nine months following the receipt of the final Federal Decennial Census information."

(Emphasis added.)

At the state and federal level, courts have assumed there may be only one valid plan for legislative and congressional districts implemented in a decennial census period. *Legislature v. Deukmejian,* 34 Cal. 3d 658, 671 (1983) [citations omitted].

At the municipal level, however, Article II, Section 5 of the Charter addresses a procedure for one type of redistricting that does not follow a federal decennial census and which may occur in any year. The Charter section discusses a redistricting triggered by city annexation or consolidation of new land in a way that upsets the approximate equality of the populations of the council districts. In that event,

"a redistricting shall be conducted pursuant to Section 5.1 of this Charter, except that the nomination period for appointment to the Redistricting Commission shall commence on the July 1 immediately succeeding the annexation, deannexation or consolidation and the Redistricting Commission shall be constituted no later than the next November 1."

(Charter, Article II, Section 5, Redistricting.)

This Charter provision could be amended to specify a schedule for redistricting for the purpose of adding a council seat. The deadlines could be amended to set forth a schedule that follows the date of the election in which voters approve the additional council seat or seats.

b. Clean-up Revisions

A number of Charter revisions would be needed to be made for "clean up," to change a reference to the number of council seats to the new number. For example, Article II, Section 4, "Districts Established" of the Charter specifies that the council "shall be divided into eight Districts as nearly equal in population as practicable."

Charter sections referencing "eight" districts would require amendment to the new number of council districts. Among those Charter sections in need of "clean up":

- Article II, Section 4 (Districts Established) [. . . the City shall be divided into eight Districts . . . "];
- Article II, Section 5.1 (Redistricting Commission) [". . .eight (8) Council districts designated by numbers 1 to 8. . ." and "one-eighth of the total population. . ."];
- Article II, Section 10 (Elections) [setting forth the dates of elections for specific council seats, would require amendment to add an election schedule for the new district].

The sections above are those contained in Article II that reference "eight" votes or districts. All Charter sections would need thorough review to ensure that any other related reference to "eight" is revised.

CONCLUSION

Voters approving the Strong Mayor form of government may not have realized they were creating a City Council with an even-number of members, leading to inevitable tie votes on critical city issues. Voter approval of a ballot measure to increase the size of the City Council to nine would allow the council to avoid tie votes. The Charter already contemplates that the council be expanded by one, to nine members, after the next decennial census. (Art. XV, Sec. 255(b).) A ballot measure to expand the size of the council may resolve problems created by the new Strong Mayor form of government.

Respectfully submitted,

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