Subcommittee on Interim Strong Mayor

Staff Report with Proposed Charter Language
by James Ingram, Job Nelson and Catherine Tran

At the June 30 meeting, the Subcommittee requested draft language on a number of items for deliberation. Specifically, the Subcommittee asked for "straw" language on the Veto Override, Ninth Council District, Redistricting, Redevelopment Agency and the Sunset Provisions of Article XV. This staff report proposes some draft Charter language for all five of these issues, and presents an analysis of the questions raised by the proposed language.

Veto Override Language

Option 1 - Two-thirds vote

Section 285: Enactment Over Veto
The Council shall reconsider any resolution or ordinance vetoed by the Mayor. If, after such reconsideration, at least two-thirds of the entire Council vote in favor of passage, that resolution or ordinance shall become effective notwithstanding the Mayor's veto. If more than five votes are required for the passage of any resolution or ordinance by the provisions of this Charter or other superseding law, such larger vote shall be required to override the veto of the Mayor. If a vetoed resolution or ordinance does not receive sufficient votes to override the Mayor's veto within thirty (30) calendar days of such veto, that resolution or ordinance shall be deemed disapproved and have no legal effect.

Option 2 - One more vote

Section 285: Enactment Over Veto
The Council shall reconsider any resolution or ordinance vetoed by the Mayor. If, after such reconsideration, at least one more Council member votes in favor of passage than required for passage, that resolution or ordinance shall become effective notwithstanding the Mayor's veto. If more than five votes are required for the passage of any resolution or ordinance by the provisions of this Charter or other superseding law, such larger vote shall be required to override the veto of the Mayor. If a vetoed resolution or ordinance does not receive sufficient votes to override the Mayor's veto within thirty (30) calendar days of such veto, that resolution or ordinance shall be deemed disapproved and have no legal effect.

Staff Discussion of These Two Options

Is it intentional that supermajority votes do not require additional Council members to override a Mayoral veto? I can understand that we don't want the Mayor's veto and the requirement of a larger Council vote to override it for the Council's quasi-judicial functions, such as appeals on personnel and planning matters, but we don't want the Council's votes to be veto-proof on all supermajority items.

That seems to me to be a flaw with both of these options. We could require that for supermajority items vetoed by the Mayor, the Council is required to achieve a larger supermajority for a veto override. That is easier to fix with the language of option two, where we could add a sentence about those ordinances requiring more than 5 votes to pass requiring one more than 6 to pass now. I would suggest using the ¾ to override 2/3 in option 1, but 6/8 is already ¾. In that option, we may have to

spell out the actual number as 7/8, which is even OK if the Council moves to 9 members, but not if it is increased to 11 or more.

I know that the Article XV language exempts the Annual Appropriations Ordinance from a Mayoral veto. Is this required by California law (I think not), or was this a compromise that was made to get Prop F on the ballot?

Ninth Council District Language

Option 1 – Nine (9) Districts

Section 270: The Council
(a) The Council shall be composed of **nine** (9) Council members elected by district, and shall be the legislative body of the City.
"(j) The City shall be redistricted, as soon as practicable, to establish the additional district required by this section. Such redistricting process shall follow the terms prescribed by Section 5.1."

Option 2 – Eleven (11) Districts

Section 270: The Council
(a) The Council shall be composed of **eleven** (11) Council members elected by district, and shall be the legislative body of the City.
(b) No resolution, ordinance, or other action of the Council shall be passed or become effective without receiving the affirmative vote of six (6) members of the Council, unless a greater number is otherwise required by the Charter or other superseding law. All substantive actions of the Council shall be passed by adoption of an ordinance or resolution.
(j) The City shall be redistricted, as soon as practicable, to establish the additional districts required by this section. Such redistricting process shall follow the terms prescribed by Section 5.1.

Option 3 – Thirteen (13) Districts

Section 270: The Council
(a) The Council shall be composed of **thirteen** (13) Council members elected by district, and shall be the legislative body of the City.
(b) No resolution, ordinance, or other action of the Council shall be passed or become effective without receiving the affirmative vote of seven (7) members of the Council, unless a greater number is otherwise required by the Charter or other superseding law. All substantive actions of the Council shall be passed by adoption of an ordinance or resolution.
(j) The City shall be redistricted, as soon as practicable, to establish the additional districts required by this section. Such redistricting process shall follow the terms prescribed by Section 5.1.

Option 4 – Fifteen (15) Districts

Section 270: The Council
(a) The Council shall be composed of **fifteen** (15) Council members elected by district, and shall be the legislative body of the City.
(b) No resolution, ordinance, or other action of the Council shall be passed or become effective without receiving the affirmative vote of eight (8) members of the

Council, unless a greater number is otherwise required by the Charter or other superseding law. All substantive actions of the Council shall be passed by adoption of an ordinance or resolution.
(j) The City shall be redistricted, as soon as practicable, to establish the additional districts required by this section. Such redistricting process shall follow the terms prescribed by Section 5.1.

Staff Discussion of These Four Options

Is it better to use the "as soon as practicable" language, or should the Charter establish a date certain by which the City must be redistricted to provide for the additional Council member(s)?

Regardless of whether we create 9, 11, 13 or 15 districts, we would also need to alter Sections 4 and 5.1 of the Charter, as they refer to the Council being composed of 8 districts. In addition, we would need to alter Section 10 of the Charter to add the ninth district among the odd-numbered Council district elections.

Is it just the City's adobe version of the Charter that is online, or is the hard copy version of the Charter also flawed in that Charter Section 5.1 includes a spelling error, using the word "proceeding" when it should be "preceding"!?

Redistricting Language

Section 5. Redistricting.
In the event that any voting precinct which may be established at the time this Charter takes effect or which may be thereafter established is partly within two or more such districts, said precinct shall be allocated to the District in which a majority of the voters within such precinct resides, and said district boundaries shall be changed accordingly. **The redistricting following the receipt of the final Federal Decennial Census information of 2010 shall be completed no later than December 31, 2013 and shall take effect on January 1, 2014.** *Thereafter*, 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.

[The remaining two paragraphs of Section 5 shall remain as they are in the Charter at present.]

Staff Discussion of This Item

Does delaying the Redistricting until 2013 create any potential Voting Rights Act issue, such as the Minority Vote Dilution considered in *Thornburg v. Gingles* or in the retrogression-related litigation that followed the decision? Or has this all been addressed in cases such as *Shaw v. Reno*?

If the redistricting is delayed, and the redistricting of 2009 will obviously not be able to take the 2010 Census into account, could the City potentially violate the one person-one vote mandate established by *Baker v. Carr* and *Reynolds v. Sims*?

If delaying the redistricting is legal, then is 2013 the date to do it, or is another later date to be preferred? A 2009 redistricting could be ideal, due to the effect of term limits on the Council in 2010. How will the choice of 2104 play out in those terms?

Redevelopment Agency Language

Administrative Authority of the Mayor – Option 1 (with veto)

Section 265: The Mayor
(k) The Mayor shall serve or be designated as the administrative head of any body established by federal or state law for which the City Council acts as the governing or legislative body. In that capacity, the Mayor shall supervise the administrative affairs of such body, and shall have the same administrative and procedural authority over the affairs of the body as the Mayor has with respect to the City of San Diego, including the power of veto, subject only to the superior provisions of federal or state law, or superior authority of the City Council acting as the governing or legislative body.

Administrative Authority of the Mayor – Option 2 (without veto)

Section 265: The Mayor
(k) The Mayor shall serve or be designated as the administrative head of any body established by federal or state law for which the City Council acts as the governing or legislative body. In that capacity, the Mayor shall supervise the administrative affairs of such body, and shall have the same administrative and procedural authority over the affairs of the body as the Mayor has with respect to the City of San Diego, subject only to the superior provisions of federal or state law, or superior authority of the City Council acting as the governing or legislative body.

Staff Discussion of These Two Options

Does this language need to be drafted more narrowly? At present, the City Council acts as the Housing Authority. Do we want the same process for the Housing Authority as for the Redevelopment Agency? This language would also apply to any future body the state or federal law creates, for which the Council acts as the governing or legislative body. Do we want to cast the net that widely or cover only the City Council's actions as the Redevelopment Agency?

Sunset Provisions Language

Option 1- Extended Trial Period

Section 255: Operative Date; Sunset of Article; Future Action by Voters
After January 1, 2009, the revised provisions of this Article shall remain in effect for an additional period of five years (until December 31, 2014) at which time this Article shall become permanent unless the Council or people should propose to place a measure on the ballot repealing the Article or lengthening the trial period.

Option 2 - Extended Trial Period & Automatic Placement on Ballot

Section 255: Operative Date; Sunset of Article; Future Action by Voters
After January 1, 2009, the revised provisions of this Article shall remain in effect for an additional period of five years (until December 31, 2014). The question of whether or not this form of governance shall be made permanent must be placed on the 2014 primary ballot. However, the Council and the people reserve the right to

propose amendments to the Charter before the primary 2014 election to extend, make permanent, shorten or repeal the effective period of this Article.

Staff Discussion of These Two Options

Some members of the Subcommittee expressed concern as to whether the Charter could bind the Council to call an election in the future, based on what happened as part of Oakland's charter reform sunset process a few years ago. If we are concerned, we could even build in to the Charter the actual phrasing that is required to appear on the ballot under Option 2. This would not provide leeway to alter the Strong Mayor system at the same time as voting on the sunset referendum. Oakland's trial period did not specify the language of the ballot proposition that would go to the voters, or sufficiently constrain the City Council in its phrasing of the election question, and that is where the potential for sabotage of their Strong Mayor sunset referendum apparently arose.

Oakland's Measure X of 1998 stated: "Section 1213. Sunset Provision. At the general election to be held in November, 2004, the City Council shall cause to be placed on the ballot a proposed Charter amendment the sole effect of which, if passed, shall be to retain the changes made to the Charter in 1998 and 1999. If that proposed Charter amendment is put before the voters and not passed, then all of said changes to the Charter shall lapse and have no further effect."

The San Francisco Chronicle reported that Oakland City Council was contemplating the possibility of tinkering with the Strong Mayor Charter language in the sunset referendum that Measure X required for November 2004. To prevent this tampering, then-Mayor Jerry Brown placed Measure P on the ballot in March 2004. "If Measure P had failed, Oakland would have reverted next year to a city manager form of government, in which the mayor was no longer the chief executive. Brown would have spent his last two years in office presiding over the City Council. If the measure had failed, the council was expected to have placed a slightly different version of the strong-mayor initiative before voters in the fall." (See Jim Herron Zamora, "Oakland OKs Libraries, Strong Mayor," The San Francisco Chronicle, March 3, 2004).

Because Option 1 does not require Council action, then it could prevent the problem that Oakland faced. Alternatively, Option 2 could be made more rigid in terms of mandating the terms of the sunset referendum to be held. The present City Council may be amenable to charter changes because its members are familiar with the problems created by the old system, and the fact that term limits are giving the members who are soon to leave that body a more long-term perspective on what is best for the City. How can we predict how a new Council might view the continuation of San Diego's successful experiment with the Strong Mayor system?