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## OFFICE OF THE CITY CLERK

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# REPORT

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### REPORT TO THE CHARTER REVIEW COMMITTEE

REPORT NO.: 15-06

**DATE:** October 27, 2015 for the November 4, 2015 Charter Review Committee Meeting

**SUBJECT:** Proposed Changes to the Charter Related to Redistricting

### **BACKGROUND**

In June 1992, San Diego citizens approved ballot Proposition C, which amended the City Charter to grant "sole and exclusive authority to adopt plans which specify the boundaries of districts for the City Council" to a seven-member citizen Redistricting Commission.

The current process, as outlined in the City's Charter and further detailed in the Municipal Code, has been used in two successful City of San Diego redistricting processes: 2000 and 2010. In February 2015, the City Clerk, working with the City Attorney's Office, presented an overview to the Charter Review Committee that outlined those elements of the City's Redistricting process that had been identified as being in need of review. This report was crafted using the feedback gathered from that February Committee presentation, as well as information and recommendations from both the 2000 and 2010 Commissions, a 2012 San Diego County Grand Jury Report, and community and participant feedback in order to cast as wide a net as possible for potential input.

A summary of the more notable proposed changes to the Charter is outlined below. Each section considered was also edited for stylistic changes in order to create clarity and/or consistency and, where appropriate, use "plain English" to promote accessibility to the material. A strike-out version of the Charter was prepared by the City Attorney's Office and is attached for your consideration.

#### **Charter Section 4: Districts Established**

- Since the ninth Council district was created in 2010, outdated language that anticipated the addition of the ninth district has been removed.

#### **Charter Section 5: Redistricting**

- Procedures for handling a split voting precinct have been clarified. In addition, the term “Federal Decennial Census” has been defined.

#### **Charter Section 5.1: Redistricting Commission**

- The number of Redistricting Commission members has been increased from seven to nine members. The following language has been added, “The Appointing Authority shall attempt to appoint one Commission member from each of the nine Council districts to the extent practicable, given the other requirements of this Charter Section, and considering the extent of the applicant pool and an individual’s qualifications to serve. The Appointing Authority shall also attempt to appoint Commission members who possess working knowledge of the geography and neighborhoods of The City of San Diego.”

The increase to the number of Commissioners, with an attempt to select one Commissioner from each Council district, was suggested by various community groups and members of the public during outreach and overview presentations by the City Clerk. In addition, Councilmember Cate’s February 2, 2015 Charter Review Committee Priority Memo also suggests that the Council consider language that includes representation from each Council district.

The recommended change is to select one Commissioner from each Council district to the extent practicable, and not to require district-specific representation. Requiring district-specific representation could place the Appointing Authority in a difficult or even impossible situation if there were no applicants from a particular Council district, or a small number of applicants who fail to meet the requirements as outlined in the Charter in terms of demonstrated capacity to serve.

Despite significant outreach efforts by the City Clerk to expand and diversify the applicant pool, the 2000 redistricting process resulted in a range in the number of candidates per Council district from one candidate to thirteen. In 2010, the range in the number of candidates ran from two (in several Council districts) to twelve.

- The Appointing Authority process has been updated to reflect current practices in keeping with judicial ethics prohibitions and the Court's response to 2000 and 2010 requests for assistance in the appointment process. Language has been added to clarify that the Appointing Authority will consist of "a panel of three retired judges who served in any of the following courts: the Superior Court of the State of California, an appellate court of the State of California or a U.S. District Court located within California." The recommendation to update the language related to the selection of the Appointing Authority was included in Councilmember Gloria's January 26, 2015 memo on Charter Review Priorities, as well as in the 2012 San Diego County Grand Jury Report.

In addition, the term "Appointing Authority" has been defined.

- Outdated language that referenced the Penal Code has been eliminated. An outdated reference to the City Manager has been replaced with the City Clerk for random selection of Appointing Authority members to create a panel of three.
- The option for the City Council to appoint the Commission as a last resort to the appointment process has been removed in order to eliminate the perception of a conflict of interest.

Instead of the Council, it has been proposed that the City Clerk serve as the Appointing Authority in the event that the retired judges are unable or unwilling to serve as the Appointing Authority. After a ministerial review of applications to ensure compliance with City Charter requirements and procedures set forth in the San Diego Municipal Code, the Clerk will notify the qualified candidate pool and randomly select applicants in a public location for appointment to the Redistricting Commission.

- The nomination (or application) period has been expanded from thirty days to sixty, with a start date of May 1<sup>st</sup> rather than July 1<sup>st</sup>. This would provide the City Clerk more time to conduct outreach in order to generate a sizeable pool of applicants. It also provides applicants additional time to fill out the required application and gather necessary paperwork to comply with the application requirements. The earlier nomination period also avoids the heart of the summer months, during which many individuals vacation.

This expansion of the nomination period was suggested in the 2012 Grand Jury Report, which suggested that the number of nominees for the Commission was limited by the current 30-day nomination period. In addition, Councilmember Cate's Charter Review Committee Priority Memo suggested expanding the nomination period in order to draw from a wide pool of qualified applicants.

- Language has been added to clarify that should the panel of three Appointing Authority members fail to meet within sixty days of receiving the application material, a quorum of two of the panel members comprising the Appointing Authority shall be deemed sufficient to make the Commission appointments in order to meet statutory deadlines.

The issue of the two-member quorum was raised in the 2012 Grand Jury Report.

- Language has been added to outline a process for selecting alternate Commissioners, as follows: "The Appointing Authority shall also appoint two alternate Commission members from the same applicant pool, who will be available to serve if a Commission member cannot serve or resigns. The alternates shall have a duty to remain informed of Commission business so they are prepared to serve if called upon to do so."

Both the 2000 Redistricting Commission Recommendations and the 2012 Grand Jury Report suggested providing guidance on the selection of alternate Commissioners.

- Service of the Commission members and alternates has been clarified to last until the redistricting plan adopted by the Commission becomes effective and the referendary deadline for the Final Redistricting Plan has passed. If the Final Redistricting Plan is rejected by referendum or by legal challenge, the Commission shall resume service and create a new plan as outlined in the City Charter.
- The time by which Commission members shall hold their first meeting upon appointment has been extended from twenty to thirty days to give the members time to set a day, time and location and to understand noticing and other pertinent Brown Act requirements related to a public meeting.
- With the proposed increase in the number of Commissioners, the votes required to appoint the Commission's chief of staff has been increased from five to six in order to maintain a majority vote.
- The number of required public hearings prior to the preparation of a preliminary redistricting plan has been increased from four to nine in order to facilitate geographical diversity and coverage.

In addition, the number of public hearings during the 30-day period after the filing of the preliminary redistricting plan with the City Clerk has been increased from three to five in order to expand public participation.

The 2000 Redistricting Commission recommended that pre-map hearings be conducted in each of the Council Districts. The 2010 Redistricting Commission noted that it held “far more meetings than the number required by the City Charter and suggest[ed] that future Commissions do the same...”

- Language has been added to clarify that although the Final Redistricting Plan document, including all maps, will be final as set forth in the City Charter, the boundaries of the Council districts in the Final Redistricting Plan shall not be adjusted and effective until after the next regularly scheduled general election for Council seats following the redistricting. This clarifies what is already the applicable redistricting law.

### **Other Impacts/Issues**

Charter Section 12(d): This section has been clarified as follows: “Upon any redistricting pursuant to the provisions of this Charter, incumbent Council members will continue to represent the district they were elected to serve for the remainder of their current term.”

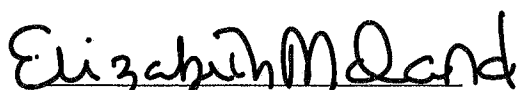
Charter Section 270: The Council: Since the ninth Council District was created in 2010, the City Attorney has removed outdated language that anticipated the addition of the ninth district, and cleaned up extraneous language.

Municipal Code Chapter 2, Article 7, Division 14: Procedure for Making Appointments to the Redistricting Commission: This entire Division will be expanded and updated contingent upon changes to the Charter. Some additional information would include:

- Details related to City hiring practices for the appointment of the chief of staff.
- Information about the City’s budget timeline and process to facilitate the creation and submission of the Commission’s budget.
- Specific information related to the City Clerk’s ministerial review of Redistricting applications.

### **Recommendation**

Approve the proposed changes to the City Charter to go forward to the appropriate Committee for consideration as a ballot measure for the June 7, 2016 Primary Election.



Elizabeth Maland  
City Clerk

## ARTICLE II

### NOMINATIONS AND ELECTIONS

#### SECTION 4: DISTRICTS ESTABLISHED

For the purpose of electing members of the Council, the City shall be divided into ~~eight~~ Districts as nearly equal in population as practicable. A ninth Council district shall be created in the redistricting following the 2010 national decennial census, at which time the City shall be divided into nine (9) eCouncil districts as nearly equal in population as practicable. ~~Thereafter~~ The boundaries of such districts shall be subject to alteration and change under the provisions of this Charter.

In any redistricting plan adopted by the Redistricting Commission pursuant to Section 5.1 or ordinance adopted by the Council establishing, changing or altering the boundaries of any Council district, the redistricting plan or ordinance may describe the new boundaries by reference to a map on file in the office of the City Clerk; a metes and bounds description of the new boundaries need not be contained in said the redistricting plan or ordinance.

*(Amendment voted 03-10-1953; effective 04-20-1953.)*

*(Amendment voted 09-17-1963; effective 02-11-1964.)*

*(Amendment voted 11-06-1990; effective 02-19-1991.)*

*(Amendment voted 06-02-1992; effective 07-13-1992.)*

*(Amendment voted 06-08-2010; effective 07-30-2010.)*

## 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 located partly within two or more such Council districts, ~~said~~ the precinct shall be allocated to the Council ~~d~~District in which a majority of the voters within such the precinct resides, and ~~said~~ the district boundaries shall be changed accordingly.

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 City's receipt of the final Federal Decennial Census information. The term "Federal Decennial Census," as used in this Charter, shall mean the national decennial census taken under the direction of the United States Congress at the beginning of each decade.

Any territory hereafter annexed to or consolidated with The City of San Diego shall at the time of such annexation or consolidation be added to an adjacent ~~D~~District or ~~D~~Districts by an ordinance of the Council. However, if any territory annexed, deannexed or consolidated upsets the approximate equality of the populations of the established districts, 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~~ May 1 immediately succeeding the annexation, deannexation or consolidation and the Redistricting Commission shall be constituted no later than the next November 1.

In any redistricting, the districts shall be comprised of contiguous territory and made as equal in population as shown by the census reports, and as geographically compact as possible, and the districts so formed shall, as far as possible, be bounded by natural boundaries, by street lines and/or by City boundary lines.

*(Amendment voted 06-02-1992; effective 07-13-1992.)*

### **SECTION 5.1: REDISTRICTING COMMISSION**

The members of the City Council shall be elected by districts, as follows:

Subject to the provisions of the City Charter relating to referendum and initiative powers of the people, the sole and exclusive authority to adopt plans which specify the boundaries of districts for the City Council is vested in the Redistricting Commission, to be established by this Section.

Commencing in the year following the year in which the ~~national~~ Federal Decennial Census is taken ~~under the direction of the United States Congress~~ at the beginning of each decade, the Redistricting Commission shall adopt plans that redistrict the City into nine (9) Council districts designated by numbers 1 to 9, inclusive. Those districts shall be used for all elections of Council members, including their recall, and for filling any vacancy in the office of member of the Council, ~~subsequent to the effective date of this Section~~ (and until new districts are established).

No change in the boundary or location of any district by redistricting as herein provided shall operate to abolish or terminate the term of office of any member of the Council prior to the expiration of the term of office for which such member was elected.



Districts formed by the Redistricting Commission shall each contain, as nearly as practicable, one-ninth of the total population of the City as shown by the Federal Decennial Census immediately ~~proceeding~~ preceding such formation of districts.

Each redistricting plan shall provide fair and effective representation for all citizens of the City, including racial, ethnic, and language minorities, and be in conformance with the requirements of the United States Constitution and ~~F~~ federal statutes.

To the extent it is practical to do so, districts shall: preserve identifiable communities of interest; be geographically compact - populous contiguous territory shall not be bypassed to reach distant populous areas; be composed of whole census units as developed by the United States Bureau of the Census; be composed of contiguous territory with reasonable access between population centers in the district; and not be drawn for the purpose of advantaging or protecting incumbents.

The Redistricting Commission shall be composed of ~~seven (7)~~ nine members who shall be appointed by the Presiding Judge of the Municipal Court, San Diego Judicial District. ~~In the event that the Presiding Judge declines to make the appointments, they shall be made by a Municipal Court Judge selected by vote of the Judges of the Municipal Court, San Diego Judicial District. Should the Judges of the Municipal Court decline to so act, then the Redistricting Commission shall be appointed by a panel of three retired judges who served in any of the following courts: the Superior Court Judges of the State of California, an appellate court of the State of California, or a U.S. District Court located within California. Names of the retired~~

judges willing to serve will be submitted to the City Clerk and drawn at random by the City Clerk, using procedures for judicial nominees and appointees as set forth in the San Diego Municipal Code. Manager in the fashion described in Penal Code sections 900(a) and 902. In the event that all of the preceding individuals decline to act, then the Redistricting Commission shall be appointed by a majority vote of the City Council in the fashion set forth below. The term "Presiding Judge," "Appointing Authority," as used herein below, shall include any person or any body refer to the panel of retired judges acting to appoint the Redistricting Commission pursuant to the provisions of this paragraph.

The City Clerk shall solicit nominations for appointment to the Redistricting Commission in accordance with this Section and shall distribute to the news media the announcement of a ~~thirty (30)~~ sixty-day nomination period (which shall commence on ~~July 1, 2000, and on July~~ May 1 of every year in which a ~~national~~ Federal Decennial Ceensus is taken) and the guidelines for selection of Commission members.

Individuals or organizations desiring to nominate persons for appointment to the Commission shall ~~do so in writing~~ submit application materials to the City Clerk within the nominating period, using procedures set forth in the San Diego Municipal Code.

The City Clerk shall transmit the names and information regarding all nominees with the names of nominating individuals and organizations to the ~~Presiding Judge~~ Appointing Authority immediately upon the close of nominations.

Within 60 days of receiving Commission member applications from the City Clerk, the three members of the Appointing Authority shall hold a public meeting to appoint the nine Commission members and two alternates. If the full panel of three members cannot meet within the 60-day period, thereafter a quorum of two members of the Appointing Authority shall be deemed sufficient to make the appointments if necessary to ensure the appointments are timely made. The Presiding Judge Appointing Authority shall appoint the members constituting the Commission no later than November 1, 2000, and on November 1 of every year in which a national Federal Decennial Census is taken.

In the event that retired judges are unable or unwilling to serve as the Appointing Authority, the City Clerk will serve as the Appointing Authority. The City Clerk will conduct a ministerial review of Commission member applications to determine which persons are qualified to serve, using the requirements of this Charter and procedures set forth in the San Diego Municipal Code. After all qualified applicants are identified and notified, the City Clerk will randomly select the Commission members and alternates from the pool of qualified applications in a public place.

The Presiding Judge Appointing Authority shall appoint ~~women and men~~ members who will give the Redistricting Commission geographic, social and ethnic diversity, and who, in ~~his or her~~ the Appointment Authority's judgement, have a high degree of competency to carry out the responsibilities of the Commission. The appointees shall include individuals with a demonstrated capacity to serve with impartiality in a nonpartisan role.

The Appointing Authority shall attempt to appoint one Commission member from each of the nine Council districts to the extent practicable, given the other requirements of this Charter Section, and considering the extent of the applicant pool and an individual's qualifications to serve. The Appointing Authority shall also attempt to appoint Commission members who possess working knowledge of the geography and neighborhoods of The City of San Diego.

Each member of the Commission shall be registered to vote in The City of San Diego.

The Appointing Authority shall also appoint two alternate Commission members from the same applicant pool, who will be available to serve if a Commission member cannot serve or resigns.

The alternates shall have a duty to remain informed of Commission business so they are prepared to serve if called upon to do so.

Persons who accept appointment as members of to the Commission, at the time of their appointment, shall file a written declaration with the City Clerk stating that within five (5) years of the Commission's adoption of a final redistricting plan, they will not seek election to a San Diego City public office. Alternates shall sign the declaration if and when they become members of the Commission.

The members of the Redistricting Commission, and the alternates, shall serve until the redistricting plan adopted by the Commission becomes effective and ~~any and all legal and referendum challenges have been resolved~~ the referendary deadline for the Final Redistricting Plan has passed. If the Final Redistricting Plan is rejected by referendum or by a legal challenge,

members of the Commission shall resume their service and shall create a new plan pursuant to the criteria set forth in Sections 5 and 5.1.

~~Any vacancy in the Redistricting Commission which occurs after the Commission is constituted shall be filled within seven (7) calendar days by the Presiding Judge of the San Diego Municipal Court, San Diego Judicial District, following the same procedure and using the same criteria established with this Section and making the selection from the same pool of individuals given consideration for appointment when the Commission was constituted.~~

~~Within twenty (20) thirty days after the ~~membership of the Commission~~ members are is appointed, ~~it~~ the Commission shall hold its first meeting at a time and place designated by the City Clerk.~~

Within sixty days after the Commission members are appointed, the Commission shall adopt a budget and submit it to the Appointing Authority. If approved, the budget shall be forwarded to the City Council for its prompt consideration. The City Council shall appropriate funds to the Commission and to the City Clerk adequate to carry out their duties under this Section.

All Commission meetings shall be open to the public and Commission records, data and plans shall be available, at no charge, for public inspection during normal business hours in the office of the City Clerk. Copies of records and plans shall be provided, for a reasonable fee, to any interested person.

The Commission shall elect a chair and a vice chair and shall employ a chief of staff, who shall serve at the Commission's pleasure, exempt from Civil Service, and shall contract for needed staff, technical consultants and services, using existing City staff to the extent possible.

Aye votes by ~~5~~ six members of the Commission shall be required for the appointment of its chief of staff, the election of its chair, and the adoption of the ~~Final R~~redistricting ~~P~~lan, and Aa majority vote of the Commission shall be required for all other actions. A majority of the entire Commission shall constitute a quorum for the transaction of business or exercise of any power of the Commission.

The Commission shall make every reasonable effort to afford maximum public access to its proceedings. It shall solicit public comment and shall hold at least ~~four~~ (4) nine public hearings in various geographic areas of the City before the preparation of a preliminary redistricting plan.

At least ~~thirty~~ (30) days prior to the adoption of a final plan, the Commission shall file a preliminary plan with the City Clerk, along with a written statement of findings and reasons for adoption, which shall include ~~notation of all~~ the criteria employed in the process and a full analysis and explanation of decisions made by the Commission.

During the ~~thirty~~-(30)-day period after such filing, the Commission shall hold at least ~~three~~ (3) five public hearings in various geographic areas of the City before it adopts a final plan. ~~Upon approval of the final plan, the Commission shall adjust the boundaries of any~~

~~or all of the Council districts of the City pursuant to the final plan. Said The Final Redistricting Plan shall be effective thirty (30) days after adoption by the Commission and shall be subject to the right of referendum in the same manner as are ordinances of the City Council. If rejected by referendum, the same Commission shall be empaneled to create a new plan pursuant to the criteria set forth in Sections 5 and 5.1.~~

The Final Redistricting Plan document, including all maps, will be final as set forth herein; however, the boundaries of the Council districts in the Final Redistricting Plan shall not be adjusted and effective until after the next regularly scheduled general election for Council seats following the redistricting.

~~Within sixty (60) days after the members of the Commission are appointed, the Commission shall adopt a budget and submit it to the Presiding Judge. If he or she approves it, it shall be forwarded to the City Council for its consideration. The City Council shall appropriate funds to the Commission and to the City Clerk adequate to carry out their duties under this Section.~~

If any part of these amendments to Sections 4, or 5, or 5.1 of the Charter ~~or the addition of Section 5.1 to the Charter~~ or their application to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications which reasonably can be given effect without the invalid provision or application.

*(Addition voted 06-02-1992; effective 07-13-1992.)*  
*(Amendment voted 06-08-2010; effective 07-30-2010.)*

## SECTION 12: THE COUNCIL

[(a) to (c) No change in text.]

(d) Upon any redistricting pursuant to the provisions of this Charter, incumbent Council members will continue to represent the district they were elected to serve in which they reside for the remainder of their current term, unless as a result of such redistricting more than one incumbent Council member resides within any one district, in which case the City Council may determine by lot which Council member shall represent each district. At the next municipal primary and general elections following a redistricting, Council members shall be elected from those districts not represented and from those districts represented by incumbent Council members whose terms expire as of the general election in said that year. If, as a result of any redistricting, more than a simple majority of the City Council as redistricted shall be elected at either the municipal primary or general election next following any such redistricting, the City Council prior to any such election shall designate one or more new districts for which the initial council term shall be two (2) years in order to retain staggered terms for Council members.

[(e) to (h) No change in text.]

*(Amendment voted 11-08-1949; effective 12-20-1949.)*

*(Amendment voted 06-05-1956; effective 01-10-1957.)*

*(Amendment voted 11-06-1962; effective 01-21-1963.)*

*(Amendment voted 09-17-1963; effective 02-11-1964.)*

*(Amendment voted 11-04-1969; effective 01-29-1970.)*

*(Amendment voted 11-05-1974; effective 12-01-1975.)*

*(Amendment voted 11-04-1975; effective 12-01-1975.)*

*(Amendment voted 11-06-1979; effective 12-17-1979.)*

*(Amendment voted 11-08-1988; effective 04-03-1989.)*

*(Amendment voted 11-06-1990; effective 02-19-1991.)*

*(Amendment voted 06-02-1992; effective 07-13-1992.)*

*(Amendment voted 11-03-1992; effective 12-18-1992.)*

*(Amendment voted 06-07-1994; effective 08-18-1994.)*

*(Section 12(a) was superseded by section 270 from 01-01-2006 through 07-30-2010.)*

*(Amendment voted 06-08-2010; effective 07-30-2010; see section 270.)*

*(Amendment voted 06-03-2014; effective 07-24-2014.)*



## SECTION 270: THE COUNCIL

(a) The Council shall be composed of nine councilmembers elected by district. ~~The ninth councilmember shall be elected at the next municipal primary and general elections following the redistricting occurring after the 2010 national decennial census. Until the ninth councilmember is elected and qualified, the Council shall be composed of eight councilmembers elected by district.~~ The Council shall be the legislative body of the City.

[(b) to (h) No change in text.]

*(Added by vote on 11-02-2004; effective 01-01-2006.)*

*(Added by vote on 06-03-2008; effective 07-08-2008.)*

*(Added by vote on 06-08-2010; effective 08-16-2010.)*

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