

ATTACHMENT C

MARCH 7, 2016
CITY STAFF REPORT TO
CITY COUNCIL

(Attachments omitted)



Agenda Report

March 7, 2016

TO: Honorable Mayor and City Council

FROM: City Clerk

**SUBJECT: REQUEST FOR DIRECTION REGARDING THE FORMATION OF A
CHARTER STUDY TASK FORCE**

RECOMMENDATION:

It is recommended that the City Council:

- (1) Find that the proposed action is exempt from California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061(b)(3), ("General Rule");
- (2) Review a list of potential charter amendment issues and provide direction to staff on whether to proceed with the formation of a Charter Study Task Force to study potential amendments to the City Charter; and
- (3) Direct staff to prepare a Request for Proposals seeking consultant services to lead the Charter Study process.

LEGISLATIVE POLICY COMMITTEE:

On January 26, 2016, the Legislative Policy Committee received a report from staff regarding the California Voter Participation Rights Act (Elections Code Sections 14050 – 14057) and a request for direction regarding the formation of a Charter Study Task Force. Following discussion, it was the direction of the Committee to forward the matter to the full City Council for consideration on how to proceed.

BACKGROUND:

During the Fiscal Year 2016 budget process, the City Council expressed interest in convening a Charter Study Task Force to review the City's Charter for possible amendments, with specific interest expressed regarding a number of election-related issues. As part of the Fiscal Year 2016 budget adoption, the City Council allocated \$150,000 in the City Clerk's budget for this purpose.

During the past year, the State's legislature has been considering a number of election related bills with potentially significant direct and indirect impacts to Pasadena. In July 2015, the Legislative Policy Committee received a report from staff and provided direction to monitor the outcomes of the pending legislation and report back once a final

determination was reached by Governor Brown to sign or veto election-related bills under consideration, including information regarding the applicability of the adopted legislation on charter cities such as Pasadena.

Past Chart Study Efforts

As additional background information, staff is providing information on previous Charter Reform/Charter Review Task Force work (Attachment A) that occurred in the 1980's, 1990's and 2000's regarding (among other topics) issues related to Pasadena's Council/Manager Form of Government, Citywide Elected Mayor, Oversight of the Pasadena Unified School District, and the Taxpayer Protection Act. This background information (including composition, scope or charge, and resulting proposed charter amendments), may be helpful when considering the question on whether to proceed with the formation of a new Task Force, as well as any future actions related to scope and charge, composition, topics for study, and timeline.

VOTER PARTICIPATION RIGHTS ACT

SB 415 (Hueso), codified as the Voter Participation Rights Act (Elections Code Sections 14050-14057) (Attachment B), was signed by Governor Brown with the intended goal to address low voter turnout rates at the local level. The law eliminates local election dates and requires local elections to be held on statewide election dates. The bill prohibits any "political subdivision" from holding local elections on any other date than statewide election dates when local voter turnout rates average 25% less than statewide voter turnout rates within the same political subdivision.

Following is a summary of the Voter Participation Rights Act:

"Commencing January 1, 2018, a political subdivision is prohibited from holding an election other than on a statewide election date if holding an election on a non-current date has previously resulted in voter turnout for a regularly-scheduled election in that political subdivision being at least 25 percent less than the average voter turnout within the political subdivision for the previous 4 statewide general elections, except as specified. Requires a court to implement appropriate remedies upon a violation of this prohibition. Permits a voter who resides in a political subdivision where a violation is alleged to file an action in Superior Court to enforce this prohibition, and allows a prevailing plaintiff other than the state or political subdivision to collect a reasonable attorney's fee and litigation expenses, as provided."

Applicability to Charter Cities

There remains some question regarding the applicability of the Voter Participation Rights Act to the City of Pasadena, insofar as the language contained in Pasadena City Charter Sections 1202 and 1205 (Attachment C) already defines the timing of elections for the Mayor and City Council. As a Charter City, the California Constitution states

that properly adopted charter language would supersede state law (Cal Const. Article XI, Sec 5: "City charters adopted pursuant to this Constitution....with respect to municipal affairs shall supersede all laws inconsistent therewith"). Further, the text of the bill does not contain the usual language asserting "statewide significance", which would have signified applicability to charter cities and could have clarified the intent of the legislature with regard to the Voter Participation Rights Act.

Staff has discussed the potential impacts of the Act with the City Attorney's Office, Scott Martin (City's Election Consultant), and David Jones (City's State Legislative Advocate). Mr. Jones also conferred with the League of California Cities on the issue of applicability of the Voter Participation Rights Act to charter cities. Mr. Martin, Mr. Jones, and the League of California Cities all believe that the premise of local control and the above referenced California Constitution provisions provide protection to charter cities from having to comply with the new law, provided that charter language exists defining the timing of local elections.

However, State Senator Hueso's Office has informed staff that the intent of the legislation was that the Voter Participation Rights Act would in fact apply to charter cities, and that those municipalities that fail to comply with the law (effective January 1, 2018) do so at their own risk and may be subject to litigation under the new law. While staff and the League of California Cities may not agree with this assertion, there may exist some vulnerability to potential litigation for charter cities under the act.

Recent case law applied the California Voting Rights Act to charter cities despite the similar lack of "statewide significance" language (see Los Angeles Times articles contained in Attachment D), where the definition of "political subdivision" (in the California Voting Rights Act) was the same as in the new Voter Participation Rights Act, which according to Senator Hueso, was by design. Subsequently as part of recently signed legislation contained in AB 277 (Hernandez), the definition of "political subdivision" in the California Voting Rights Act was amended to clearly apply the Act to charter cities. As a result of the arguable legislative intent present in the Voter Participations Rights Act and recent case law applying the definition of "political subdivision" to charter cities, there appears to be some risk that litigation regarding the application of the Voter Participations Rights Act would require charter cities to comply with its requirements. This conflict of understanding and applicability may also be resolved through future amendments to the law.

Issues to Consider

The Voter Participation Rights Act contains a provision allowing political subdivisions to delay compliance until the 2022 election cycle. This allowance was included as part of the law to primarily address a timing issue that was raised by Los Angeles County, who is in the final stages of a voting system modernization effort called the Voting System Assessment Project (VSAP). The goal of VSAP is to replace the County's current system, "Ink-A-Vote," with more modern technology, that has scalability to meet the needs of future elections, with increased ballot capacity, an enhanced voter experience

and enable the County to provide election administration services to all 88 cities within its jurisdiction. As the Council may be aware, the County has for years denied consolidation requests from cities within the jurisdiction to move to statewide election dates due to limitations with the Ink-A-Vote voting system. VSAP is scheduled for completion prior to the 2022 election cycle, which (as was stated) is the reason for the built-in flexibility contained in the Voter Participations Rights Act.

There are many issues to be considered when weighing the pros and cons of changing the City's election timing to statewide election dates. Following is a preliminary list of issues supporting a change, with some brief staff notes and analysis included as part of each issue:

- 1) Changing to statewide election dates will likely increase voter turnout rates and provide efficiencies for voters (fewer elections to vote in).
Notes/Analysis: This is the main focus point of the Voter Participation Rights Act and one of the attractions for those advocacy groups supporting changes to the electoral process to increase voter turnout rates.
- 2) Los Angeles County's VSAP project should greatly increase accessibility at polling sites, especially for voters with special voting needs, and allow residents to leverage voting system enhancements to improve their voting experience.
Notes/Analysis: Like Ink-A-Vote, the City's Opto-Mark voting system is substantially the same voting technology used during the past 60 years. The County's effort to modernize their current voting system will incorporate electronic and audio tools, and greatly enhance the flexibility of voters to cast ballots privately, independently, and with multijurisdictional ballot capacity. By switching to statewide election dates, the County would run the City's election and Pasadena area voters will in turn have the benefit of using this updated voting system.
- 3) The State legislature continues to introduce new bills focusing on voter participation issues at the county level, while also utilizing the momentum gained with the signing of the Voter Participation Rights Act to further support these efforts. Such bills include AB 1461 (Gonzales) California New Motor Voter Program and SB 450 (Allen and Hertzberg) All Mail Ballot Elections (see Attachment B for the bill text), with the former bill increasing voter registration through record sharing between the Secretary of State and the Department of Motor Vehicles, and the latter bill providing authorization to counties to conduct all mail ballot elections with voting centers.
Notes/Analysis: Active voter registration is believed to be a key barrier to voting, and the Motor Voter bill would seek to utilize a person's motor vehicle records to constitute a completed affidavit of voter registration. One impact to cities will be increased election costs based on significant increases in registered voters. SB 450 is designed to make substantial changes to election administration but only focuses on county-run elections. The City would have to adopt Charter language to allow for a similar style of voting for local elections.

In contrast, following is a list of issues challenging whether such a move to statewide election dates would be in Pasadena's best interest, with some brief staff notes and analysis included as part of each issue:

- 1) With more jurisdictions, issues, and races appearing on one election ballot, voters will contend with a significantly longer ballot to complete, and local issues will be relegated to the latter portion of the ballot, appearing below federal, state, and county issues and races

Notes/Analysis: A longer ballot would likely mean increased voting time to complete the entire ballot, longer voting lines at polling sites, and increased voter fatigue to complete the entire ballot. Some of the benefit of increased voter turnout on Election Day would be lost for local races where voters might stop voting after casting votes on some of the larger issues and races.

- 2) If federal and state issues appear on the same ballot as City races, local campaigns will find themselves competing for the attention of voters with statewide and national campaigns

Notes/Analysis: The benefits of consolidating all regular elections on one ballot to increase voter turnout and reduce voter fatigue could be offset if local issues are lost in national and statewide debates.

- 3) A potentially significant impact to Pasadena's election process would be the increased length of time between the Primary and General Elections

Notes/Analysis: Currently, there are six weeks between the City Primary Election and the City General Election. However, the period between the statewide Primary and General election dates is 5 months, which would greatly prolong the election cycle for City Council campaigns, and result in longer periods of campaigning, increased campaign costs, etc.

- 4) Shifting the responsibility for the City's election administration to the County has the further impact of placing control of what has historically been a core City function for Pasadena into the purview of an outside agency

Notes/Analysis: As a direct report to the City Council, the City Clerk's Office has immediate accountability to the City Council and Pasadena residents. Should these duties shift to the County level, Pasadena would then become just one of 88 "clients" of the County for election administration services. The final tally of votes and certification of election results, for example, would be delayed by 2-3 weeks, as it often takes the County several weeks to complete the Official Canvass. The City generally provides election results less than two weeks after Election Day. Cost control would be another aspect that could present challenges, with Los Angeles County determining election costs/charges for all the local jurisdictions within its borders.

As has been illustrated, issues both favoring and opposing a change in election timing are important to consider, yet complex and multifaceted when considering a pathway forward. With a deadline looming for the City to determine a course of action, the work of a citizen-based task force would be extremely beneficial in thoroughly vetting these issues and providing a recommendation for the City Council to consider.

CHARTER STUDY TASK FORCE CONSIDERATION

As was noted in the FY 2016 Budget discussion, there are a number of other potential Charter Study issues that could be considered. The following preliminary list of issues was generated by members of the City Council and the community, and could also be included as part of the scope and charge of a Charter Study effort:

- 1) Should the City consolidate election dates with statewide election dates?
- 2) Should the City Council continue to have appointment authority to fill unscheduled vacancies on the City Council?
- 3) Should the timing of the Mayor's election be adjusted to avoid having only some Councilmembers forgo the ability to run for their current elected seat in order to run for Mayor, while others do not have to forgo due to the staggered election cycle?
- 4) Should the Mayor and Councilmembers continue to serve part-time or should Councilmembers be employed as full-time members and receive compensation?
- 5) Should there be a limit on the number of terms that a Councilmember/Mayor can serve?
- 6) Should the City change to an All Mail Ballot Election process?
- 7) Is there a need to revisit the City Manager/City Council form of government, by increasing the authority of the Mayor?
- 8) Should the City consider setting spending limits for campaign finance expenditures for Mayor and City Council?

Next Steps

Staff is requesting direction on whether to proceed with the coordination of a Charter Study Task Force. In the event that the City Council provides the necessary direction, staff will complete work on a Request for Proposals for consultant services to lead the Task Force, and also bring forward a future report and recommendation to the City Council regarding a proposed charge, scope of work, composition, and timeline. Finally, the City Council will need to consider an application and/or appointment process for those interested in serving, with appointments recommended to occur in June, 2016. The Council may also wish to consider involving the Pasadena Unified School District, as changes in the election process would also impact Board of Education elections.

Once formed, the Task Force can begin work starting in July 2017, assisting staff in setting the consultant's work plan, scheduling public meetings, finalizing a list of issues to be considered, and approving the timeline for the final report and recommended ballot measures for the City Council to consider.

FISCAL IMPACT

The City Council allocated \$150,000 in the City Clerk's FY 2016 Operating Budget towards the formation and support of a citizen-based Charter Study Task Force. The City Clerk's Office has maintained the full balance of Council's allocation and is working with the Finance Department to carryover these funds to FY 2017. At this time, no additional funding is being requested.

Respectfully submitted,



Mark Jomsky, CMC
City Clerk

Attachments:

- A. Background Information on Previous Charter Study Committees
- B. Legislation Related to Voter Participation and Turnout
- C. Pasadena City Charter Section 1202 and 1205
- D. Los Angeles Times Articles on Palmdale, a Charter City, and the California Voting Rights Act

Attachments omitted