



2020-2021

**Charter Review Committee
Recommendations**

August 10, 2021

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Executive Summary

In September 2019, The Charter Review Committee (Committee) was charged by the Mayor and City Council to undertake a review of the Modesto City Charter, a procedure that the City generally undertakes at least every decade. The Committee received sections of the Charter that required review from the Mayor and City Council, City Attorney, City Clerk, and City Manager's Office. The Committee reviewed various sections with support from City departments and interested parties. The Committee researched, received feedback, deliberated, and developed recommendations regarding these issues throughout the preceding 14 months – with a temporary interruption due to the COVID-19 pandemic.

From this process, the Committee has prepared 5 key recommendations and additional miscellaneous recommendations that require modern language to allow for advancements in technology to support City operations, and finally there are several areas that require administrative clean-up.

The 5 key recommendations from the Committee includes:

I. Timing of the Mayor's Election

At the March 2, 2020 meeting, the Charter Review Committee voted on the timing of the election of the Mayor. The recommendation is to move the election dates of the Mayor from November and February to occur at the same time as the State's primary and general elections of the state (generally either March or June, and November respectively). In the instance that a candidate receives more than 50% + 1 of the votes cast, in the primary election then no run-off election in November would be necessary and this candidate would assume office and coincide with the terms of office for the other members of Council, as provided under Section 700 of the Charter.

Currently, the Charter requires the Mayor's election to be held in November, and if no candidate receives 50% + 1 of the vote, then a run-off election will be held in February for the voters to decide between the two candidates who received the most votes.

II. Office of the City Auditor

The Charter Review Committee reviewed sections related to the Office of the City Auditor extensively. Ultimately, the Committee voted to make key changes

to this section related to the duties, qualifications, recruitment, and removal process.

- i. The qualifications for the City Auditor were changed to allow for a broader pool of candidates. The qualifications required specific changes to the requirement of being a Certified Public Accountant, to “adequate professional proficiency for the job, demonstrated by relevant certifications such as Certified Internal Auditor (CIA), Certified Public Accountant (CPA) or Chartered Accountant (CA) or have an advanced degree and at least five (5) years of experience in government auditing, evaluation or analysis.”
- ii. The responsibilities of the City Auditor were modified to reflect the standard responsibilities outlined in the Association of Local Government Auditors’ model legislation.
- iii. Lastly, the Charter Review Committee voted to modify the vote requirement to remove the City Auditor from an affirmative vote of four (4) members of the Council to an affirmative vote of five (5).

III. Audit Committee

The Charter Review Committee recommended to include the Audit Committee within the Charter with the following purpose and responsibilities:

The purpose of the Audit Committee is to advise the City Council on items related to the work of the City Auditor, and the City’s financial statement audits. The Audit Committee shall review and forward to the City Council, quarterly reports of the City Auditor’s activities and findings. Additionally, the Audit Committee shall review and forward to the City Council materials related to the city’s annual financial statement audit conducted pursuant to Section 1306 of this Charter, and monitor any follow-up required to ensure corrective action is taken by management.

- The Audit Committee shall be comprised of the Mayor, two members of the City Council, and two members of the public who are residents of the City of Modesto and shall possess a minimum of 2 years of experience in financial or performance auditing. Strong consideration shall be given to residents who are Certified Public Accountants.
- No public member of the Committee shall be a relative by blood or marriage to the third degree of the mayor, member of the council, any charter officer, or any department head or deputy department head.

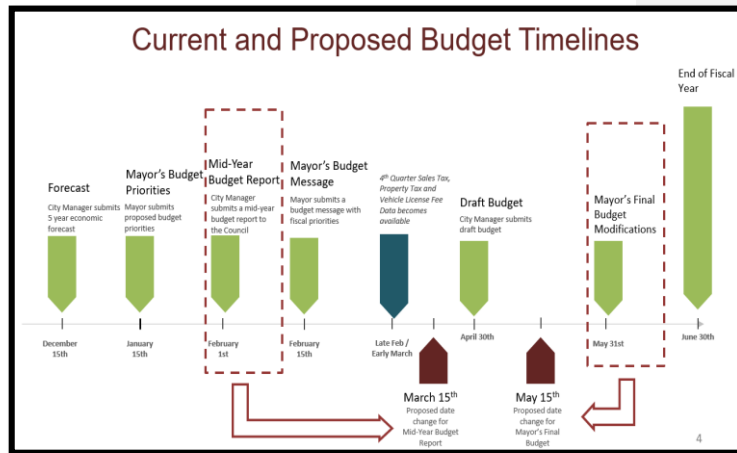
- No public member of the Committee shall be an employee of the City nor any bargaining unit for employees of the City, nor a person who receives compensation from the City or from bargaining units of the City in any manner, including retirement benefits.
- No public member of the Committee shall be a lobbyist or other person with business before the City that represents and economic interest in excess of the limit for material financial effect established by local ordinance for the time periods established by local ordinance.
- Public members of the Committee shall serve without compensation

IV. Office of the City Manager

Per State law, and recommendations from the City Attorney’s Office, the Charter Review Committee voted to remove the residency requirement for the City Manager because employers cannot base employment decisions based on a person’s residence. Prior to this change, the Charter required that the City Manager live in the City of Modesto.

V. Budget Timeline

There were several areas of concern with the timeline related to the development of the budget. First, the City does not receive property tax revenue or second quarter sales tax data until late February which can be helpful in informing the mid-year budget report. In addition, the current budget timeline requires the Mayor’s Final Budget Modifications on May 31st (or 30 days prior to the new fiscal year) and Council to consider the Mayor’s modifications and the draft budget in early June, which only allows for one meeting for Council to consider the approval of the budget. The recommended change, shown below, would allow for the Council to consider the Mayor’s modifications and the



draft budget in late May, post the hearing notice, and allow for two Council meetings for the approval of the budget, which grants staff and Council additional flexibility with regard to changes to the proposed budget.

VI. Technical Amendments

In addition to these major areas of focus, the Committee has also recommended a number of technical amendments to the City Charter. The key themes of the many technical amendments are intended offer the organization greater flexibility in performing day to day work by streamlining processes, allowing for the use of modern technology, and additional amendments are intended to clarify several sections throughout the Charter.

Introduction

The Modesto City Charter is the local constitution by which the electors of Modesto govern themselves. A City Charter, like the state and federal constitutions, is a statement of basic principles, outlining powers, relationships, and responsibilities.

City charters are authorized under the California Constitution, which allows a City to choose either to be a general law city under the laws of the state or become a self-governing charter city. Modesto became a Charter City in 1911 after it approved its first City Charter on September 14, 1910 when Modesto's population was approximately 4,032. Modesto undertook major revisions of its Charter in 1949, 1950, and 1962. The Charter under which Modesto operates today was adopted in 2008. Section 1604 of the Modesto City Charter requires that the City Council shall cause the City Charter to be reviewed at least every 10 years.

The City Council appointed members to the 2020-2021 Charter Review Committee (Resolution 2019-487). Traditionally, Charter Review Committees have been charged with various duties by the Mayor and have submitted a final written report to the Mayor and City Council; and this effort exemplifies the continuation of this process.

Charge of the Mayor and City Council

At the September 10, 2019 Council meeting, the Council approved the recommendation to adopt the following process for the review of the Charter:

- (i) Each Councilmember to nominate one person to serve as members of the Charter Review Committee with the Mayor's appointee serving as the Chair and the Vice Mayor's appointee serving as the Vice Chair of the Committee;
- (ii) The initial seven (7) Committee members are authorized to nominate up to four (4) additional members to the Committee from the community and forward them to Council for ratification;
- (iii) City staff is authorized to post and publicize information requests, volunteer applicants for the City of Modesto; and
- (iv) Mayor Brandvold will appoint one (1) Councilmember to serve as an ad hoc, nonvoting member of the Charter Review Committee. Mayor Brandvold may nominate and forward to Council for approval up to two (2) other ad hoc, non-voting members of the Committee that are not registered voters in the City of Modesto, but are registered voters in Stanislaus County to provide input on regional issues addressed by the Committee.

Composition of the Committee

At the October 22, 2019 Council meeting by Resolution 2019-487, the following appointments were made by the Council:

- Mayor Ted Brandvold recommended appointing Cecil Russell
- Vice Mayor Jenny Kenoyer recommended appointing Sam Pierstorff
- Councilmember Mani Grewal recommended appointing Chris Tyler
- Councilmember Tony Madrigal recommended appointing Aaron Anguiano
- Councilmember Kristi Ah You recommended appointing Janice Keating
- Councilmember Bill Zoslocki recommended appointing Michael Moradian
- Councilmember Doug Ridenour recommended appointing Wendy Byrd

Additionally, Modesto City School Board Trustee John Walker was appointed to serve on the Committee due to the Charter's inclusion of the Modesto City Schools District, Mayor Brandvold recommended that Mr. Walker serve as an ad hoc non-voting member to support with regional and interagency issues between the City and Modesto City Schools. Lastly, George Petrulakis, Past Chairman of the Charter Review Committee, was appointed as a regional ad hoc non-voting member.

At the January 7, 2020 meeting of the Charter Review Committee, the committee voted to direct staff to solicit applications on the City website for the 4 vacant Charter Review Committee positions and return to the January 22, 2020 meeting for the appointments process. At the January 22, 2020 meeting, the Charter Review Committee interviewed applicants for the 4 vacancies, and selected the following: Sandra Lucas, Tim Ragsdale, Renaldo Rucker, and Jose Sabala. Alternate members that were also selected include Alternate A – Monica Valencia, Alternate B – Paul Baxter, Alternate C – Dewey Bradford, and Alternate D – Douglas Highiet. The recommendations were forwarded to Council and were approved in February 2020.

Areas Assigned for Review

On November 25, 2019, Mayor Brandvold provided a memo (Appendix B) requesting that the City Council and City departments prepare a list of issues within the Charter to be reviewed by the Charter Review Committee.

The list from the Council, City Manager, and City Attorney included the following:

City Manager's Office

(i) SECTION 600 – 725 – The Mayor & City Council

Issue: The Charter is silent on the standards for the Mayor and City Council members' failure to maintain their financial obligations to the City in good standing (i.e., fees, fines or taxes).

Proposed Change/Consideration: There have been instances where either the Mayor or a Council Member has unpaid City fees, fines or taxes for which no recourse is provided in the Charter. Staff recommends that the Charter Review Committee consider establishing standards, along with the basis and nature of possible action by Council.

(ii) SECTION 800 – City Manager

Summary of Current Language: The City Manager need not be a resident of the City or State at the time of appointment, but during the City Manager's tenure of office, the City Manager shall reside within the City.

Proposed Change/Consideration: California Government Code Section 50083 deems this residency requirement illegal,¹ and therefore this requirement should be removed.

(iii) SECTION 1104 – Meetings / Chairpersons

Summary of Current Language: (Section 1) Written notice to each member of any board or commission may be dispensed with as to any member of any board or commission who, at or prior to the time the meeting convenes, files with the Secretary of such board or commission a written waiver of notice. The waiver may be given by telegram.

(Section 2) Unless otherwise provided by the Council, or by this Charter, the City Manager shall provide a secretary for the recording of the minutes of each of such boards and commissions who shall keep a record of its

¹ California Government Code Section 50083 states that "no local agency shall require that its employees be residents of such local agency or district."

proceedings and transactions. Each board and commission shall prepare and submit to the Council an annual report of its activities. Such report shall be made on the fiscal year basis and shall be submitted on or before September 1 of each year.

Proposed Changes/Consideration:

Section 1: The language in needs to be modernized to reflect the ever changing methods of communication. The language should be broad enough to accommodate technologies yet to come.

Section 2: It is not current the practice of the boards and commission to submit annual reports, rendering this language moot.

(iv) SECTION 1107-1111 - Board of Personnel Appeals, Powers and Duties – Human Relations Commission

Issue: The Charter lists only four of the seventeen total boards and commissions for the city. The four boards and commissions are the Planning Commission, Board of Personnel Appeals, Culture Commission, and Human Relations Commission. Two of the four commissions listed in the Charter - the Human Relations Commission and the Board of Personnel Appeals- no longer exist.

Board of Personnel Appeals: shall consist of three members and the powers and duties include the selection of a hearing officer to hear the appeals of any person in the classified service relative to any suspension, demotion or dismissal, so long as a separate and distinct procedure has not been delineated by a valid and existing Memorandum of Understanding. And act in an advisory capacity to the City Manager on such personnel matters as may be referred to it by the City Manager.

Human Relations Commission: shall consist of seven (7) members, five (5) of whom shall be registered electors of the City, and two (2) of whom shall live outside the City but shall be registered electors of Stanislaus County. The Commission shall have the power and duty to:

- Act in an advisory capacity to the City Council in matters pertaining to human relations and behavior
- Formulate and recommend annually to the Council a program for furthering human relations
- Perform such other duties with respect to human relations and behavior as the City Council may prescribe by ordinance or resolution

Proposed Changes/Consideration:

First, staff recommends the Review Committee consider eliminating all boards and commissions from the Charter. Boards and Commissions often require modifications to their function because of legislative action by the City Council, city resources, and community interest. To ensure that the organization can be flexible with the existing boards and commissions, staff recommends considering the removal of the four commissions from the Charter.

Second, staff recommends that the Human Relations Committee be eliminated. From a practical perspective, it does not exist, and its functions are not be carried out by any existing committee as described in the Charter. In title only, the Human Relations Committee has been merged with 2 other Human Resources advisory bodies: the Equal Opportunity /Disability Commission, which does not encompass the functions outlined in the Charter for the Human Relations Committee.

And finally, staff recommends that the remaining two commissions – the Planning Commission and the Culture Commission be created by ordinance or Council resolution and removed from the Charter.

SECTION 1205 – Hearing Officer

Summary of Current Language: An appeal of any person in the Classified Service relative to any suspension, demotion or dismissal, where the right of appeal is granted by the Personnel System of the City of Modesto, shall be heard by a hearing officer, who shall be selected by the Board of Personnel Appeals.

Proposed Change/Consideration: The use of hearing officers as identified in the Charter is no longer a practice of the City. The City now uses State hearing officers and this is specified in the Memorandums of Understanding that the City has with the various employee associations. Therefore, this Charter section should be considered for removal.

SECTION 1302.1 -1304 – Annual Budget

Summary of Current Language: Section 1302.1 through Section 1304 include various deadlines for the budget, including Section 1302.1 which requires a mid-year budget report by February 1st but the City does not receive property tax revenue or second quarter sales tax data until late February which can be helpful in informing the mid-year budget report.

Proposed Change/Consideration: The recommendation from staff is to review and modify the dates to ensure a timely adoption of the budget with sufficient time provided to receive data to inform the budget.

SECTION 1307 – Public Work To Be Done By Contract

Summary of Current Language: Every project involving an expenditure of City funds of more than the amount which the City Council shall establish by ordinance, for the construction or improvement of public buildings, works, drains, sewers, utilities, parks, playgrounds, and streets (exclusive of projects for resurfacing, maintenance and repair of streets, or any park or parks playground project otherwise subject to the public bidding requirements of this section that involves any donated labor and/or material) shall be let by contract to the lowest responsible bidder after notice by publication in the official newspaper by one or more insertions, the first of which shall be at least seven (7) days before the time for opening bids.

Proposed Change/Consideration: Recommendation from staff is to revise the language to reflect modern methods of communication and that language be flexible and adaptable for advances in communication methods.

SECTION 1311 – Contracts for Official Advertising

Current Language: In the event there is more than one (1) newspaper of general circulation published and circulated in the City, the Council shall advertise for one (1) day, setting forth distinctly and specifically the work contemplated to be done, and asking for sealed proposals therefor.

Proposed Changes/Consideration: Recommendation from staff is to revise the language to reflect modern methods of communication and that the language be flexible and adaptable for advances in communication methods.

SECTION 1313 – Purchase of Supplies and Equipment

Current Language: The Council, by ordinance, within one (1) year following the adoption of this section, shall adopt policies and procedures, including bidding regulations, governing purchases of supplies and equipment by the City.

Proposed Change/Consideration: The City's Purchasing Division has met the intent of this section by establishing an Administrative Directive under the City Manager's authority and created an internal Purchasing Manual to ensure compliance with the Modesto Municipal Code. The question to consider relative to this section is whether a policy adopted by Council is necessary if the City has implemented a process that meets the spirit of this Charter section.

City Attorney's Office

- (i) Minor modifications to further comply with the California Voting Rights Act, in response to recent case law and new 2020 Census data.
- (ii) Ensuring Charter compliance with state laws regarding the process of disposing of surplus City lands. A November 2019 court decision indicates that the City will need to comply with additional processes to sell surplus land. Our office is evaluating whether this requires a Charter amendment, or merely changes to the Municipal Code and/or City policies

City Council:

- (i) Elections in line with State
- (ii) Possible Auditor elected
- (iii) Review Charter for possible updates
- (iv) Review and expansion of the City Auditor responsibilities to include adding the requirement the position adhere to California Government Code 1236(a) which states, "all city, county and district employees that conduct audits or that conduct audit activities of those respective agencies shall conduct their work under the general and specified standards prescribed by the Institute of Internal Auditors or the Government Auditing Standards issued by the Comptroller General of the United States, as appropriate"
- (v) Consider creation of an Audit Committee composed of three members of the City Council (Mayor and two members of the City Council) and two qualified residents of the City of Modesto.
- (vi) Consider whether Charter Officers be required to be full time employees of the City of Modesto?
- (vii) Consider whether there should be a requirement for a mandatory forensic audit (every two years) of professional service contracts?
- (viii) Consider removing requirement of Modesto City School Board elections.
- (ix) Add clean-up of Salary Setting Commission and Districting Commission meetings from even years to odd years.
- (x) Add clean-up of outdated terms/requirements such as "telegrams" under Boards, Commissions and Committees.
- (xi) Review effectiveness of council term limits and determine if modifications are warranted.
- (xii) Review clean up language from last Charter Review changes/amendments.
- (xiii) To Reaffirm the Council-Manager form of Modesto City Government and intent. Issues
 - a. Over the years form of government has been watered down allowing Mayor/Council to assume they have Charter authority in da to day operations.

- b. Employees, Charter Officers, Citizens, and Council members do not always follow the Charter requirements.
 - c. Return the budget process to the City Manager and eliminate the Mayor's pre preferred role in the process. The current practice has created individual desires and interests that are seldom shared by purposeful deliberated process by the full City Council.
- (xiv) Establish a primary for all City elections prior to November General Elections in even years to match the State (i.e: March) of California. This would eliminate (unless a candidate receives 50%+1) post November election runoff to February of the next uneven year.
 - (xv) To review and consider public discussion on our current Council makeup of one elected Mayor City wide and six council members in districts elections versus five district elections and an annual rotating Mayor and Vice Mayor like the County of Stanislaus Board of Supervisors format.
 - (xvi) Review the current district's boundaries based on population, community diversity and demographics.
 - (xvii) Review and have public discussion for possible change to City-wide elected office of the Auditor, verses appointed by the Modesto City Council.
 - (xviii) Review Powers and Duties of the Mayor for efficiencies and possible inefficiencies which may inhibit the position to effectively address issues of importance to the citizens of Modesto.
 - (xix) Review the Charter for regional issues such as do school district items need to remain in the Charter?
 - (xx) Does anything in the Charter prevent or interfere with the City cooperating on issues outside city limits such as providing regional and cost effective fire services, preserving prime agricultural lands, addressing social issues such as homelessness or similar issues?
 - (xxi) Should anything be added to the Charter to encourage regional approaches?

Recommendations and Considerations

I. MAYOR'S ELECTION

The Charter Review Committee reviewed the primary and run-off election of the Mayor that is currently held in November and February. The Committee discussed this topic thoroughly and arrived at the recommendation to modify the election of the Mayor so that it is consistent with the election for the State of California, ordinarily held in March and November.

More specifically, at the March 2, 2020 meeting, the CRC voted on two issues as it relates to the Mayor:

1. First, as it relates to timing only, to move the election dates of the Mayor from November and February to occur at the same time as the State's primary and general elections of the state (generally either March or June, and November respectively).
2. Second, the Committee voted to not change the process of election, so the primary election in March/June would simply require a 50% + 1, and the election in November will occur only if a run-off is needed.

RECOMMENDED CHARTER REVISIONS:

SECTION 300. REGULAR MUNICIPAL ELECTIONS.

Regular Municipal Elections for the election of officers, other than the elective office of Mayor, and for such other purposes as the Council may prescribe shall be held biennially on the first Tuesday after the first Monday in November of each even-numbered year, to coincide with the statewide general election.

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Regular municipal elections for the elective office of Mayor shall coincide with the date of the statewide primary election in even-numbered years. To transition to even-numbered year elections, the municipal election normally held in November 2019 shall be moved to November 2020 and the municipal election normally held in November 2021 shall be moved to November 2022. This transition results in a one-time, one-year extension of the terms of city council members elected in November 2015, the mayor elected in the November 2015 election which resulted in his election in the February 2016 run-off election, and the city council members elected in the November 2017 election.

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If, at ~~said~~ regular municipal election ~~for the Office of Mayor, held on the date of the statewide primary election,~~ no candidate for the elective office of Mayor for the City of Modesto receives a majority of the valid votes cast for said office, a run-off election shall be held for said office ~~on the first Tuesday after the first Monday in November of that year to coincide with the regular municipal election of the elective offices of the other members of Council.~~ At said run-off election, the two (2) candidates for the elective office of Mayor receiving the highest number of votes at the prior municipal election shall have their names placed on the ballot for election to said office.

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Deleted: held on the first Tuesday, after the first Monday in November of each even-numbered year

Deleted: at said regular municipal election,

Deleted: on the first Tuesday in February of each odd-numbered year commencing with the Mayoral election held in November 2020

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SECTION 501 – METHOD OF ELECTION.

The Mayor shall be elected at the regular municipal election on a general ticket from the City at large, ~~as set forth under Section 300 of this Charter.~~

SECTION 600 – TERM OF OFFICE.

The Mayor shall hold office for a term of four (4) years, ~~until the Mayor's successor is qualified and elected, coinciding with the terms of office for the other members of Council as provided under Section 700 of this Charter.~~

Deleted: less any time required between a November election and a February run-off election, from and after the first Tuesday following the Mayor's election and until the Mayor's successor is qualified and elected. To allow for a transition to even-numbered year elections as required by state law, the term for the Mayor elected in the November 2015 election which resulted in his election in February 2016 shall be extended by one year to accommodate moving the November 2019 election to November 2020.

ADDITIONAL CONSIDERATIONS:

At the March 17, 2021 CRC Meeting, the CRC voted against moving the six Council Member elections to coincide with the statewide primary (and coincide with office of mayor). They voted to (i) approve (i) section 300 as revised below, (ii) section 501 as revised below, and (iii) directed staff to clarify section 600 to ensure mayor has complete four-year term post-November to post-November in view of the fact that mayoral run-off is now prior to general municipal election (in spring rather than November). The language to section 600 below reflects this change. Staff also un-deleted the paragraph in section 300 beginning "To transition to even-numbered..." because this still applies to council members elected in 2017 whose term will now end in 2022, not 2021.

II. OFFICE OF THE CITY AUDITOR

The Charter Review Committee reviewed sections related to the Office of the City Auditor extensively. Ultimately, the Committee voted to make key changes to this section related to the duties, qualifications, recruitment, and removal process.

Furthermore, the CRC gave the following direction regarding changes in the language in Section 902.1. At the February 25, 2021 meeting, the phrase "with

the exception of the office of any elected official" was unstruck in section (d). Based on the February 25, 2021 meeting, additional changes were made to Section 902.1 and section 900 as these sections cover some of the same language.

On March 17, 2021, the Committee approved language changes in 900. They also approved the 902.1 language regarding qualifications in subdivision (a). Further changes to the rest of the 902.1 section are suggested below, which were made after the March 17, 2021 meeting where the CRC provided Chris Tyler direction to confer with the City Auditors from Sacramento and Berkeley regarding language in this section and bring back further suggested changes.

RECOMMENDED CHARTER REVISIONS:

SECTION 902.1 OFFICE OF THE CITY AUDITOR

The Office of the City Auditor is hereby established. The City Council shall appoint the City Auditor,

Deleted: who shall serve at its pleasure. The City Auditor shall be certified according to standards comparable to a Certified Public Accountant or a Certified Internal Auditor at time of appointment

A. Qualifications: The City Auditor shall possess adequate professional proficiency for the job, demonstrated by relevant certifications such as Certified Internal Auditor (CIA), Certified Public Accountant (CPA) or Chartered Accountant (CA) or have an advanced degree and at least five (5) years of experience in government auditing, evaluation or analysis.

B. Appointment: Within 30 days of a vacancy, the Mayor shall initiate the recruitment process by recommending the selection of a recruitment firm or other recruitment process, and the Council shall, thereafter appoint a City Auditor as soon as practicable. The Council shall appoint the City Auditor for an indefinite term and may only remove the City Auditor by a vote of five (5) or more of its members as further provided under Section 900 of this Charter.

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C. The City Auditor shall have the following powers and duties:

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(1) The Auditor shall have authority to conduct financial and performance audits of all departments, offices, boards, activities, agencies and programs of the City in order to independently and objectively determine whether:

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i. Activities and programs being implemented have been authorized by government Charter or Code, state or provincial law or applicable federal law or regulations and are being conducted and funds expended in compliance with applicable laws;

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ii. The department, office, or agency is acquiring, managing,

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- protecting, and using its resources, including public funds, personnel, property, equipment, and space, economically, efficiently, equitably, and effectively and in a manner consistent with the objectives intended by the City Council or enabling legislation;
- iii. The entity, programs, activities, functions, or policies are effective, including the identification of any causes of inefficiencies or uneconomical practices;
 - iv. The desired result or benefits as intended by the City Council are being achieved;
 - v. Financial and other reports are being provided that disclose fairly, accurately, and fully all information required by law, to ascertain the nature and scope of programs and activities, and to establish a proper basis for evaluating the programs and activities including the collection of, accounting for, and depositing of, revenues and other resources;
 - vi. Management has established adequate operating and administrative procedures and practices, systems or accounting internal control systems and internal management controls; and
 - vii. Indications of fraud, abuse or illegal acts are valid and need further investigation.

- D. Conduct special audits and investigations, as requested by the Council. "Special audits and investigations" mean assignments of limited scope, intended to determine:
- i. The accuracy of information provided to the Council.
 - ii. The costs and consequences of recommendations to the Council.

E. Standards. Audits shall be conducted in accordance with recognized government auditing standards.

F. Funding. Sufficient funds shall be proposed and approved to carry out the responsibilities specified herein. The Office of the City Auditor 's budget shall be submitted to Council directly by the Audit Committee.

G. Staffing. The City Auditor may appoint and prescribe the duties of the professional, technical and clerical employees employed in the Office of the City Auditor; provided, however, that the City Auditor shall not appoint to any position any business associate or any person related to him or her or to the City Manager or to any member of the Council by blood or marriage within the second degree. All such appointees shall serve at the pleasure of the City Auditor in the Unclassified Service; and shall serve under such terms and conditions, salaries and benefits as are similar to other employees in Modesto's service. In the event an employee of the City who holds a Classified Service position is appointed to a position in the Unclassified Service under this Section, he or she may return to a position in the Classified Service. Such return to the Classified Service shall be without

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Deleted: Conduct or cause to be conducted annual post audits of all the fiscal transactions and accounts kept by or for the City. Such audits shall include but not be limited to the examination and analysis of fiscal procedures and the examination, checking and verification of accounts and expenditures. The audits shall be conducted in accordance with generally accepted auditing standards and accordingly shall include tests of the accounting records and other auditing procedures as may be considered necessary under the circumstances. The audits shall include the issuance of suitable reports of examination so the Council and the public will be informed as to the adequacy of the financial statements of the City.

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 <#>Conduct performance audits, as assigned by Council. A "performance audit" means a post audit which determines with regard to the purpose, functions and duties of the audited agency all of the following:¶
 <#>Whether the audited department, office or agency, is managing or utilizing its resources, including public funds, personnel, property, equipment and space in an economical and efficient manner.¶
 <#>Causes of inefficiencies or uneconomical practices, including inadequacies in management information systems, internal and administrative procedures, organizational structure, use of resources, allocation of personnel, purchasing policies and equipment.¶

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Deleted: <#>Other information concerning the performance of City Departments, Offices or Agencies as requested by the Council.¶

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loss of any rights or privileges that currently pertain to the Classified Service.

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Neither the Council nor any of its members shall in any manner dictate the appointment or removal of any such officer or employee whom the City Auditor is empowered to appoint, but the Council may express its views and fully and freely discuss with the City Auditor anything pertaining to the appointment and removal of such officers and employees. Nor may any person coerce or attempt to coerce the City Auditor relative to the City Auditor's work.

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H. The City Auditor shall have, unless prohibited by law, access to, and authority to examine any and all documents including but not limited to books, accounts, internal memoranda, writings and tapes, reports, vouchers, correspondence files and other records, bank accounts, money and other property of any City department, office or agency, whether created by the Charter or otherwise, with the exception of the office of any elected official. It is the duty of any officer, employee or agent of the City having control of such records to permit access to, and examination thereof, upon the request of the City Auditor or his or her authorized representative. It is also the duty of any such officer, employee or agent to fully cooperate with, and to make full disclosure of all pertinent information.

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- i. Prepare and submit to the Council quarterly reports of the City Auditor's activities and findings in the immediately preceding three calendar months, together with any recommendations to improve the administration of the City.
- ii. Perform other auditing functions, consistent with other provisions of this Charter, and prepare and submit such other reports, as may be assigned by the Council.

I. Audit Schedule. At the beginning of each calendar/fiscal year, the Auditor shall submit a one-to-five-year audit schedule to the Audit Committee and Council for review and comment. The schedule shall include the proposed plan, and the rationale for the selections, for auditing departments, offices, boards, activities, subcontractors and agencies for the period. This schedule may be amended after review with the Audit Committee and Council but the Auditor shall have final authority to select the audits planned.

J. Reports. Each audit will result in a report, written or in some other retrievable form. The report shall contain relevant background information and findings and recommendations. The Auditor shall prepare and submit to the Audit Committee, at their regularly scheduled public meetings, quarterly reports or updates of the City Auditor's activities and findings, together with any recommendations requiring immediate action to improve the administration of the City.

K. Report of Irregularities. If, during an audit, the Auditor becomes aware of abuse or illegal acts or indications of such acts that could affect the City, the Auditor shall report the irregularities to the Audit Committee.

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Section 900 – Officers and Employees. General

Recommended Charter Revisions

The officers of the City of Modesto shall consist of a Mayor, the Council, a City Manager, a City Attorney, a City Clerk, a City Auditor and such other or subordinate officers, assistants, deputies and employees as the Council may deem necessary to provide by ordinance or resolution.

The City Attorney, the City Clerk and the City Auditor shall be appointed by the affirmative votes of four (4) members of the Council. The City Attorney and the City Clerk may be removed by the affirmative votes of four (4) members of the Council and the City Auditor may only be removed by the affirmative votes of five (5) members of the Council. Notwithstanding the foregoing, that neither the City Attorney, the City Clerk nor the City Auditor shall be removed from office during or within a period of ninety (90) days next succeeding the election of a member of the Council. The purpose of this provision is to allow any newly elected member of the Council to observe the actions and abilities of these officers in the performance of the powers and duties of the respective offices.

The City Manager shall be appointed and removed as provided by Section 800 of this Charter. Except as otherwise provided in this section, all other officers and department heads of the City shall be appointed by the City Manager and shall serve at the pleasure of the City Manager.

The City Auditor shall have such powers and be required to perform such duties, consistent with the provisions of this Charter, as may be required by the Council.

The City Manager, the City Attorney, the City Clerk, and the City Auditor may be referred to collectively in this Charter as "Charter Officers."

Recommended Charter Addition

902.2 Audit Committee

The purpose of the Audit Committee is to advise the City Council on items related to the work of the City Auditor, and the City's financial statement audits. Among other duties, the Audit Committee shall:

Deleted: <#>The City Auditor may appoint and prescribe the duties of the professional, technical and clerical employees employed in the Office of the City Auditor; provided, however, that the City Auditor shall not appoint to any position any business associate or any person related to him or her or to the City Manager or to any member of the Council by blood or marriage within the second degree. All such appointees shall serve at the pleasure of the City Auditor in the Unclassified Service; and shall serve under such terms and conditions, salaries and benefits as are similar to other employees in Modesto's service. In the event an employee of the City who holds a Classified Service position is appointed to a position in the Unclassified Service under this Section, he or she may return to a position in the Classified Service. Such return to the Classified Service shall be without loss of any rights or privileges that currently pertain to the Classified Service.¶
<#>Neither the Council nor any of its members shall in any manner dictate the appointment or removal of any such officer or employee whom the City Auditor is empowered to appoint, but the Council may express its views and fully and freely discuss with the City Auditor anything pertaining to the appointment and removal of such officers and employees.¶

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- (a) Review the Auditor's audit plan annually and submit a proposed Auditor's Office budget annually to the City Council;
- (b) Provide suggestions and comments for the annual audit plan;
- (c) Review and consult with the Auditor on quarterly reports or updates of the City Auditor's activities and findings;
- (d) Report irregularities raised by the Auditor to the City Council;
- (e) Ensure that audit reports are transmitted to the legislative body and to the public;
- (f) Monitor follow-up on reported findings to assure corrective action is taken by management;
- (g) Report to the legislative body on problems or problem areas at such times as deemed appropriate;
- (h) Provide input on, and participation in, the selection of the firm conducting the annual financial statement audits;
- (i) Review and forward to the City Council materials related to the city's annual financial statement audit conducted pursuant to Section 1306 of this Charter.

902.3 Audit Committee Composition:

- The Audit Committee shall be comprised of the Mayor, two members of the City Council, and two members of the public who are residents of the City of Modesto and shall possess a minimum of 2 years of experience in financial or performance auditing. Strong consideration shall be given to residents who are Certified Public Accountants.
- No public member of the Committee shall be a relative by blood or marriage to the third degree of the mayor, member of the council, any charter officer, or any department head or deputy department head.
- No public member of the Committee shall be an employee of the City nor any bargaining unit for employees of the City, nor a person who receives compensation from the City or from bargaining units of the City in any manner, including retirement benefits.
- No public member of the Committee shall be a lobbyist or other person with business before the City that represents and economic interest in excess of the limit for material financial effect established by local ordinance for the time periods established by local ordinance.
- Public members of the Committee shall serve without compensation

III. CITY MANAGER

The Charter Review Committee reviewed this section based on the direction from city staff. The Committee voted to remove the residency requirement as indicated by the redlines below in line with the following legal recommendation:

California Government Code Section 50083 states that “no local agency shall require that its employees be residents of such local agency or district. Likewise, the California Constitution provides: “A city or county, including any chartered city or chartered county, or public district, may not require that its employees be residents of such city, county or district; except that such employees may be required to reside within a reasonable and specific distance of their place of employment or other designated location.” Cal Const art XI, §10(b). An apparent minority of cities do take the position that the constitutional and statutory prohibition does not apply to an officer of the city, such as a city manager, as opposed to an “employee.”

This issue has not been tested in the courts, however, city officers are also employees and therefore the City Attorney’s Office recommends that the majority view be adopted. The Committee approved this recommendation and voted to make the following changes to this section.

RECOMMENDED CHARTER REVISIONS:

There shall be a City Manager who shall be the chief executive officer and head of the Administrative Branch of the City government. The City Manager shall be chosen on the basis of the person's executive and administrative qualifications with special reference to the person's actual experience in, or the person's knowledge of accepted practices with respect to the duties of the office as hereinafter set forth. No member of the Council shall be eligible for appointment to the office of City Manager during the term for which the member shall have been elected or appointed, nor within one (1) year thereafter. ▼

Deleted: The City Manager need no be a resident of the City or State at the time of appointment, but during the City Manager’s tenure of office, the City Manager shall reside within the City.

IV. BUDGET TIMELINE

There were several areas of concern with the timeline related to the development of the budget in Sections 1302.1, 1302.2, and 1303.3. First, the City does not receive property tax revenue or second quarter sales tax data until late February which can be helpful in informing the mid-year budget report. In addition, the current budget timeline requires the Mayor's Final Budget Modifications on May 31st (or 30 days prior to the new fiscal year) and Council to consider the Mayor's modifications and the draft budget in early June, which only allows for one meeting for Council to consider the approval of the budget. The recommended change, shown below, would allow for the Council to consider the Mayor's modifications and the draft budget in late May, post the hearing notice, and allow for two Council meetings for the approval of the budget, which grants staff and Council additional flexibility with regard to changes to the proposed budget.

Further, at the March 2, 2020 meeting, the Charter Review Committee deliberated regarding the possibility of the Mayor not considering the remainder of the Council in the development of the City's budget priorities. Based on this, the Committee voted to approved the revised timeline that also includes allotted time for the Council to submit budget priorities to the Mayor for consideration.

RECOMMENDED CHARTER REVISIONS

Section 1302.1 Submission of Economic Forecasts

The City Manager shall, on or before December 15 of each year, submit to the Mayor and to the Council a five (5) year economic forecast of expenditures and revenues for each City department, office or agency.

On or before January 10, the members of the Council may submit individual written budget priorities to the Mayor for consideration.

The Mayor shall, after consideration of any received written budget priorities, prepare and deliver to the Council the Mayor's Proposed Budget Priorities and Direction for both the City's Capital Budget and for the City's Operating Budget.

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The Mayor shall, on or before February 15 of each year prepare and deliver to the Council the Mayor's Budget Message which shall include:

Deleted: The City Manager shall, on or before February 1 of each year, prepare and deliver to the Mayor and to the Council a Capital and Operating Mid-Year Budget Report for each City department, office or agency

(a) A statement of the fiscal priorities which the City should adopt for the ensuing fiscal year; and

(b) Which City services, departments, offices or agencies the Mayor proposes to be expanded or reduced.

The Council shall hold a public hearing to consider the Final Mayor's Budget Message and to make any additions or revisions the Council deems advisable.

Upon close of the public hearing, the Council shall approve the Mayor's Budget Message as presented, or as revised.

The City Manager shall, on or before March 15 of each year, prepare and deliver to the Mayor and Council, a Capital and Operating Mid-Year Budget Report for each City department, office, or agency.

Section 1302.2 Annual Budget

By April 30 of each year, the City Manager shall send to the Council a draft budget consisting of a careful estimate, in writing, of the amounts of expenditures required for the business and proper conduct of the various departments, offices, boards and commissions of the City, over which the City Manager has control during the next ensuing year. Said estimate shall be in such detail as the Council shall specify. The City Manager shall also include in the draft budget at said time and submit to the Council an estimate of the amount of income from fines, licenses and other sources of revenue, exclusive of taxes upon property, and the probable amount required to be levied and raised by taxation.

In addition to complying with the requirements of this section, the draft budget shall accurately reflect the recommendations and priorities specified in the Final Mayor's Budget Message as adopted by the Council.

The report of the City Manager accompanying the draft budget shall specify the budget allocations which implement each component included within the Final Mayor's Budget Message as adopted by the Council.

Section 1303. Mayor's Final Budget Modifications; Public Hearing on the Proposed Budget

At least forty-five (45) days prior to the new fiscal year, the Mayor shall prepare and deliver to the Council the Mayor's Final Budget Modifications on the draft budget.

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Following the receipt of the Mayor's Final Budget Modifications, the Council shall consider and review the draft budget as submitted by the City Manager together with the Mayor's Final Budget Modifications and may make such revisions as the Council may deem advisable. The document resulting from this process shall be deemed the "Proposed Budget."

Thereafter, the Council shall determine the time for holding of a public hearing upon the "Proposed Budget", and shall cause a notice thereof to be published

not less than ten (10) days prior to said hearing by at least one (1) insertion in a newspaper of general circulation within the City.

Copies of the Proposed Budget to be considered at the public hearing shall be available for inspection by the public at the office of the City Clerk at least ten (10) days prior to said hearing.

At the time so advertised or at any time such public hearing from time to time be adjourned, the Council shall hold a public hearing on the proposed budget at which interested persons desiring to be heard shall be given such opportunity.

V. METHOD OF ELECTION

At the February 19, 2020 meeting, the Committee directed staff to come back with some recommendations for updating the criteria for districting language in subdivision (b)(4) to ensure any future re-districting complies with state law. At the March 17, 2021 the Committee approved this language.

RECOMMENDED CHARTER REVISIONS

- (4) Criteria for Districting. To ensure fair and effective representation for all citizens of the City, the Commission, in recommending a districting or redistricting plan, and the Council, in approving or rejecting a districting or redistricting plan, shall consider the following criteria for the districts to the extent practicable and permissible under federal and state law:
- (A) district boundaries should be geographically compact and contiguous;
 - (B) district boundaries should follow visible natural and man-made features;
 - (C) district boundaries should respect communities of interest. A community of interest is defined as a geographic area comprised of residents who share similar interests including, but not limited to, social, cultural, ethnic, geographic or economic interests, or formal government or quasi-governmental relationships, but not including relationships with political parties, incumbents, or candidates;
 - (D) district boundaries should be drawn without regard for advantage or disadvantage to incumbents or challengers;
 - (E) district boundaries should be drawn without regard for advantage or disadvantage to any political party.

VI. CULTURE COMMISSION

Based on the recommendation from staff, the Committee considered whether it would be more appropriate to include all committees and commissions in the municipal code, rather than the charter, to offer greater flexibility in the composition, purpose, and other miscellaneous details.

At the February 19, 2020 meeting the Charter Review Committee voted to revise the language to exclude the specific member requirements to match the simplicity of the Planning Commission in Section 1107 and maintain it in the charter.

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RECOMMENDED CHARTER REVISIONS

There shall be a Culture Commission. The Commission shall have the power and duty to:

Deleted: consisting of seven (7) members, five (5) of whom shall be registered electors of the City, and two (2) of whom shall live outside the City but shall be registered electors of Stanislaus County

- (a) Act in an advisory capacity to the Council and the City Manager in all matters pertaining to art, literature, music and other cultural activities;
- (b) Formulate and recommend annually to the Council a program relating to art, literature, and music and other cultural activities;
- (c) Promote the preservation of historic sites, landmarks, documents, paintings and other objects associated with the history of the City and its area, and develop educational interest in all such historical matters;
- (d) Act in an advisory capacity to the Council, City Manager and Director of any Museum or Cultural Center that may be established by the Council.

VII. BOARD OF PERSONNEL APPEALS

Sections 1108-1109

Based on the recommendation from staff, the Committee considered whether it would be more appropriate to include all committees and commissions in the municipal code, rather than the charter, to offer greater flexibility in the composition, purpose, and other miscellaneous details.

The Committee voted to keep the Board within the Charter at the February 19, 2020 meeting. In view of the fact that, according to HR, the Board of Personnel Appeals was effectively taken over by the State through its Public Employment Relations Board (PERB), the Committee directed staff to make the language flexible to reflect the fact these duties are now performed by the State of California. At the March 17, 2021, the CRC voted to approve the changes and consolidation below.

RECOMMENDED CHARTER REVISIONS

SECTION 1108 – BOARD OF PERSONNEL APPEALS

There shall be a Board of Personnel Appeals consisting of three (3) members. The Board of Personnel Appeals shall have the power and duty to:

- (a) Select a hearing officer to hear the appeals of any person in the classified service relative to any suspension, demotion or dismissal, so long as a separate and distinct procedure has not been delineated by a valid and existing Memorandum of Understanding.
- (b) Act in an advisory capacity to the City Manager on such personnel matters as may be referred to it by the City Manager.

The Board of Personnel Appeals, and its duties and obligations hereunder, shall not be operative, or in effect, during the period in which the California Public Employment Relations Board (PERB), or similar state agency or department, exercises the essential functions and duties prescribed for the Board of Personnel Appeals as contemplated herein.

VIII. MEETINGS AND CHAIRPERSONS

At the February 19, 2020 meeting the CRC voted to approve the revised language set forth immediately below because, as recommended by staff, it was not the practice of the boards and commission to submit annual reports, or rules, rendering the language moot.

RECOMMENDED CHARTER REVISIONS

As soon as practicable following the first day of January of each year, each of such boards and commissions shall organize by electing one of its members to serve as chairperson at the pleasure of such board or commission. Whenever a special meeting of any board or commission shall be called, the secretary shall cause written notice of such meeting to be given to each member of such board or commission and to each local newspaper of general circulation, radio or television station requesting notice in writing. Such notice must be delivered personally or must be deposited in the United States mail, postage prepaid, at least twenty-four (24) hours before the time of such meeting as specified in the notice. The notice and order shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings by said boards or commissions.

Written notice to each member of any board or commission may be dispensed with as to any member of any board or commission who, at or prior to the time the meeting convenes, files with the Secretary of such board or commission a written waiver of notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member of any board or commission who is actually present at the meeting at the time it convenes. The affirmative or negative vote of a majority of the entire membership of such board or commission shall be necessary for it to take action.

Unless otherwise provided by the Council, or by this Charter, the City Manager shall provide a secretary for the recording of the minutes of each of such boards and commissions who shall keep a record of its proceedings and transactions.

IX. TECHNICAL AMENDMENTS

As mentioned in the Executive Summary of this report, the technical amendments include changes to various sections of the Charter to offer the

Deleted: Each board and commission shall prepare and submit to the Council an annual report of its activities. Such report shall be made on the fiscal year basis and shall be submitted on or before September 1 of each year. Each board or commission shall prescribe its own procedural rules and regulations which shall be consistent with this Charter and copies of which shall be kept on file in the office of the City Clerk where they shall be available for public inspection.

organization greater flexibility by streamlining processes, and allowing for the use of modern technology. The Committee unanimously approved of the recommended changes to the following sections:

Section 1313 – Purchase of Supplies and Equipment

The Council, ~~section~~, shall annually review by June 30th policies and procedures governing, bidding regulations, and purchases of supplies, services and equipment by the City. Said policies and procedures may include provisions authorizing joint purchasing with other local governmental agencies. Purchases of supplies, services, and equipment by the City shall be made in accordance with such policies and procedures.

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Section 1307 – Public work to be done by contract

Every project involving an expenditure of city moneys of more than the amount which the City Council shall establish by ordinance, for the construction or improvement of public buildings, works, drains, sewers, utilities, parks, playgrounds, and streets (exclusive of projects for resurfacing, maintenance and repair of streets, or any park or parks playground project otherwise subject to the public bidding requirements of this sections that involves any donated labor and/or material) shall be let by contract to the lowest responsible bidder after notice by publication in any or all methods permitted under state law, including in the official newspaper by one or more insertions, the first of which shall be at least seven (7) days before the time for opening bids.

Section 1311 – Contracts for Official Advertising

The Council shall let annually contracts for the official advertising for the ensuing fiscal year. Official advertising contracts may be let to digital or print platforms, as permitted under state law. The Council shall let the contracts for such official advertising to the lowest responsible bidder; provided, that the Council may reject any or all bids and advertise for new bids.

In the event the official advertising contract is to be let to a newspaper, if there is more than one (1) newspaper of general circulation published and circulated in the City, the Council shall advertise for one (1) day, setting forth distinctly and specifically the work contemplated to be done, and asking for sealed proposals therefor. The proposals shall specify the type and spacing to be used at the rates named in the bids. Any contracts let to a newspaper shall be to one publishing publishing in the City, which is a newspaper of general circulation and has been in existence at the time of the awarding of the contract at least one year.

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