



DATE: February 19, 2019
TO: Charter Review Committee
FROM: Joseph P. Lopez, City Manager
SUBJECT: Charter Review Committee – Proposed Changes to the Charter

In response to the request by the Charter Review Committee for additional information pertaining to the recommended changes to the Charter, as previously submitted, the following detail outlines the referenced sections, proposed language, and the justification for the proposed changes from the city's various departments.

SECTION 1313 – Purchase of Supplies and Equipment

Proposed Language: The Council shall annually review policies and procedures governing bidding regulations and purchases of supplies and equipment by the City.

Justification: The City adopted an ordinance and policies and procedures that govern purchases and bidding as reflected in Title 8 of the Modesto Municipal Code. This change is an update to still require regular reviews of the adopted ordinance, as recommended by the committee.

SECTION 1302.1 -1304 – Annual Budget

Proposed Language: The modification to the release date of the mid-year budget report will require modifying the entire budget timeline, and staff recommends that the committee consider the modified timeline:

- December 15th: Submission of a 5-year economic forecast of expenditures and revenues for each city department, office, or agency to the Mayor
- January 15th: Mayor shall 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
- February 15th: Mayor shall prepare and deliver to the Council the Mayor's Budget Message
- March 15th: City Manager shall prepare and deliver to the Mayor and Council a Operating Mid-Year General Fund Budget Report
- April 30th: City Manager shall send to the Council a draft budget
- At least 45 days prior to new fiscal year) ~~At least thirty (30) 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.

Justification: 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 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.

Therefore, 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 1107-1111 – Various Boards and Committees

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.

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

- (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.

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

- (a) Recommend to the Council, after a public hearing thereon, the adoption, amendment or repeal of a General Plan or any part thereof for the physical development of the City; and
- (b) Exercise such functions with respect to land subdivisions, planning and zoning as may be prescribed by ordinance or resolution.

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

Staff Recommendation: Remove Sections 1107 (Planning Commission), Section 1108-09 (Board of Personnel Appeals), Section 1110 (Culture Commission), Section 1111 (Human Relations Commission) from the Charter with a recommendation to Council that the Planning Commission and the Culture Commission or their functional equivalent be added to the municipal code.

Justification: 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.

SECTION 800 – City Manager

Proposed Language: 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, not within one (1) year thereafter.

Justification: The California Constitution and the Government Code prohibit a residency requirement for employees. Because city managers, although employees, are also



charter officers, a minority of cities take the position the Constitution and Government Code do not apply. The safest legal recommendation is to remove the requirement.¹

SECTIONS 1104, 1307, and 1311: Outdated Methods of Communication and other sections that require the use of a telegram as a method of communication

Proposed Language:

1. **Section 1104 – Meetings/ Chairpersons:** 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.
2. **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.
3. **Section 1311 – Contracts for Official Advertising:** The Council shall let annually contracts for the official advertising of competitive bidding events for the ensuing fiscal year. Official advertising contracts may be let to digital or print platforms, as permitted under state law. 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 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. The Council shall let the contracts for such official advertising to the lowest responsible bidder publishing a newspaper 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; provided that the council may reject any or all bids and advertise for new bids. Except as otherwise provided by the provisions of state law applicable to chartered cities, claims against the City shall be filed as prescribed by ordinance.

¹ 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 following the majority view is recommended.

Justification: The language needs to be modernized to give ample flexibility to reflect the ever-changing methods of communication. The language should be broad enough to accommodate technologies yet to come to ensure that the City may use digital or print methods of advertising.

SECTION 1104 – Meetings / Chairpersons

Proposed Language: 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.

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

SECTION 1205 – Hearing Officer

Proposed 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 state hearing officer, [from the State Mediation and Conciliation Service.](#)

Justification: 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.

