

4/24/91

Charter Review '91. Group II Questions 5, 6, 9, & 11

1

1. All four questions (5,6,9,11) become operational only subsequent to two events taking place: (1) the issue of should Sunnyvale directly elect its Mayor being a ballot issue, and (2) the voters vote to do so. Nevertheless, we need to address these questions concurrently with the other 11.
2. I would like to deal with question 11 first in order to get it out of the way. Question 11 requires development of a procedure or process, that deals with a sequence of events. I think it requires research into like situations in other communities. What I see doing is the following: identify cities, who within the last 5 to 10 years have made the transition to directly electing the mayor; and then, contact persons in those communities for comments, observations and information on their procedure. Group II could research as many as possible in the time constraints we are working in and bring the findings to this group for review.
3. Before I go on, I need to interject a comment about the public hearings. Before we leave tonight I think we need to determine how we are going to conduct the public hearings. In my opinion we should invite the public to address us on any one of the 15 questions that they wish to speak to. We all take good notes and sort it all out later relative to the subcommittee assignments.
4. The reason I interject this comment is that the next time we meet will be a public hearing and I would like your feedback on some suggestions and observations in dealing with Group II's questions at the public hearing.
5. To a large extent questions 5, 6, and 9 are a matter of making value judgements and therefore are somewhat arbitrary. Because of that, I am going to make this suggestion as a way to arrive at a plausible recommendation to the City Council. Over the next several weeks as we take public testimony, either during public hearings, at study session, or other times, we record as many different responses from the public as may be generated, and from that log of responses develop a consensus of the community on these questions for our final recommendation to the Council.

comments on specific questions (5,6,9)

Question 5: Question 5, as written requires only a yes or no answer. In the matter of taking public testimony we can ask for a simple yes or no answer. However, the Committee may want to discuss this in a study session further. I want to draw the Committee's attention to paragraph 4, Section 601, (Term and Election), of the City Charter. The paragraph reads "No incumbent member of the Council shall be a candidate for a Council seat

other than the one which that person then holds." This could be extended and interpreted to mean you can not run for Mayor, which would be a Council seat, if you are an incumbent Council Member.

Question 6: Question six has two parts. The first part basically needs only a yes or no answer. The second part "How much is ample time?" does require a quantified answer. To prompt discussion, I would like to offer the suggestion that the declaration of intent be made 30, or 60, or 90 days prior to the close of the filing date for the election at which the election will occur.

Question 9: At this point in considering this question I do not see any factors that weighs one seat against another. To remove some of the arbitrary nature of a recommendation on question 9, we could consider several options: (1) tying the issue to the cycle in which the four Council seats 4, 5, 6, and 7 become vacant. Which of the four seats to be eliminated could be determined by lot; (2) another possibility is that the seat to be eliminated could be determined by lot from among the seven. (To give you a reference point, I would like to bring your attention to paragraph 8, of Section 601, of the existing City Charter.)

A related question we may want to ask is: should the Mayor be a separate election track from the other Council Members?

All of the questions we have been asked to address deal with change, consequently, in order to bring some focus to the discussion of these questions, I think that wherever possible we should relate them to the existing Sunnyvale City Charter. In some cases the reference may be tenuous.

RTC 10-183 Part 2 (July 20, 2010)
DIVISION 4. ELECTION DATES

Chapter 1. Established Election Dates

2500. Three regular election dates.

Three regular election dates shall be established in each year as follows:

- (1) The second Tuesday of April of each even-numbered year.
 - (2) The first Tuesday after the first Monday in March of each odd-numbered year.
 - (3) The first Tuesday after the first Monday in June of each year.
 - (4) The first Tuesday after the first Monday in November of each year.
- (Amended by Stats. 1978, c. 1376, §12.)

2501. Statewide election dates.

Elections held in June and November of each even-numbered year shall be statewide elections and these dates shall be considered statewide election dates.

(Added by Stats. 1976, c. 1155, §2.)

2502. Date all state, county, municipal, district and school elections to be held.

Except as provided in Section 2503, notwithstanding any other provisions of law, all state, county, municipal, district, and school district elections shall be held on the established election date nearest to the date on which they would be held in the absence of this chapter. If the election is held on a statewide election date it shall be consolidated with the statewide election according to the provisions of Part 2.5 (commencing with Section 23300) of Division 14 except that, in counties of the first class, the board of supervisors may deny any request for consolidation, if it finds that the ballot style, voting equipment, or computer capacity is such that additional elections or materials cannot be handled. The procedural requirements prescribed for any such election shall be construed as if the provisions of this section were specifically set forth in the provisions relating to that election.

(Amended by Stats. 1985, c. 897, §1.)

2503. Exceptions of this chapter.

This chapter shall not apply to the following:

- (1) Any special election called by the Governor.
- (2) Elections held in chartered cities or chartered counties in which the charter provisions are inconsistent with the provisions of this chapter.
- (3) School governing board elections consolidated pursuant to Section 5006 of the Education Code or initiated by petition pursuant to Section 5091 of the Education Code.
- (4) Elections of any kind required or permitted to be held by a school district located in a chartered city or county when such election is consolidated with a regular city or county election held in a jurisdiction which includes 95 percent or more of the school district's population.
- (5) County, municipal, district, and school district initiative, referendum, or recall elections.
- (6) Any election conducted solely by mailed ballot pursuant to the provisions of Chapter 5 (commencing with Section 1340) of Division 2.

(Amended by Stats. 1979, c. 424, §4.)

ELECTIONS CODE PROVISIONS

Article 3. City or City and County Charters

4080. City or City and County Charter proposals submitted to voters.

(a) The following city or city and county charter proposals shall be submitted to the voters at either a special election called for that purpose, at any established municipal election date, or at any established election date pursuant to Section 2500 provided that there are at least 88 days before the election:

(1) A charter proposed by a charter commission, whether elected or appointed by a governing body. A charter commission may also submit a charter pursuant to Section 34455 of the Government Code.

(2) An amendment or repeal of a charter proposed by the governing body of a city or a county on its own motion.

(3) An amendment or repeal of a city charter proposed by a petition signed by 15 percent of the registered voters of the city.

(4) An amendment or repeal of a city and county charter proposed by a petition signed by 10 percent of the registered voters of the city and county.

(5) A recodification of the charter proposed by the governing body on its own motion, provided that the recodification does not, in any manner, substantially change the provisions of the charter.

(b) Charter proposals by the governing body and charter proposals by petition of the voters may be submitted at the same election.

(c) The total number of registered voters of the city or city and county shall be determined according to the county clerk's last official report of registration to the Secretary of State.

(Added by Stats. 1988, c. 357, §3.)

GOVERNMENT CODE PROVISIONS

ALTERNATIVE FORMS OF GOVERNMENT

§ 34900

Div. 2

§§ 34890 to 34896. Repealed by Stats.1979, c. 546, p. 1750, § 9

Historical Note

The repealed sections, relating to redistricting of city legislative body elected by or from districts, were added by Stats.1970, c. 278, p. 551, § 3. See, now, Elec.C. §§ 35100 to 35106.

§ 34898. Repealed by Stats.1979, c. 546, p. 1750, § 10

Historical Note

The repealed section, relating to the election of governing body members of a charter city, was added by Stats.1971, c. 707, p. 1372, § 1, amended by Stats.1972, c. 404, p. 725, § 1; Stats.1978, c. 387, p. 1233, § 1. See, now, Elec.C. § 35150.

Article 3

ELECTIVE MAYOR

Section

- 34900. Submission of question to electors.
- 34901. Form of question on ballot.
- 34902. Majority vote; election of mayor; term; vacancy; elimination of elective office of mayor.
- 34903. Member of council; powers and duties.
- 34904. Eligibility for office; elector and registered voter of city.
- 34905. Mayor pro tem; manner of selection.
- 34906. Designation of one office as two year term; subsequent four year terms.

Article 3, added as Article 5, Elective Mayor, by Stats.1959, c. 1571, § 1, was renumbered Article 3 and amended by Stats.1979, c. 546, § 11.

Former Article 3, "Redistricting of City Legislative Body Elected By Or From Districts", added by Stats.1970, c. 278, p. 551, § 3, consisting of §§ 34890 to 34896, was repealed by Stats.1979, c. 546, p. 1750, § 9.

Former Article 3, "City Manager in Sixth Class Cities" consisting of sections 34850 to 34859, added by Stats.1949, c. 79, p. 114, § 1, was renumbered Article 1, and the heading was amended to read "City Manager" by Stats.1955, c. 624, p. 1116, § 18.

Cross References

Mayor, generally, see §§ 36801 to 36803, 40601 et seq.

§ 34900. Submission of question to electors

At any general municipal election, or at a special election held for that purpose, the city council may submit to the electors the question of whether electors shall thereafter elect a mayor and four city councilmen, and whether the mayor shall serve a two-year or four-year term. In cities presently having elected mayors, the city council may also submit to the electors the question of whether the mayor shall thereafter serve a two-year or a four-year term. (Added by Stats.1959, c. 1571, p. 3901, § 1. Amended by Stats.1969, c. 504, p. 1112, § 1.)

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Title 4

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§ 34900**CITY GOVERNMENT
Title 4****Cross References**

Appointments in general law cities having elected mayor, see § 40605.
 Compensation of mayor elected pursuant to § 34900 et seq., see § 36516.1.
 Conduct of elections, see Elections Code § 22900 et seq.
 Municipal elections, conduct, see Elections Code § 22800 et seq.
 Qualification of electors, see Const. Art. 2, §§ 2, 4; Elections Code § 100.
 Special election defined, see Elections Code § 30.

Library References

Municipal Corporations ¶129, 130.
 C.J.S. Municipal Corporations § 472 et seq.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

Notes of Decisions

Compensation 1
 Term of office 2

tion of the mayor's compensation at a municipal election or by an ordinance adopted by the city council. 57 Ops.Atty.Gen. 626, 12-18-74.

1. Compensation

A mayor of a general law city separately elected as such pursuant to § 34900 et seq. may receive compensation as mayor in addition to compensation received by him as a councilman when such compensation has been approved by the electors voting on the proposi-

2. Term of office

The electors of a general law city do not have the power, under §§ 34329 (repealed) and 36503, to reduce the term of a city councilman from four years to two years, with the exception of the office of mayor which is provided for under this section and § 34902. 56 Ops. Atty.Gen. 327, 8-8-73.

§ 34901. Form of question on ballot

The questions shall be printed on the ballots used at the election in substantially the following form:

"Shall the electors elect a mayor and four city councilmen?"

"Shall the term of office of mayor be two years?"

"Shall the term of office of mayor be four years?"

The words "Yes" and "No" and "two years" and "four years" shall be so printed on the ballots that the voters may express their choice. The term of office of mayor shall be that preferred by a majority of those voting on the proposition.

(Added by Stats.1959, c. 1571, p. 3902, § 1. Amended by Stats.1969, c. 504, p. 1113, § 2.)

§ 34902. Majority vote; election of mayor; term; vacancy; elimination of elective office of mayor

(a) If a majority of the votes cast on the proposition is for it, the office of mayor shall thereafter be an elective office, except as provided in subdivision (b).
 (b). At the next succeeding general municipal election held in the city one of the offices of city councilman, to be filled at such election, shall be designated as the office of mayor, to be filled at such election. The person elected at such election as mayor shall hold office from the Tuesday succeeding his election, and until his successor is elected and qualifies.

ALTERNATIVE FORMS OF GOVERNMENT
Div. 2

§ 34904

In the case of a vacancy in the office of the mayor for any reason, the council shall fill the vacancy by appointment. If the council fails to fill it within 30 days, it shall call an election to fill the vacancy to be held on the next established election date to be held not less than 90 days thereafter. A person appointed or elected to fill a vacancy shall hold office for the unexpired term of the former incumbent.

(b) After an office of elective mayor has been established, the city council may subsequently submit to the electors the question of whether or not to eliminate the elective office of mayor, pursuant to the procedures enumerated in this article, and thereby reestablish the procedure of selection of the mayor by the city council. If a majority of the votes cast on such proposition are in favor of the elimination of the office of elective mayor, such office shall be eliminated on the expiration date of the incumbent's term, and on such date the procedure of selection of the mayor by the city council shall be reestablished.

(Added by Stats.1959, c. 1571, p. 3902, § 1. Amended by Stats.1961, c. 1321, p. 3100, § 1; Stats.1969, c. 504, p. 1113, § 3; Stats.1973, c. 1146, p. 2366, § 20; Stats.1976, c. 217, p. 401, § 1; Stats.1977, c. 1205, p. 4076, § 88.)

Cross References

Appointment prohibited if result would be majority of council members having been appointed, see § 36512.3.
City council vacancies, ordinance providing for special election to fill, see § 36512.1.

Library References

Municipal Corporations ⇐124(4), 149(2).
C.J.S. Municipal Corporations § 495 et seq.

Notes of Decisions

Reduction of term of office 1

1. Reduction of term of office

The electors of a general law city do not have the power, under §§ 34329 (repealed) and

36503, to reduce the term of a city councilman from four years to two years, with the exception of the office of mayor which is provided for under § 34900 and this section. 56 Ops. Atty.Gen. 327, 8-8-73.

§ 34903. Member of council; powers and duties

The mayor is a member of the city council and has all of the powers and duties of a member of the city council.

(Added by Stats.1959, c. 1571, p. 3902, § 1.)

Library References

Municipal Corporations ⇐169.
C.J.S. Municipal Corporations § 544.

§ 34904. Eligibility for office; elector and registered voter of city

A person is not eligible to hold office as mayor unless he is at the time of assuming such office an elector of the city, and was a registered voter of the

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§ 34904**CITY GOVERNMENT
Title 4**

city at the time nomination papers are issued to the candidate as provided for in Section 22842 of the Elections Code.

(Added by Stats.1959, c. 1571, p. 3902, § 1. Amended by Stats.1975, c. 1030, p. 2432, § 3, urgency, eff. Sept. 24, 1975.)

Cross References

Qualifications of electors, see Const. Art. 2, §§ 2, 4; Elections Code § 100.

Library References

Municipal Corporations ⇐124(3).
C.J.S. Municipal Corporations § 476 et seq.

§ 34905. Mayor pro tem; manner of selection

A mayor pro tempore shall be chosen in the manner provided by Section 36801.

(Added by Stats. 1959, c. 1571, p. 3902, § 1.)

§ 34906. Designation of one office as two year term; subsequent four year terms

Notwithstanding Section 36503, if a city has an elected mayor and the election of the remaining members of the city council for four-year terms is not evenly staggered, the city council may, on a one-time basis only and prior to the first day for circulating nomination papers for the general municipal election, designate one of the city council offices appearing on the general municipal ballot, other than the office of the mayor, to serve a two-year term, or may provide that of the city council offices appearing on the general municipal ballot, other than the office of the mayor, the one which receives the least votes of those elected (or if there is a tie for such a position, as decided by lot) shall serve a two-year term. At all subsequent general municipal elections, each member of the city council elected at such election, other than the mayor if the mayor has a two-year term, shall be elected to serve a four-year term.

(Added by Stats.1975, c. 399, p. 876, § 1, urgency, eff. Aug. 29, 1975. Amended by Stats.1977, c. 237, p. 1080, § 1; Stats.1980, c. 732, p. 2192, § 1.)

Library References

Municipal Corporations ⇐129.
C.J.S. Municipal Corporations § 472 et seq.

Cite as 258 Cal.Rptr. 265 (Cal.App. 1 Dist. 1989)

request for diversion. The court in that case was addressing the question of what the trial court should do when confronted with a pretrial request for diversion where the defendant is charged concurrently with a divertible narcotics offense and nonnarcotics offenses which do not necessarily render the defendant ineligible for diversion.² The *Harvey* court held that in such a case diversion could properly be granted on the divertible offense prior to the trial of the concurrent nondivertible, nonnarcotics charges. If the defendant was subsequently convicted, the diversion would be rendered meaningless. If, on the other hand, the defendant was subsequently acquitted, he would be required to complete the diversion program.

The language upon which defendant relies is found in the court's alternative approach to the above scenario.

"Alternatively, the court may believe that the defendant's suitability and availability for the diversion program depend heavily upon the future outcome of the accompanying criminal charges. In that event, nothing in the diversion law prevents the court from offering the defendant deferment of the diversion application pending disposition of the other criminal charges." (*Harvey v. Superior Court, supra*, 43 Cal.App.3d at p. 70, 117 Cal.Rptr. 383.)

The foregoing alternate reasoning was unnecessary to the disposition of the appeal in *Harvey* and is therefore dictum. Since it directly conflicts with the holding in *Wright*, it is without meaningful precedential value.

We see no significant distinctions between *People v. Wright, supra*, 47 Cal. App.3d 490, 120 Cal.Rptr. 899, and the case before us. Nor do we see any logical reason why we should not apply the holdings of *Wright*.

2. Contrast the present case where the defendant is charged concurrently with nondivertible narcotics offenses.

* Retired Presiding Justice of the Court of Appeal sitting under assignment by the Chairperson of the Judicial Council.

The order granting diversion is reversed. The matter is remanded for sentencing. The alternative writ of mandate is discharged, and the petition is dismissed as moot.

FRANSON, P.J., and GEO. A. BROWN, J., concur.



210 Cal.App.3d 402

1402 Warren STEINKAMP, Plaintiff and Appellant,

v.

Roberta Cerri TEGLIA, Defendant and Appellant.

No. A041154.

Court of Appeal, First District, Division 4.

April 12, 1989.

Certified for Partial Publication *

Unsuccessful candidate for city council filed action to contest council member's reelection to third term under city ordinance limiting council members to two consecutive terms. The San Mateo County Superior Court, Thomas M. Jenkins, J., ruled that ordinance was invalid as preempted by state law. Plaintiff appealed and defendant cross-appealed. The Court of Appeal, Channell, J., held that ordinance of general law city limiting council members to two consecutive terms was preempted by state law.

Affirmed.

* Pursuant to rules 976 and 976.1 of the California Rules of Court, this opinion has now been certified for partial publication, with the exception of part II.

1. Municipal Corporations ⇐67(3)

Ordinance of general law city limiting city council members to two consecutive terms was preempted by state law. West's Ann.Cal.Elec.Code §§ 20080-20116.

2. Municipal Corporations ⇐54

A general law city was a political subdivision of the state, rather than a distinct individual entity, for preemption purposes.

¹⁴⁰³Albert E. Polonsky, Daly City, for plaintiff and appellant Steinkamp.

Nielsen, Merksamer, Hodgson, Parrinello & Mueller, James R. Parrinello, Louise J. Rosen-Garcia, San Francisco, for defendant and appellant Teglia.

CHANNELL, Associate Justice.

In 1987, defendant and cross-appellant Roberta Cerri Teglia won reelection to a third term on the South San Francisco City Council. A city ordinance limits councilmembers to two consecutive terms. Plaintiff and appellant Warren Steinkamp contested the election, seeking declaratory and injunctive relief to invalidate her election. (See Elec.Code, §§ 20080-20116.) The trial court ruled that the ordinance was invalid as preempted by state law, but declined to award Teglia attorney fees. Steinkamp appeals on the merits and Teglia cross-appeals on the denial of fees. We affirm the judgment.

¹⁴⁰⁴I. PREEMPTION

In his appeal, Steinkamp contends that the ordinance is not preempted by state law. A local ordinance is preempted by state law if "the subject matter has been so fully ... covered by general law as to clearly indicate that it has become exclusively a matter of state concern," or if "the subject matter has been partially covered by general law couched in such terms as to indicate ... a paramount state concern will not tolerate further ... local action...." (*In Re Hubbard* (1964) 62 Cal.2d 119, 127-128, 41 Cal.Rptr. 393, 396 P.2d 809, overruled on other grounds in *Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 63, 81 Cal.Rptr. 465, 460 P.2d 137; *Sports Commit-*

tee Dist. 37 A.M.A., Inc. v. County of San Bernardino (1980) 113 Cal.App.3d 155, 159, 169 Cal.Rptr. 652.)

South San Francisco's ordinance limits a person's eligibility for city council to two successive terms. Numerous Government Code provisions also affect eligibility for local offices in a general law city such as South San Francisco. (See Gov.Code, §§ 36501-36524.) State law provides that a person is not eligible to hold office as councilmember unless he or she is an elector at the time of assuming office and was a registered voter of the city at the time nomination papers are issued to the candidate. (*Id.*, § 36502.) We must determine whether, by this statute, the state Legislature has either fully occupied the field or so fully covered it as to indicate a paramount state concern. (*In re Hubbard, supra*, 62 Cal.2d at p. 127, 41 Cal.Rptr. 393, 396 P.2d 809.)

[1] A similar statute relating to eligibility of county elected officers—Government Code section 24001—has been held to constitute evidence of the Legislature's intent to exercise statewide control over the qualifications of elected county officers. (*Younger v. Board of Supervisors* (1979) 93 Cal.App.3d 864, 872, 155 Cal.Rptr. 921.) Steinkamp attempts to distinguish this case because the local governmental entity in *Younger* was a chartered county and South San Francisco is a general law city. This distinction is not pertinent in this case. The two statutes establish that the Legislature intends to preempt local regulation of eligibility for election to local governing bodies, whether they are charter counties or general law cities.

[2] Steinkamp also contends the city is a distinct, individual entity and is not a political subdivision of the state. He is incorrect. "[G]eneral law cities are simply creatures of the state and as such are parts of the machinery by which the state conducts its governmental affairs." (*Williams v. City of San Carlos* (1965) 233 Cal.App.2d 290, 295, 43 Cal.Rptr. 486; see *Wiltshire v. Superior Court* (1985) 172 Cal.App.3d 296, 302, 218 Cal.Rptr. ¹⁴⁰⁵199.)

Cite as 258 Cal.Rptr. 267 (Cal.App. 1 Dist. 1989)

"[Voters] have the right to pass upon the composition of their local government within the legal framework established by the Constitution of the state and the laws enacted by the Legislature." (Williams, supra, 233 Cal.App.2d at p. 295, 43 Cal.Rptr. 486, emphasis added; see 56 Ops.Cal.Atty. Gen. 327 (1973).) The trial court correctly found the city ordinance was preempted by state law.

ning commission prepared a supplemental environmental impact report for a proposed office building project and reaffirmed its earlier resolution approving a permit for the project without imposing any additional mitigation measures. The Court of Appeal, Anderson, P.J., held that: (1) commission was not required to consider additional mitigation measures in areas of child care, open space and affordable housing, and (2) grandfather provisions of municipal ordinances did not violate state Environmental Quality Act.

II. ATTORNEY FEES **

III. CONCLUSION

The judgment is affirmed. Each party shall bear its own costs.

Affirmed.

Opinion, 256 Cal.Rptr. 606, vacated.

ANDERSON, P.J., and POCHÉ, J., concur.

1. Health and Environment ⇐25.15(3.1)

Appellate court would not consider appellants' attack on sufficiency of supplemental environmental impact report that was raised in appellant's reply brief, insofar as appellants, in their opening brief, clearly stated that they would not attack sufficiency of report.

2. Amicus Curiae ⇐3

Court would not consider arguments of amicus curiae on issue not properly raised by appealing parties.

3. Health and Environment ⇐25.5(4)

City planning commission had no duty under state Environmental Quality Act, when determining whether to reapprove proposed office building project, to condition reapproval on exactions from project sponsor for increased availability of child care programs, insofar as child care was not an "environmental impact." West's Ann.Cal.Pub.Res.Code §§ 21000 et seq., 21060.5, 21068.

See publication Words and Phrases for other judicial constructions and definitions.

4. Zoning and Planning ⇐14

Grandfather provisions of municipal ordinance requiring sponsors of real estate projects to construct on-site child care facilities or contribute to a child care fund, which exempted projects approved by city planning commission prior to ordinance's



209 Cal.App.3d 1502

11502 SAN FRANCISCANS FOR REASONABLE GROWTH et al., Plaintiffs and Appellants,

v.

CITY AND COUNTY OF SAN FRANCISCO et al., Defendants and Respondents;

201 SPEAR STREET ASSOCIATES, Real Party in Interest and Respondent.

No. A035010.

Court of Appeal, First District, Division 4.

May 2, 1989.

Citizens group appealed from an order of the Superior Court for the City and County of San Francisco, Roy L. Wonder, J., which discharged its peremptory writ of administrative mandamus after city plan-

** See footnote *, ante.

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YOUNGER v. BD. OF SUP'RS OF SAN DIEGO CTY.

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93 Cal.App.3d 864

Cite as, App., 155 Cal.Rptr. 921

[8] In response to the mother's assertion concerning the proper standard of proof to be applied, we need only point out it is now well established in cases of this sort, where the parent is not deprived of custody in favor of a nonparent, the correct standard for both jurisdictional and dispositional purposes is proof by a preponderance of the evidence (§ 355; *In re Christopher B.*, 82 Cal.App.3d 608, 616-618, 147 Cal.Rptr. 390; *In re Lisa D.*, 81 Cal.App.3d 192, 196, 146 Cal.Rptr. 178).

Judgment affirmed.

GERALD BROWN, P. J., and WIENER, J., concur.



93 Cal.App.3d 864

1864 1 Evelle J. YOUNGER et al., Plaintiffs and Respondents,

v.

BOARD OF SUPERVISORS OF the COUNTY OF SAN DIEGO et al., Defendants and Appellants.

Civ. 16912.

Court of Appeal, Fourth District, Division 1.

June 7, 1979.

Hearing Denied Aug. 1, 1979.

Attorney General and district attorney brought action challenging constitutionality of provision of the county charter limiting the number of consecutive terms which elective county officials could hold. The Superior Court, San Diego County, Ben W. Hamrick, J., found the provisions to be unconstitutional and defendants appealed. The Court of Appeal, Wiener, J., held that: (1) power of a county operating under a charter permitting local self-government is restricted to the authority granted by the State Constitution, and (2) county charter's

limitation on the number of consecutive terms which county officials could serve was unconstitutional as an enactment in excess of the county's authority.

Affirmed.

1. Counties ⇌ 3

Purpose of underlying constitutional charter provisions is to extend to county the option of home rule. West's Ann.Const. art. 11, § 4.

2. Municipal Corporations ⇌ 65

The term "home rule" refers to the right of the people of a local area to create their own local government and to define its power and describe the boundaries within which it is to exist; it includes their right to prevent interference by state government with their creation although the breadth of the power is embraced within limits laid down by the State Constitution and statutes.

See publication Words and Phrases for other judicial constructions and definition.

3. Counties ⇌ 1, 21½

Counties are merely political subdivisions of the state and have independently only such legislative authority as has been expressly conferred by the Constitution and laws of the state. West's Ann.Const. art. 11, §§ 1, 4.

4. Counties ⇌ 24

If the Constitution and laws of the state are silent in regard to the delegation of authority to the county, the authority must rest with the legislature.

5. Counties ⇌ 24

If a charter provision of a home rule county is properly authorized, it supersedes general state laws in conflict, but only to the extent that it is not limited by the Constitution. West's Ann.Const. art. 11, § 4.

6. Counties ⇌ 24

Local rules or regulations relating to matters which a county is constitutionally empowered to regulate by charter supersede general state law on the subject, ex-

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cept as to matters covered by general law where the local legislation attempts to impose additional requirements, or the subject matter is one of state concern and the general law occupies the entire field, or the subject matter is of such statewide concern that it can no longer be deemed a municipal affair.

7. Counties ⇔ 21½

County has only those powers and can enact within its charter only those provisions authorized by the Constitution. West's Ann.Const. art. 11, § 4.

8. Counties ⇔ 64

As used in provision of county charter that no person shall be "eligible" to serve as an elected county officer in the same elective office for more than 12 consecutive years, the term "eligible" means capable of being chosen or being the subject of selection or choice.

See publication Words and Phrases for other judicial constructions and definitions.

9. Counties ⇔ 64

Requirement of county charter that a person elected to office not having been elected for two prior six-year terms or three prior four-year terms was imposed as an additional, but unauthorized, qualification for candidacy.

10. Counties ⇔ 65

The word "terms" as used in provision of Constitution authorizing county to provide for the terms of elected officials is not synonymous with tenure. West's Ann. Const. art. 11, § 4.

See publication Words and Phrases for other judicial constructions and definitions.

11. Counties ⇔ 65

Power given to county by home rule provision of the Constitution to provide for the removal of elected officials did not authorize the county to adopt a charter provi-

1. Section 14.1 provides:

"No person shall be eligible to serve as an elective County Officer in the same elective office for more than three (3) successive four-

sion placing a limit on the number of consecutive terms which county elective officials could serve. West's Ann.Const. art. 11, § 4.

12. Counties ⇔ 65

Provision of county charter placing a limit on the number of consecutive terms which elective county officials could serve was unconstitutional as it was in excess of a charter county's authority as conferred upon the governmental entity by both the Constitution and general state laws. West's Ann.Const. art. 11, § 4.

Donald L. Clark, County Counsel, Lloyd M. Harmon, Jr., Chief Deputy County Counsel, Luce, Forward, Hamilton & Scripps and Ronald W. Rouse, San Diego, for defendants and appellants.

Evelle J. Younger, Atty. Gen., Iver E. Skjeie, Asst. Atty. Gen., Susan J. Orton, Deputy Atty. Gen., Edwin L. Miller, Jr., Dist. Atty., and Richard D. Huffman, Chief Deputy Dist. Atty., for plaintiffs and respondents.

WIENER, Associate Justice.

Since 1933, San Diego County has operated under a charter providing for "home rule." (Approved by the Legislature Jan. 17, 1933, Stats.1933, res. ch. 10, p. 2814; see Cal.Const., art. XI, §§ 3, 4; see also former art. XI, § 7½.) In November 1976 the voters of San Diego County amended the charter by adding section 14.1 which placed a limitation on the number of consecutive terms a county elective official could serve. The amendment provides that no person is eligible to serve more than three consecutive four-year terms or two consecutive six-year terms in the same county-elected office.¹ We conclude the power of a county

year elective terms or, if elected for six-year terms, for more than two (2) successive six-year elective terms. Any person appointed or elected as an elective County Officer to fill an

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operating under a charter permitting local self-government is nevertheless restricted to the authority granted by the State Constitution. We hold section 14.1 unconstitutional for it is an enactment in excess of the county's authority.

Procedural and Factual Background

At its regular meeting on August 10, 1976, the San Diego County Board of Supervisors approved and ordered the submission of proposed San Diego County Charter section 14.1 to the electorate of San Diego County at the general election to be held on November 2, 1976. At the election, a majority of the voters, 315,356 to 218,335, voted in favor of the proposal. After the voters approved the amendment, the California Attorney General and the San Diego County District Attorney filed their second amended complaint against the Board of Supervisors of the County of San Diego and Robert T. Denny, Registrar of Voters of the County of San Diego, for declaratory and equitable relief. Plaintiffs and defendants filed motions for summary judgment; plaintiffs' motion was granted. Defendants appeal from the judgment declaring section 14.1 of the Charter of the County of San Diego unconstitutional, an unlawful exercise of lawful authority and permanently enjoining the defendants from entering section 14.1 in the charter and from enforcing it. We affirm the judgment.

A CHARTER COUNTY HAS ONLY THOSE POWERS AUTHORIZED BY THE CALIFORNIA CONSTITUTION

Article XI, section 4 of the California Constitution currently directs that county charters shall provide for:

"(a) A governing body of 5 or more members, elected (1) by district or, (2) at

unexpired term shall, however, be eligible to serve three (3) successive four-year elective terms or, if elected for six-year terms, two (2) successive six-year elective terms, upon the expiration of the unexpired term for which he was appointed or elected. This section shall become operative on the 15th day of January,

large, or (3) at large, with a requirement that they reside in a district. Charter counties are subject to statutes that relate to apportioning population of governing body districts.

"(b) The compensation, terms, and removal of members of the governing body. If a county charter provides for the Legislature to prescribe the salary of the governing body, such compensation shall be prescribed by the governing body by ordinance.

"(c) An elected sheriff, other officers, their election or appointment, compensation, terms and removal.

"(d) The performance of functions required by statute.

"(e) The powers and duties of governing bodies and all other county officers, and for consolidation and segregation of county officers, and for the manner of filling all vacancies occurring therein.

"(f) The fixing and regulation by governing bodies, by ordinance, of the appointment and number of assistants, deputies, clerks, attaches, and other persons to be employed, and for the prescribing and regulating by such bodies of the powers, duties, qualifications, and compensation of such persons, the times at which, and terms for which they shall be appointed, and the manner of their appointment and removal.

"(g) Whenever any county has framed and adopted a charter, and the same shall have been approved by the Legislature as herein provided, the general laws adopted

1977 and shall apply to any person serving as an elective County Officer on that date; provided, however, that the provisions of this section shall not apply to any person, other than a member of the board of supervisors, holding a County elective office on November 2, 1976."

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by the Legislature in pursuance of Section 1(b) of this article, shall, as to such county, be superseded by said charter as to matters for which, under this section it is competent to make provision in such charter, and for which provision is made therein, except as herein otherwise expressly provided.

¹⁸⁶⁹ 1“(h) Charter counties shall have all the powers that are provided by this Constitution or by statute for counties.”²

Relying on *Reuter v. Board of Supervisors* (1934) 220 Cal. 314, 326-327, 30 P.2d 417, defendants contend the intent behind the constitutional charter provisions was to extend the option of “home rule” to counties, the right of self-government over local and county affairs, and thus permit county charters to “contain any provision which relates to county self-government and which is not prohibited by the California Constitution or which is not a matter of statewide concern where the state has occupied the field.” Defendants’ premise relating to “home rule” is correct. Their quoted conclusion regarding the scope of a charter county’s authority is not.

[1, 2] The general purpose underlying the constitutional charter provisions was to extend to counties the option of home rule. (*Ibid.*) “‘Home Rule’ as used here means the right of the populace of a local area to create . . . their own local governments, define its powers, describe the boundaries within which it is to exist, and prevent interference by the state govern-

2. In construing the scope of the power of a charter county as authorized by the California Constitution and general state laws, reliance is made upon case precedent dated before the adoption, on June 2, 1970, of the current article XI. This reliance is proper as article XI, section 13, provides:

“The provisions of Sections 1(b) (except for the second sentence), 3(a), 4, of West Orange County Judicial District from and 5 of this Article relating to matters affecting the distribution of powers between the Legislature and cities and counties including matters affecting

ment with what they have created”; however, the breadth of this power of self-government is embraced “within [the] limits laid down by the state constitution and . . . state statutes.” (Wayne A. Brooks, *The Metropolis, Home Rule, and the Special District* (1959) 11 Hastings L.J. 110, 111.) As this court stated in *Williams v. McClellan* (1953) 119 Cal.App.2d 138, 141, 259 P.2d 12, 14 (quoting *Whelan v. Bailey* (1934) 1 Cal.App.2d 334, 335-337, 36 P.2d 709, overruled on other grounds in *Estate of Miller* (1936) 5 Cal.2d 588, 591, 55 P.2d 491):

“[S]uch charters are authorized and may be framed for the purpose of giving a certain local control over the means of carrying out governmental functions in such counties, with the limitation that anything in the charters, so authorized, shall be consistent with the Constitution and shall relate only to matters authorized by that fundamental law. While a county is thus authorized to provide for a measure of self-government, this authorization must be and is confined to providing for such functions as are properly governmental in their nature and which are consistent with our general scheme of government.”¹¹⁷⁰

[3-6] “It is elementary law that a charter provision relating to county officials is valid only if authorized by the state Constitution.” (*Galli v. Brown* (1952) 110 Cal. App.2d 764, 777, 243 P.2d 920, 928; see also *Williams v. McClellan, supra*, 119 Cal. App.2d at p. 141, 259 P.2d 12.) Since counties constitute merely political subdivisions

supersession, shall be construed as a restatement of all related provisions of the Constitution in effect immediately prior to the effective date of this amendment, and as making no substantive change.

“The terms general law, general laws, and laws, as used in this Article, shall be construed as a continuation and restatement of those terms as used in the Constitution in effect immediately prior to the effective date of this amendment, and not as effecting a change in meaning.”

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of the state (Cal.Const., art. XI, § 1, subd. (a); *Hicks v. Board of Supervisors* (1977) 69 Cal.App.3d 228, 242, 138 Cal.Rptr. 101; *Byers v. Board of Supervisors* (1968) 262 Cal.App.2d 148, 155, 68 Cal.Rptr. 549), they have independently only such legislative authority that has been expressly conferred by the Constitution and laws of the state. If the latter sources are silent in regard to the delegation of such authority, the authority must still rest with the Legislature. (*Simpson v. Payne* (1926) 79 Cal.App. 780, 785-786, 251 P. 324.) However, if a charter provision is properly authorized, then it supersedes general state laws in conflict, but only to the extent it is not limited by the Constitution. (*Wilkinson v. Lund* (1929) 102 Cal.App. 767, 770, 283 P. 385.) For, it is without dispute that local rules or regulations relating to matters which a county is constitutionally empowered to regulate by charter supersede general state laws on the subject, except as to matters covered by general law where "(a) the local legislation attempts to impose additional requirements [citation], or (b) the subject matter is one of state concern, and the general law occupies the entire field [citation], or (c) the subject matter is of such statewide concern that it can no longer be deemed a municipal affair [citation]." (*In re Hubbard* (1964) 62 Cal.2d 119, 127, 41 Cal.Rptr. 393, 398, 396 P.2d 809, 814, overruled on other grounds in *Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 63, 81 Cal.Rptr. 465, 460 P.2d 137.)

[7] Therefore, a charter county has only those powers and can enact within its charter only those provisions authorized by the Constitution. These include those enumerated in article XI, section 4, *supra*. Further, in light of the language of subdivision (h) of section 4, a charter county has all powers provided for counties under the general laws as well, including those powers "necessarily implied from those expressed." (Gov.Code, § 23003.) We review the provision in controversy with the foregoing in mind.

THE CALIFORNIA CONSTITUTION [871
DOES NOT AUTHORIZE SAN DIEGO COUNTY TO ESTABLISH ADDITIONAL QUALIFICATIONS FOR CANDIDACY FOR COUNTY ELECTED OFFICE

Defendants urge section 14.1 is authorized by section 4, subdivision (c), of article XI which directs the county charter to provide for "other officers, their election or appointment, compensation, terms and removal." They rely specifically upon the words "terms and removal" noting the breadth and scope of former section 7½ of article XI, which read in pertinent part:

"It shall be competent, in all charters, framed under the authority given by this section to provide, in addition to any other provisions allowable by this Constitution, and the same shall provide, for the following matters:

"1. For boards of supervisors and for the constitution, regulation and government thereof, for the times at which and the terms for which the members of said board shall be elected, for the number of members, not less than three, that shall constitute such boards, for their compensation and for their election, either by the electors of the counties at large or by districts; provided, that in any event said board shall consist of one member for each district, who must be a qualified elector thereof; and

"2. For sheriffs, county clerks, treasurers, recorders, license collectors, tax collectors, public administrators, coroners, surveyors, district attorneys, auditors, assessors and superintendents of schools, for the election or appointment of said officers, or any of them, for the times at which and the terms for which, said officers shall be elected or appointed, and for their compensation, or for the fixing of such compensation by boards of supervisors, and, if appointed, for the manner of their appointment"

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Our interpretation of the statute starts with an examination of the words themselves to determine the intent of the Legislature. (*Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230-231, 110 Cal.Rptr. 144, 514 P.2d 1224.) "We are required to give effect to statutes 'according to the usual, ordinary import of the language employed in framing them.'" [Citations.] (*Id.*, at pp. 230-231, 110 Cal. Rptr., at p. 149, 514 P.2d, at p. 1229.)

The Constitution differentiates between elected county officials and non-elected personnel. As to the latter, under article XI, section 4, subdivision (f), the county can fix and regulate "the powers, duties, ^[§72] qualifications, and compensation of such persons, the times at which, and terms for which they shall be appointed, and the manner of their appointment and removal." (Emphasis added.) Further, section 1, subdivision (b), of article XI directs the county governing body to "provide for the number, compensation, tenure, and appointment of employees." (Emphasis added.) The exclusion of the words "qualifications" and "tenure" from the grant of powers to charter counties regarding county officers and the specific inclusion of the power to set "qualifications" and "tenure" for non-elected employees discloses an intent by the framers of the Constitution to retain statewide control over the qualifications of the former while releasing such control over the latter. This intent for statewide control over the qualifications of elected county officers is also indicated by the Legislature's enactment of Government Code section 24001 et seq. relating to eligibility of county elected officers.

[8, 9] Charter section 14.1 reads that "no person shall be eligible to serve as an elective County Officer in the same elective office. . . ." (Emphasis added.) The word "eligible" in this context means "capable of being chosen—the subject of selection or choice.'" (*Samuels v. Hite* (1950) 35 Cal.2d 115, 116, 216 P.2d 879, 879, quoting

Searcy v. Grow (1860) 15 Cal. 117, 121.) Thus the requirement of not having been elected for two prior six-year terms or three prior four-year terms is imposed as an additional, but unauthorized, qualification for candidacy.

[10] We also reject defendants' argument that the words "terms" and "tenure" are synonymous. Since no uniform meaning has been assigned to the word "term" as it is used in the Constitution and related statutes, it has become necessary to interpret the word on a case-by-case analysis so as to effectuate the intended statutory scheme pertaining to the offices under examination. (*Barber v. Blue* (1966) 65 Cal.2d 185, 187-188, 52 Cal.Rptr. 865, 417 P.2d 401.) In the context of the plural use of the word "terms," it reflects the singular meaning of the prescribed period for which an officer has been elected and may serve, not his incumbency. (*Chenoweth v. Chambers* (1917) 33 Cal.App. 104, 107, 164 P. 428; *Harold v. Barnum* (1908) 8 Cal.App. 21, 25, 96 P. 104.) "It is, therefore, not to be confused with the tenure of office. . . ." (*Holbrook v. Board of Directors, etc.* (1937) 8 Cal.2d 158, 161, 64 P.2d 430, 431.)

[11] We also reject defendants' effort to rely upon the term "removal" as the source of the authority for the imposition of the tenure limitation. "Removal" is defined in the context used as "the act of a person or body having lawful authority thereto, in depriving one of an ^[§72] office to which he was appointed or elected.'" (*Lotts v. Board of Park Commrs.* (1936) 13 Cal.App.2d 625, 631, 57 P.2d 215, 219, quoting Webster's New Internat. Dict. (1931).) Even though torturous interpretation contrary to the plain meaning of the words, section 14.1 cannot be construed as a removal provision.

[12] We conclude charter section 14.1, a qualification provision imposing a restriction upon the eligibility of elected county officials to seek reelection for the same office, is unconstitutional since it constitutes an act in excess of a charter county's

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authority as conferred upon the govern-
mental entity by both the Constitution and
general state laws. (See *Nielsen v. Rich-
ards* (1924) 69 Cal.App. 533, 538, 232 P. 480.)

The judgment is affirmed.

GERALD BROWN, P. J., and NORBERT
EHRENFREUND (Judge of the Superior
Court of San Diego County sitting under
assignment by the Chairperson of the Judi-
cial Council), J., concur.

Disposition



CITY OF MOUNTAIN VIEW

Sec. 401.

Section 401. Elected at large.

The council shall be elected at the general municipal election on a general ticket from the city at large.

Section 402. When an elective office becomes vacant.

An elective office becomes vacant when the incumbent dies, resigns, is removed from office under recall proceedings, is adjudged insane, convicted of a felony, or of an offense involving a violation of the incumbent's official duties, or ceases to be a resident of the city, or neglects to qualify within the time prescribed by the provisions of this Charter, or shall have been absent from the state without leave for more than sixty days, or fails to attend the meetings of the council for a like period without being excused therefrom by said body. (As amended June 3, 1980.)

Article V. The Council

Section 500. Term of office.

Except as otherwise provided in this section, the members of the council shall hold office for a term of four (4) years from and after the first Tuesday following their election and continuing until their respective successors qualify.

Ties among candidates for any office shall be settled by the drawing of lots.

No person shall be eligible to serve as a member of the city council for more than two successive four-year elective terms. Any person appointed or elected to the city council to fill an unexpired term of not more than two years in length shall, however, be eligible to serve two successive four-year elective terms upon the expiration of the unexpired term for which that person was appointed or elected. (As amended March 4, 1975; June 3, 1980.)

Section 501. Eligibility.

No person shall be eligible to be nominated for or to hold office as a member of the council unless that person is and shall have been a registered voter of the City of Mountain View at the time nomination papers are issued to the candidate and that the person be a qualified elector of

Sec. 501.
Contd.

the City of Mountain View or of territory annexed thereto, as defined in the California Elections Code. (As amended April 9, 1974; June 3, 1980.)

Section 502. Councilmember to hold no other office.

No member of the council shall hold any other city office or city employment except as is otherwise provided by this Charter. No member of the council shall be eligible to be elected or appointed to any city position, office or employment which was created or the compensation of which was increased by the council while that person was a member thereof, until one year after the expiration of the term for which the councilmember was elected or appointed. (As amended June 3, 1980.)

Section 503. Compensation.

Each member of the city council shall receive as salary, each month, that sum which has been established by the state legislature as the salary limit for members of the city council of general law cities having that population range within which the City of Mountain View falls, all as is specified in Government Code Section 36516(a) as it now exists or may be hereafter amended or recodified to read. The mayor shall receive as salary, each month, that amount as calculated for a councilmember above, plus an additional twenty-five percent (25%) of said sum. Notwithstanding the foregoing, the city council shall have no power to increase its salary by ordinance, resolution or motion. If a member of the city council, or mayor, does not attend all meetings of the city council or study sessions called on order of the city council and held during the month, that person's salary for such month shall be reduced by the sum of twenty-five dollars (\$25) for each meeting or study session not attended unless that person is absent on official duty with the consent of or on order of the city council. (As amended, April 9, 1968; June 3, 1980; November 6, 1984.)

Section 504. Vacancies.

The council shall, within 30 days from the commencement of any vacancy on the council from whatever cause arising, either fill the vacancy by appointment or call a special election to fill the vacancy. If the vacancy is filled by appointment, the person so appointed shall hold office until the first Tuesday following the next general municipal election at which a successor could be elected and until that person's successor qualifies. At that next general municipi-

Sec. 504.
Contd.

pal election following any vacancy, a councilmember shall be elected to serve for the remainder of any unexpired term. If the vacancy be filled by election, the person so elected shall hold office for the unexpired term of the former incumbent and until that person's successor qualifies. When any vacancy occurs, if there are two councilmembers at that time serving terms to which they were appointed, then in that event, the vacancy shall be filled solely by election. Notwithstanding the provisions of Charter Section 1302, a special election to fill a council vacancy may be held on any date. (As amended, April 12, 1960; June 3, 1980; November 6, 1984.)

Section 505. Election, powers and duties of mayor; designation of mayor pro tempore.

(a) Mayor. On the first Tuesday following any general or special municipal election at which any councilmember or councilmembers are elected, the council shall meet and shall elect one of its members as its presiding officer, who shall have the title of mayor. The mayor shall have a voice and vote in all its proceedings. The mayor shall be the official head of the city for all ceremonial purposes. The mayor shall perform such other duties consistent with the mayoral office as may be prescribed by this Charter or as may be imposed by the council. The mayor shall serve in such capacity at the pleasure of the council. In time of public danger or emergency, the mayor may, with the consent of the council, take command of the city, maintain order, and enforce laws.

(b) Mayor pro tempore. The council shall also designate one of its members as mayor pro tempore who shall serve in such capacity at the pleasure of the council. The mayor pro tempore shall perform the duties of the mayor during the mayor's absence or disability. (As amended June 3, 1980.)

Section 506. Powers vested in the council.

All powers of the city, except as otherwise provided in this Charter, shall be vested in the council, and said council may establish the method by which any of such powers may be exercised.

Section 507. Meetings of the council.

The council shall, by ordinance, provide for the time and place of holding its meetings and the manner in which its special meetings may be called.

as not inconsistent with the provisions of this Charter, shall apply to such agency as provided by this Charter.

ARTICLE II.

POWERS OF THE CITY

Section 200. General Powers. The City shall have the power to make and enforce all laws and regulations in respect to municipal affairs, subject only to such restrictions and limitations as may be provided in this Charter and in the Constitution of the State of California. It shall also have the power to exercise any and all rights, powers and privileges heretofore or hereafter established, granted or prescribed by any law of the State, by this Charter, or by other lawful authority, or which a municipal corporation might or could exercise under the Constitution and laws of the State of California.

The enumeration in this Charter of any particular power shall not be held to be exclusive of, or any limitation upon the generality of the foregoing provisions.

Section 201. Procedures. The City shall have the power and may act pursuant to any procedure established by any law of the State, unless a different procedure is established by this Charter or by ordinance.

Section 202. Contracts for Municipal Services. The City shall have the power to enter into a contract with any other City or County within the State, with a State department, or with any other public or private agency or firm for the performance of any administrative function of the City.

ARTICLE III.

FORM OF GOVERNMENT

Section 300. Form of Government. The municipal government established by this Charter shall be known as the "Council-Administrator" form of government.

ARTICLE IV.

THE COUNCIL

Section 400. Powers Vested in the Council. All powers of the City and the determination of all matters of policy shall be vested in the Council, subject to the provisions of this Charter and the Constitution of the State of California.

Section 401. Number and Method of Election. The Council shall consist of seven (7) members, including a Mayor and six (6) Councilmen, each of whom shall have the right to vote on all questions coming before the Council. The Mayor and Councilmen shall be elected at the General Municipal Election from the City at large.

Section 402. Term of Office. Except as otherwise provided in this Section, the Mayor and Councilmen shall hold office for a term of four (4) years from and after the first Tuesday following their election and continuing until their respective successors qualify. If, at any municipal election for members of the Council, there shall be no choice between candidates by reason of two (2) or more candidates having received an equal number of votes, then the Council shall proceed to determine the election of such candidates by lot.

The Mayor and all Councilmen shall be elected at the first election held under this Charter as provided in Section 1403. ~~The Mayor and the three (3) Councilmen~~ be open to the public, and all ⁽¹⁾ Councilmen elected receiving the highest number of votes shall hold office until the second Tuesday of April, 1963, and the three Councilmen elected receiving the lowest number of votes shall hold office until the second Tuesday of April, 1961. Such officers shall assume office on the first Tuesday following their election. Their successors shall be elected for a full term of four (4) years.

The terms of the members of

the legislative body in office at the time this Charter is adopted shall expire upon the election and qualification of their successors under this Charter.

Section 403. Eligibility. No person shall be eligible to be nominated for or to hold office as a member of the Council unless he is, ~~and shall have been for at least two (2) years next preceding his election and appointment,~~ a resident and qualified registered elector of the City of Gilroy or of territory annexed thereto. The Council shall be the judge of the election and qualifications of its members as defined in this Section.

Section 404. Council Member to Hold No Other Office. No member of the Council shall hold any other public office or City employment except as is otherwise provided in this Charter. No member of the Council shall be appointed to any City position, office or employment during the term of office for which he was elected or appointed until one (1) year after the expiration of the term for which he was elected or appointed except to fill a vacancy in the office of Mayor. Nothing in this Section shall prevent a Councilman or the Mayor from resigning his office to accept either an elective or appointive office under the government of a county, state or of the United States, or any governmental agency, other than the City of Gilroy. Nor shall the provisions of this Section prohibit any such officer from being a Notary Public or a member of the armed services of this State or of the United States.

Section 405. Reimbursement. The members of the Council shall receive reimbursement for expenses incurred while performing official business of the City as authorized and approved by the Council.

Section 406. Vacancies. An elective office becomes vacant

when the incumbent thereof dies, resigns, is removed from office under recall proceedings, is adjudged insane, convicted of a felony, or of an offense involving a violation of his official duties, or ceases to be a resident of the City, or neglects to qualify within the time prescribed by the provisions of this Charter, or shall have been absent from the State without leave for more than sixty (60) consecutive days, or fails to attend the meetings of the body of which he is a member for a like period without being excused therefrom by said body.

A vacancy in an elective office, from whatever cause arising, shall be filled by appointment by the Council, such appointee to hold office until the first Tuesday following the next general municipal election and until his successor qualifies. At the next general municipal election following any vacancy, a successor shall be elected to serve for the remainder of any unexpired term.

The Council shall declare the existence of any vacancy. In the event the Council shall fail to fill a vacancy by appointment within thirty (30) days after such an office shall have become vacant, it shall forthwith cause an election to be held to fill such vacancy.

Section 407. Interference in Administrative Matters Prohibited. Neither the Council nor any of its members shall interfere with the execution by the City Administrator of his powers and duties, or order or request, directly or indirectly, the appointment by the City Administrator, or by any of his subordinates, of any person to any office or employment, or his removal therefrom, except as provided in this Charter. Except for the purpose of inquiry, the Council and its members shall deal with the administrative branch of the City government solely through the City Administrator, or his designated

...y, and neither the Council nor any member thereof shall give orders to any subordinate of the City Administrator, either publicly or privately.

Section 408. Meetings of the Council. The Council shall provide for the time, place and manner of holding its meetings by ordinance, not inconsistent with the provisions of this Section. Copies of such ordinances shall be kept on file in the office of the City Clerk where they shall be available for public inspection. Except as is otherwise provided by the laws of this State, all meetings of the Council shall cause the removal of any person persons shall be permitted to attend any meeting thereof. The Council shall hold at least one (1) regular meeting each month.

A special meeting may be ordered at any time by the Mayor whenever in his opinion the public business may require it, or upon the written request of any three (3) members of the Council. Whenever a special meeting shall be called, written notice of such meeting shall be delivered personally or by mail by the City Clerk to each member of the Council and to each local newspaper of general circulation, radio or television station requesting notice in writing. Such notice must be delivered 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 the Council.

Section 409. Citizen Participation. Within the established rules for the conduct of its official proceedings, no citizen shall be denied the right personally, or through counsel, to present grievances or offer suggestions for the betterment of municipal affairs at any regular meeting of the Council.

Section 410. Quorum. A majority of the entire membership of the Council shall constitute a quorum to do business, but a less number may adjourn from time to time. In the absence of all of the members of the Council from any meeting, the City Clerk may declare the same adjourned to a stated day and hour.

Section 411. Rules and Procedures. The Council shall establish rules for the conduct of its proceedings and to preserve order as its meetings. It shall cause a record of its proceedings to be maintained which shall be open to public inspection.

Section 412. Administering Oaths: Subpoenas. Each member of the Council shall have the power to administer oaths and affirmations in any investigation or proceeding pending before the Council. The Council shall have the power and authority to compel the attendance of witnesses, to examine them under oath and to compel the production of evidence before it. Subpoenas may be issued in the name of the City and be attested by the City Clerk. Disobedience of such subpoena or the refusal to testify upon other than constitutional grounds shall constitute a misdemeanor and shall be punishable in the same manner as violations of this Charter are punishable.

ARTICLE V. THE MAYOR

Section 500. Political Position. It is the intent of this Article that the Mayor shall be the political leader within the community and the Council to facilitate the determination, expression and interpretation of City policies and programs and to assist the Council in the informed, vigorous and effective exercise of its powers of decision. Political leadership shall be concerned with the general development of the community and the

general level of City services and activity programs.

Section 501. Powers and Duties. The Mayor shall be recognized as the official head of the City for all political, representative and ceremonial purposes, by the courts for the purposes of serving civil processes, and by the Governor for military purposes. In time of public danger or emergency, he may direct the administration of the City Government through the City Administrator.

The Mayor shall be charged with the duty of making recommendations to the Council on all matters of policy and program which require Council decision, provided, that if he recommends any increases in the City budget, he shall recommend the method of financing such expenditures; and provided further, that if he proposes curtailments of services, such recommendations and his reasons therefor shall be specific. The Mayor shall have the primary, but not exclusive, responsibility for interpreting the policies, programs and needs of the City government to the community. He may also, on his own account, inform the community on any matters of policy or program which he believes the welfare of the community makes necessary.

It shall be the duty of the Mayor to represent the Council in its relationships with civic groups within the City, and by direction of the Council, he shall represent the City in its relationships with other governmental agencies on matters of policy and program.

The Mayor shall preside at meetings of the Council and shall have a vote as a member of the Council. He shall have no power to veto any ordinance or resolution adopted by the Council.

The Mayor shall have authority to preserve order at all Council meetings and to remove or from any meeting of the Council for disorderly conduct, to

enforce the rules of the Council, and to determine the order of business under the rules of the Council.

The Mayor shall exercise such other powers and perform such other duties as may be prescribed by the Council, not inconsistent with this Charter.

Nothing in this Section shall be construed in any way as an infringement or limitation on the powers and duties of the City Administrator as chief administrative officer and head of the administrative branch of the City government as prescribed in other sections of this Charter. The Mayor shall possess only such authority over the City Administrator and the administrative branch as he possesses as one member of the Council.

Section 502. Mayor Pro Tempore. At the first meeting of the Council following the election or appointment of a member to the Council, the Council shall elect one of its members as Mayor Pro Tempore who shall act as Mayor during the absence or inability of the Mayor to act. In the case of the temporary absence or disability of both the Mayor and the Mayor Pro Tempore, the Council shall elect one of its members to act as Mayor Pro Tempore.

Section 503. Vacancy. If a vacancy occurs in the office of Mayor, the Council shall forthwith appoint a member of the Council to fill such vacancy who shall serve until the next municipal election, when a Mayor shall be elected to serve for the unexpired term or the succeeding term as the case may be.

ARTICLE VI. LEGISLATION

Section 600. Method of Action. When so provided by this Charter, or by law, the rights and powers conferred upon the Council shall be exercised by ordinance. Each act of the Council establishing a fine or other

p4(2)

paper is signed by the requisite number of qualified electors, and shall within five days of said filing attach his certificate thereto showing the result of such examination or nomination.

The returns of each election precinct shall be filed with the City Clerk and no persons shall be permitted access to them until canvassed by the City Council. Not later than the seventh day after any election, and at the usual hour and place of meeting, the City Council shall meet and canvass the returns and declare the result. Any such canvass may be held earlier than seven days after such election provided that all absentee ballots furnished for such election have been returned to the Clerk. The City Council may adjourn from day to day for the purpose of completing any such canvass.

After having been canvassed, the returns shall be sealed up by the Clerk for six months and no person shall have access to them except upon order of a Court of competent jurisdiction.

After the result of an election is declared the Clerk, under his hand and the official seal of said City, shall issue a certificate thereof and deliver the same personally or by mail to the person elected.

Notwithstanding any provision contained in this Charter, the City Council may, by ordinance, provide that all municipal elections shall be held in accordance with the provisions of any state or general law as the same now exists or may hereafter be enacted or amended relative to the conduct, manner and holding of any municipal election.

No primary election shall be held for municipal officers.

The persons having the plurality of all votes cast for each of the respective offices voted for shall be declared duly elected.

In any election held in said City, the City Council shall have the power to provide for the number, naming and compensation of election officers, the number of voting precincts, and the consolidation of the election precincts and the hours between which the polls will be open.

Sec. 700.1 Offices separately filled. (08/82)

The office of each member of the City Council, including the office of the Council member who is Mayor, is and shall be deemed to be a separate office to be separately filled. No person shall be a candidate for more than one such office; and, except as otherwise provided elsewhere in this Charter, no incumbent member of the City Council while serving in such office with an unexpired term of more than six months shall be a candidate for any numbered Council seat other than the one which he holds.

Nothing in this Section or in Section 700.2 of this Charter shall change the effect in any way of any disqualification of a member of the Council, including the Mayor, to serve more than two consecutive elective terms. It is intended that these sections will not affect any such qualification at all, either retrospectively or prospectively. (Added by electors at election held November 7, 1972, approved by Senate Concurrent Resolution (1973 Stats., Res. Ch. 10))

Sec. 700.2 Elections: Designation of seats. (08/82)

Subject to other provisions of this Charter, the first election following the effective date of this Section at which a Mayor and members of the City Council shall be elected shall be the general municipal election held in the year 1973. At the general municipal election held in the year 1973, persons shall be elected to fill the seats of those three members of the Council, including the Mayor, whose terms expire at the end of the day immediately preceding, the first Monday of May, 1973. At the general municipal election held in the year 1975, persons shall be elected to fill the seats of those four members of the Council whose terms expire at the end of the day immediately preceding the first Monday of May, 1975. Thereafter, at each general municipal election, successors shall be elected to fill the seats of those members of the Council, including the member of the Council who is also the Mayor, whose terms of office are about to expire.

For purposes of said elections, each Council office shall be designated by an appropriate descriptive designation, as follows: The Council seat which on the effective date of this Section is occupied by the Mayor shall continue to be designated as "Mayor;" each of the other six seats, respectively, shall be designated by the Council within one week of the effective date of this Section, if not previously so designated, as "Councilman, Seat No. 2," "Councilman, Seat No. 3," "Councilman Seat No. 4," "Councilman Seat No. 5," "Councilman, Seat No. 6," and "Councilman, Seat No. 7," respectively, and shall continue to be designated by the respective designation. The designation so given to each such office shall thereafter be used in all election, nomination papers, certificates of election, and other election papers pertaining or referring to such office, and to designate incumbency in such office.

The effective date of this Section shall be deemed to mean the date this Section as it now reads becomes effective. (Added by electors at election held November 7, 1972, approved by Senate Concurrent Resolution (1973 Stats., Res. Ch. 10))

Sec. 701. Qualifications. (08/82)

No person shall be eligible to hold any elective office in the City including Mayor, City Council, Chief of Police Department and City Clerk, unless he shall be a qualified elector, and shall have been a resident of the City for at least three years next preceding the date of his election or appointment to such office.

A member of the Council shall not serve more than two consecutive elective terms as such, and shall be ineligible for reelection or appointment to fill a vacancy in the Council until two years after such service. The office of elected Mayor, to be filled from the City at large, is a separate office from the Council and for the purpose of this qualification for office, is neither a Council office nor the Council. For such purpose, time served in such office of elected Mayor is not time served on the Council and time served on the Council is not time served in such office of elected Mayor. (As amended by electors at election held November 5, 1968, approved by Joint Resolution of the Legislature filed with the Secretary of State January 15, 1969)

Sec. 702. Compensation. (08/82)

Each member of the City Council shall receive as compensation the sum of two hundred dollars (\$200.00) per month, and the Mayor shall receive an additional one hundred dollars (\$100.00) per month. As of the first Monday in May, 1969, the Mayor shall receive an additional seven hundred dollars (\$700.00) per month for a total of one thousand dollars (\$1,000.00) per month. If a member of the City Council, including the

Mayor, does not attend all meetings of the City Council or study sessions called on order of the City Council and held during the month, the compensation to him for such month shall be reduced by the sum of twenty-five dollars (\$25.00) for each meeting or study session not attended unless he is absent with the consent of or on order of the City Council.

Absence from five consecutive regular meetings, unless excused by resolution of the City Council, shall operate to vacate the seat of any member of the City Council so absent. (As amended by electors at election held November 5, 1968, approved by Joint Resolution of the Legislature filed with the Secretary of State January 15, 1969)

Sec. 703. Vacancies. (08/82)

A vacancy in any elective office of the City, including Mayor, City Council, Chief of Police Department, and City Clerk, from whatever cause arising, shall be filled by appointment by the City Council by a majority vote of the remaining members.

In the event the City Council shall fail to fill a vacancy by appointment within thirty (30) days after such office shall have been declared vacant, it shall forthwith cause an election to be held to fill such vacancy. A person appointed or elected to fill a vacancy holds office for the unexpired term of the former incumbent. (As approved at election held November 5, 1968, approved by Joint Resolution of Legislature filed with the Secretary of State January 15, 1969)

Sec. 704. Presiding officer, Mayor. (08/82)

At the first regular meeting in May following any municipal election at which Councilmen are elected, the Council shall elect one of its members as presiding officer, who shall have the title of Mayor. The Mayor shall have a voice and vote in all its proceedings. He shall be the official head of the City for all ceremonial purposes. He shall perform such other duties as may be prescribed by this Charter or as may be imposed by the City Council consistent with his office. The Mayor shall serve in such capacity at the pleasure of the City Council.

As of the first Monday in May, 1969, the Mayor shall be elected from the City at large and upon assuming such elective office, he shall not serve in such capacity at the pleasure of the City Council. (As amended by the electors at election held November 5, 1968, approved by Joint Resolution of the Legislature filed with the Secretary of State January 15, 1969)

Sec. 704.1 Same [Mayor]--Limitation of terms. (08/82)

No person who has been elected to the office of Mayor for two successive four-year terms shall be eligible to run for election to the office of Mayor, nor to serve as such, for any additional successive term; but the above shall not disqualify any person from running for election to the office of Mayor, nor from further service as Mayor, for any term or terms which are not successive, nor for any parts of terms which are not successive. (Added by electors at election held November 5, 1968, approved by Joint Resolution of Legislature filed with the Secretary of State January 15, 1969)

Sec. 704.2 Same [Mayor]--Political position. (08/82)

It is the intent of this article that as of the first Monday of May, 1969, the Mayor shall be the political leader within the community by providing guidance and

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Final

EXHIBIT A TO RESOLUTION NO. _____
OF THE CITY OF SAN JOSE

PROPOSAL ONE: That Section 402 of the Charter of the City of San Jose be amended to read as follows:

SECTION 402. TERMS OF OFFICE.

The terms of all members of the Council holding office, or elected to terms commencing, on January 1, 1979, excepting the Mayor, shall expire on December 31, 1980, notwithstanding any other provision of this Charter. Ten (10) members of the Council, excepting the Mayor, shall be elected by Districts at the general municipal election held in 1980.

If, for any reason, the operation of this Section and of any other Section(s) of this Charter amended together with this Section should be delayed, so that ten (10) Council members are not elected by Districts at the general municipal election held in 1980, then in that event the election of ten (10) Council members by Districts shall commence with the general municipal election to be held in 1982, and all provisions of this Charter as so amended regarding the Council, its members, the terms of office and election of members, excepting the Mayor, or the vote of Council members shall apply as modified only with regard to calendar dates and consistently with the holding of such election in 1982.

Except as provided herein below, the regular term of office of each member of the Council shall be four (4) years. At the first regular meeting of the City Council in January, 1981, the Council shall determine by lot whether the members elected at the general municipal election held in 1980 by the odd-numbered Districts or those elected by the even-numbered Districts shall hold office for a term of two (2) years ending on December 31, 1982; and at the general municipal election held in 1982, members shall be elected for a regular term of four (4) years by those Districts whose members' terms expire on December 31, 1982. Thereafter, members representing both the odd-numbered and even-numbered Districts shall be elected at general municipal elections held in each fourth (4th) year succeeding the year in which members were last elected by such Districts for a regular term of four (4) years. Each member's term shall commence on the first day of January next following, and end on the last day of December in the fourth calendar year succeeding, the date of the member's election.

SECTION 415. Rules and Procedure.

The Council shall establish rules for the conduct of its proceedings, and to preserve order at its meetings. It shall cause a record of its meetings to be maintained and this record shall be open to public inspection.

SECTION 416. Investigations.

The Council may make investigations into the affairs of the City and the conduct of any City department, office, or agency, and for this purpose may subpoena witnesses, administer oaths, take testimony, and require the production of evidence. Disobedience of any subpoena or the refusal to testify upon other than constitutional grounds shall be punishable by contempt proceedings.

**ARTICLE V
THE MAYOR**

SECTION 500. Election and Term.

There shall be a Mayor of the City of San Jose. Except as otherwise provided elsewhere in the Charter, the Mayor shall be elected by a majority of the votes cast at a general municipal election from the City at large, for a term of four (4) years from and after the first day of January following the year of the election. Any incumbent member of the Council may run for the seat of Mayor, and the Mayor may run for the seat of Mayor or for any other seat on the Council for which the Mayor is otherwise eligible; however, no member of the Council shall hold more than one seat thereof, and no person may be a candidate for more than one seat.

No person who has been elected to the office of Mayor for two (2) successive four-year terms, before or after the effective date of this Section, shall be eligible to run for election to the office of Mayor, nor to serve as such, for any additional successive term; but the above shall not disqualify any person from running for election to the office of Mayor, nor from further service as Mayor, for any term or terms which are not successive; nor for any parts of terms which are not successive.

The effective date of this Section shall be deemed to mean the date this Section as it now reads becomes effective.

Amended at election November 7, 1978

SECTION 501. Political Position.

It is the intent of this Article that the Mayor shall be the political leader within the community by providing guidance and leadership to the Council, by expressing and explaining to the community the City's policies and programs and by assisting the Council in the informed, vigorous and effective exercise of its powers. Political leadership shall be concerned with the general development of the community and the general level of City services and activity programs.

SECTION 502. The Mayor, Powers and Duties.

The Mayor shall have the following powers and duties:

- (a) The Mayor shall have the power to make recommendations to the Council on matters of policy and program which require Council decision.
- (b) Not less than annually, the Mayor shall address the citizens of the City concerning the current status of City affairs and articulating the policy plans which the Mayor proposes for the City during the ensuing year.
- (c) In addition, the Mayor, at other times during the year, may inform the citizens concerning any matters of policy or program which the Mayor believes are for the welfare of the community.
- (d) If the Mayor recommends any increases in the City budget, the Mayor shall recommend the method of financing such expenditures. If the Mayor proposes the curtailment of any service, the Mayor shall provide specific recommendations and the reasons for the proposal.
- (e) The Mayor shall preside at meetings of the Council and shall have a vote as a member of the Council. The Mayor shall have no veto powers;
- (f) The Mayor shall have authority to preserve order at all Council meetings, to remove or cause the removal of any person from

Subject to other provisions of this Charter, the Mayor, whose term of office as Mayor and member of the Council would expire on December 31, 1982 under the Charter as it existed immediately prior to the effective date of this Section, shall continue to hold office as Mayor and member of the Council until such date. At the general municipal election to be held in the year 1982, and at the general municipal election held in each fourth year succeeding 1982, a person shall be elected to fill the seat of said Mayor for a term of four (4) years, commencing on the first day of January next following, and ending on the last day of December in the fourth calendar year succeeding the date of such person's election.

The effective date of this Section shall be deemed to mean the date this Section as it now reads becomes effective.

No person who has been elected to the City Council as a Council member in any Council District in the City for two (2) successive four-year terms, after the effective date of this Section, shall be eligible to run for election as a member of the Council in any Council District, nor appointed to serve as a Council member for any additional successive term. Any person appointed or elected to the City Council as a City Council member to fill an unexpired term of two years or less in length shall be eligible to serve two successive four-year terms upon the expiration of the unexpired term for which that person was appointed or elected. Any person appointed or elected to the City Council as a City Council member to fill an unexpired term of more than two years in length shall only be eligible to serve one successive four-year term. The above shall not disqualify any person from running for election to the Office of Mayor or for any term or terms which are not successive. The effective date of this Section shall be January 1, 1991.

CITY OF ALAMEDA

ARTICLE II

Officers

Sec. 2-1. The following elective officers are hereby established: The Mayor and four (4) Councilmembers, who shall constitute the Council; Auditor; Treasurer.

Sec. 2-1.1. Notwithstanding any other provision of this Charter to the contrary, the matters contained in this Section shall be controlling as to the office of the Mayor. Commencing April 20, 1971, and thereafter, the Mayor shall be an elective officer of the City, and shall hold office for a term of four years and until his successor is elected or appointed and qualified, unless sooner removed from office pursuant to Article XX of this Charter or otherwise. The method of nomination and election of the Mayor shall be as provided in this Charter for the nomination and election of other elective officers of the City. The office of Mayor shall be a separate office and be arranged on a ballot in a separate column and shall be first in order of arrangement. Eligibility for office of Mayor shall consist of the qualifications set forth in this Charter for other elective officers. The provisions of this Charter which provide for the manner of selecting a candidate to fill office in the event of a tie vote shall apply to the office of Mayor. A vacancy in the office of Mayor shall be filled in the manner set forth in Section 2-7 of this Charter. The Mayor shall receive a monthly compensation of Two Hundred Dollars (\$200.00), payable at the time and in the manner as fixed by the Council, and shall be in addition to that provided in Sections 2-4 and 6-4. The intent of this section is hereby declared to be only to make the Mayor an elective officer of the City and to provide the compensation therefor, as set forth herein. Except to the extent they are inconsistent with the provisions of this section, other provisions of this Charter relating to the Mayor shall apply to the Mayor provided for by this section.

Sec. 2-2.

- (A) The following offices are hereby established and the incumbents thereof shall be appointed or removed by a vote of a majority of the full Council: City Manager, City Attorney, City Clerk.
- (B) During a period of ninety days immediately following the date of installation of any person newly elected to the Council at a regular or special municipal election or of any person newly appointed to the Council, the Council shall take no action, whether immediate or prospective, to remove, suspend, request the resignation of, or reduce the salary of, the incumbents in the aforementioned appointive offices.

Sec. 2-3. The City Council shall establish by ordinance offices for the administration of departments of the City and the incumbents thereof shall be appointed by and hold office at the pleasure of the City Manager. Once established those offices may be changed, deleted or new ones added by vote of a majority of the Council.

Sec. 2-4. The salary attached to the following offices shall be fixed by the Council at not less than the following amounts per annum: Auditor, \$3,600.00; Treasurer, \$3,600.00; City Manager, \$4,000.00; City Attorney, \$3,000.00; City Clerk, \$2,400.00. Each Councilmember shall receive \$50.00 for each meeting of the Council which he shall attend; provided, that no Councilmember shall receive such fees for more than two meetings in any one calendar month.

Sec. 2-5. Every elected officer of the City shall be a registered voter of the City at the time of filing nomination papers and for a period of thirty days immediately preceding the date of filing. Every elected officer and every officer appointed to a Board or Commission shall be a resident of the City during his tenure of office. Employees of the City, other than such officers, shall reside within the City, or within such distance of the City limits thereof as the Council may by ordinance prescribe.

Sec. 2-6. The term of each elective officer shall commence at 8:00 o'clock p.m. on the third Tuesday of the month following the General Municipal Election at which such officer was elected and continue for four years thereafter and until his successor is elected and qualified.

Sec. 2-6.1. Two Councilmembers, exclusive of the Mayor, shall be elected at every general municipal election. If for any reason two vacancies do not occur prior to the election, the term of the person receiving the lowest number of votes for Councilmember in the last general municipal election shall expire.

Sec. 2-7. Every vacancy in an elective office, arising otherwise than as provided in Article XX, shall be filled as follows:

- (A) Vacancies caused by the election of a Councilmember to the office of Mayor shall be filled by the candidate not elected for a contested Council seat who received the highest number of votes, provided said candidate received votes from at least ten percent (10%) of the total number of voters.
- (B) Vacancies occurring within six (6) months of any election shall be filled in the same manner provided by (A).

- (C) All other vacancies shall be filled by the Council within 60 days or the compensation paid Councilmember pursuant to Section 2-4 shall be forfeited until the appointment is made.
- (D) In the event that vacancies exist in a majority of the offices of Councilmember, such vacancies shall be filled by the two members of the Alameda School Board receiving the highest number of votes at the last election and the President of the Board of Library Trustees.

Sec. 2-8. The term of any person appointed to fill a vacancy in an elective office shall commence upon appointment and qualification and continue until 8:00 o'clock p.m. on the third Tuesday of the month following the next General Municipal Election, at which election a successor shall be elected to serve for the remainder of the unexpired term.

Sec. 2-9. If any officer of the City who shall remove from the City or absent himself therefrom for more than thirty days consecutively without the permission of the Council, or shall fail to qualify by taking the oath of office and filing his official bond, whenever such bond is required, within fifteen days from the time his certificate of election or appointment is mailed or delivered to him, or shall resign, or be convicted of a felony, or be adjudged insane, his office shall be vacant.

Sec. 2-10. In the event of a vacancy in the office of Auditor, Treasurer, City Attorney, or City Clerk, the Council shall, within twenty-one days thereof, designate someone to perform the duties of the vacant office until such time as a successor may be appointed. Until a successor is appointed the City Manager shall provide for the performance of the duties of the vacant office and is authorized hereby to execute documents required thereof to continue normal operations.

Sec. 2-11. Any incumbent of any elective Federal, State or County office shall be ineligible to hold any elective office or office of member of any board created by this Charter.

Sec. 2-12. The persons occupying the offices set forth or provided for by Sections 2-1, 2-2 and 2-3, their assistants and deputies and members of all boards provided for in Section 10-1 shall be officers of the City.

Sec. 2-13. All officers, boards and the Certified Public Accountant appointed pursuant to Subsection 3-7(C) shall have power to administer oaths and affirmations, to examine witnesses and compel their attendance by subpoena in all matters affecting their respective offices and positions.

Sec. 2-14. No person shall be eligible for the office held by that person for two complete consecutive terms immediately prior to the term for which the person seeks election or appointment. This section shall not apply to the office of Auditor or Treasurer or prevent persons in office from completing their terms.

Sec. 2-15. All references to Councilman herein shall hereby be changed to Councilmember.

CHARTER OF THE CITY OF BERKELEY
Sections 8 and 9, Article V

ARTICLE V.
ELECTIVE OFFICERS

Section 8. The elective officers.

The elective officers of the City shall be a Mayor, an Auditor, eight (8) Councilmembers, five (5) School Directors and nine (9) Rent Board Commissioners.

The Council shall consist of the Mayor and eight (8) Councilmembers, each of whom, including the Mayor, shall have the right to vote on all questions coming before the Council.

The Board of Education shall consist of five (5) School Directors, each of whom shall have the right to vote on all questions coming before the Board; provided, however, that the Mayor shall serve as a School Director with the right to vote on all questions coming before the Board for the four (4) year term commencing July 1, 1951.

Section 9. Election.

The Mayor, Auditor and School Directors shall be elected at the general municipal election on a general ticket from the City at large.

The Councilmembers shall be elected at the general municipal election by districts. The Councilmembers shall be recalled by districts.

The City is hereby divided into eight Council districts as hereinafter set forth, and, commencing with the general municipal election in November, 1986 and continuing thereafter until new districts are established as hereinafter set forth, such districts shall be used for the election and recall of Councilmembers and for filling any vacancy in the office of Councilmember by appointment. If and when new districts are established, as hereinafter provided, such new districts shall be used for the aforesaid purposes; provided, however, that no change in the boundary or location of any district by redistricting as herein provided shall operate to abolish or terminate the term of office of any Councilmember for which such Councilmember was elected or appointed. The eight Council districts, as established herein, shall be bounded and described as follows:

FIRST COUNCIL DISTRICT shall comprise all of that portion of the City of Berkeley commencing on the point at the center of the intersection of University Avenue and Grant Street, thence northerly along the center line of Grant Street to the center of

CHARTER OF THE CITY OF BERKELEY
Sections 9 to 12, Article V

The Council shall, by ordinance, adjust if necessary the boundaries of the Council districts herein set forth in the year following the year in which each decennial federal census is taken, commencing with the 1990 census, as provided and required in the Constitution and statutes of the State of California and in order that the eight Council districts shall continue to be as nearly equal in population as may be according to said census. Any such redistricting shall preserve, to the extent possible, the Council districts originally established herein and shall become effective as of the next general election of Councilmembers immediately following the effective date of said ordinance.

Commencing with the general municipal election in November 1986, each Councilmember shall be elected by the electors within a Council district, must have resided in the District in which he or she is elected for a period of not less than thirty days immediately preceding the date he or she files a declaration of candidacy for the office of Councilmember, must continue to reside therein during his or her incumbency, and shall be removed from office upon ceasing to be such resident.

The Mayor, Auditor and Councilmembers of the City shall be elected by a majority of the electors voting for each such officer. In the event no candidate for Mayor, Auditor or for Councilmember for one or more Council Districts receives a majority of the votes of the electors voting therefor, then there shall be a run-off election between the two candidates receiving the most votes, which run-off election shall be held four weeks after the initial election. No other issues shall appear on the ballot of any run-off election.

Should any provision of the amendment of this section be held invalid, the remainder of the amendment shall not be affected thereby.

Section 10. Eligibility of Mayor, Auditor, Councilmember, and School Director.

To be eligible for the office of Mayor, Auditor, Councilmember, or School Director, a person must, at the time of filing nomination papers for the office, be a citizen of the United States and a qualified elector of the State of California and of the City of Berkeley.

Section 11. (Repealed)

Section 12. Vacancy in Office of Mayor or Councilmember.

(1) If a vacancy shall occur in the office of Mayor or Councilmember:

CHARTER OF THE CITY OF BERKELEY
Section 12, Article V

(a) If the unexpired term is less than one year, the remaining members of the Council shall elect a successor with requisite qualifications to fill the vacancy for the unexpired term. Vacancies shall be filled only at a regular meeting of the Council after reasonable notice of intent to fill the vacancy has been given to all remaining members of the Council by any Councilmember by placement on the agenda. Should the Council fail to fill any vacancy within 60 days after its occurrence, the Council shall, within 10 days, order a special municipal election, to be held not less than 60 nor more than 90 days after the date of the order; provided, however, if any regular statewide or general municipal election is to be held in the City not more than 180 days or less than 80 days from the date of the occurrence of the vacancy in the case of a regular statewide election, or not more than 180 days nor less than 60 days from the date of the occurrence of the vacancy in the case of a general municipal election, then the vacancy shall not be filled by the Council nor by special election, but at said regularly occurring election.

(b) If the unexpired term is for one year or more, the vacancy shall be filled by special election, to be called by the Council within ten days after the occurrence of the vacancy and to be held not less than 60 nor more than 90 days after the date of the order; provided, however, if any regular statewide or general municipal election is to be held in the City not more than 180 days nor less than 80 days from the date of the occurrence of the vacancy in the case of a regular statewide election, or not more than 180 days nor less than 60 days from the date of the occurrence of the vacancy in the case of a general municipal election, then the vacancy shall not be filled by special election, but at said regularly occurring election.

(2) If at any municipal election a Mayor or the required number of Councilmembers be not elected by reason of a tie vote among any of the candidates therefor, then the Council, after the qualification of the persons, if any, elected thereto at such election, shall appoint one of the persons receiving such tie vote to fill such office. In such case the person so appointed shall hold office, subject to the provisions of the Recall, to and including the April 30th following the next general municipal election.

Section 12.1. Vacancy in office of Auditor.

If a vacancy shall occur in the office of Auditor, the Council shall appoint a person to fill such vacancy. If at any municipal election an Auditor be not elected by reason of a tie vote among any of the candidates therefor, then the Council, after the qualification of the persons, if any, elected thereto at such

SECTION 401. SPECIAL MUNICIPAL ELECTIONS. All other municipal elections that may be held by authority of this Charter, or of general law, or by ordinance, shall be known as special municipal elections.

SECTION 402. PROCEDURE FOR HOLDING ELECTIONS. Unless otherwise provided by ordinances hereafter enacted all elections shall be held in accordance with the provisions of the Elections Code of the State of California, as the same now exist or may hereafter be amended, for the holding of elections in cities of the sixth class, insofar as the same are not in conflict with this Charter.

SECTION 403. INITIATIVE, REFERENDUM AND RECALL. Except insofar as is otherwise provided by ordinances hereafter enacted, the provisions of the Elections Code of the State of California, as the same now exist or may hereafter be amended, governing the initiative, the referendum and the recall of municipal officers shall apply to the use thereof in the City insofar as the same are not in conflict with this Charter.

ARTICLE V.

THE ELECTIVE OFFICERS.

SECTION 500. ENUMERATION. (Elective Officers) The elective officers of the City of Hayward shall consist of a Council of seven members, to be composed of six Councilmen and a Mayor, all to be elected by the qualified voters of the City at large.

The first Mayor hereunder shall be elected at the General Municipal Election next following the effective date of this section. (AMENDED: STATS. 1964 CH. 41)

SECTION 501. VACANCY IN ELECTIVE OFFICE. An elective office becomes vacant when the incumbent thereof dies, resigns, is removed from office under recall proceedings, is adjudged insane, convicted of a felony, or of an offense involving a violation of his official duties, or ceases to be a resident of the City, or neglects to qualify within ten days following election or appointment, or shall have been absent from the State without leave for more than sixty consecutive days, or fails to attend the meetings of the body of which he is a member for a like period without being excused therefrom by said body.

A vacancy in an elective office shall be filled by appointment by the City Council, such appointee to hold office until the first Tuesday following the next General Municipal Election and until his successor is elected and qualified. At the next General Municipal Election following any such appointment, the person so elected shall serve for the remainder of any unexpired term.

No appointment to fill a vacancy in an elective office shall be made during such time prior to a General Municipal Election that nomination papers may be filed for candidates seeking office at said election.

In the event that Council shall fail to fill a vacancy by appointment within thirty days after such office shall have become vacant, it shall forthwith cause an election to be held to fill such vacancy. (AMENDED: STATS. 1964 CH. 41)

ARTICLE VI.

THE COUNCIL.

SECTION 600. ELECTIVE OFFICERS. (Term of Office) Except as otherwise provided in Sec-

tion 501 of this Charter, Elective Officers shall hold office for a term of four years from and after the first Tuesday following their election, and shall continue in office until their respective successors qualify.

Elective Officers in office at the time this Charter amendment takes effect shall continue in office until the expiration of their respective terms, and their respective successors qualify.

Ties among candidates for any office shall be settled by the drawing of lots. (AMENDED: STATS. 1964 CH. 41)

SECTION 600(a). COUNCIL COMMITTEES. The Council may organize among its members such standing committees as it may determine, each of which shall act as a fact finding committee for the purpose of considering all available information on proposed legislation or matters of policy referred to such committee by council and making recommendations thereon to the council as a whole.

SECTION 601. ELIGIBILITY. No person shall be eligible to be nominated for or hold office as a member of the Council unless he is and shall have been for at least one year next preceding his election or appointment, a resident and qualified elector of the City or of territory annexed thereto.

SECTION 602. COUNCILMAN TO HOLD NO OTHER OFFICE. No member of the Council shall hold any other city office or city employment, the compensation of which is paid out of municipal funds, nor be elected or appointed to any office created or the compensation of which is increased by the Council, while he is a member thereof, until one year after the expiration of the term for which he was elected.

SECTION 603. COMPENSATION. (Members of Council) Any compensation to be paid members of the Council shall be established by ordinance, and shall apply to all incumbent members of the Council. The Council may likewise change such compensation; however, such change shall not be effective until one or more members of Council becomes eligible for such change in compensation by virtue of beginning a new term of office.

In addition, each member of the Council shall receive reimbursement on order of the Council for Council authorized traveling and other expenses when on official duty.

(AMENDED: STATS. 1964 CH. 41)

SECTION 604. MAYOR (Powers and Duties) Until the General Municipal Election next following the effective date of this section, the Council's presiding officer shall be selected and hold office as provided theretofore. Thereafter, the elected Mayor shall be recognized as the official head of the City for all ceremonial purposes, and by the Courts for the purpose of serving civil processes. The Mayor shall be the presiding officer of the Council, shall preside at the meetings of the Council and shall sign the official documents of the Council. He shall be included as a member of the Council at all meetings of the Council for the purpose of determining the presence of a quorum. He shall be entitled to a vote on all matters coming before the Council, but shall possess no veto power. He may use the title of Mayor in all cases, but the same shall not be construed as conferring upon him administrative or judicial functions or other powers or functions of a Mayor under the general

(B) ELIGIBILITY. Only qualified voters of the City shall be eligible to hold the office of Councilmember.

(C) HOLDING OTHER OFFICES. Except where authorized by law, no Councilmember shall hold any other office or employment with the City.

(D) ELECTION. The regular election of Councilmembers shall be held on the last Tuesday of February in each even-numbered year, in the manner provided by State law. The terms of elected Councilmembers shall begin the second Monday after their election. They shall hold office for four (4) years. Elections shall be alternately for two (2) and three (3) Councilmembers, excluding elections to fill an unexpired term of office.

SECTION. 2.02 COMPENSATION

The members of the City Council shall not receive any compensation for their service to the City. Councilmembers may receive actual and necessary expenses incurred in the performance of their duties of office as determined by the Council.

SECTION. 2.03 TERM OF OFFICE

No person who has served two (2) full consecutive terms as a Councilmember shall thereafter be eligible to hold such office until one full intervening term of four (4) years has elapsed. For the purposes hereof, any person who serves as a Councilmember for more than eighteen (18) months of an unexpired term shall be considered to have served a full term.

SECTION. 2.04 GENERAL POWERS AND DUTIES

All powers of the City shall be vested in the City Council as the legislative body, except as otherwise provided by law or this Charter. The Council shall provide for the exercise of these powers and for the performance of all duties and obligations imposed on the City by law.

SECTION 2.05 VACANCIES; FORFEITURE OF OFFICE; FILLING OF VACANCIES

(A) VACANCIES. The office of a Councilmember shall become vacant upon his/her death, resignation, removal from office in any manner authorized by law, or forfeiture of office.

(B) FORFEITURE OF OFFICE. A Councilmember shall forfeit office if the member:

(1) lacks at any time during the term of office any qualification for the office prescribed by this Charter or by State law;



Councilmember Robin N. Parker

NOTES FROM TESTIMONY BEFORE CHARTER REVIEW COMMITTEE, 5/29/91

My focus is on leadership and I offer the following thoughts as you deliberate the issues surrounding directly elected mayor.

Mayor = City leader; symbol of power; "an official elected or appointed to act as chief executive or nominal head of a city" (Webster's)

role offers enormous leadership opportunities because as a political executive, the mayor has more freedom of expression to give opinion or position without consulting Council colleagues, depending on governmental structure and staff (elected, hired)

privilege of independence in expressing opinion or position is accorded mayor formally through structure/authority and informally through personal power/informal organization

Structure Models

Council-Manager System -----> Mayoral role to bring out best in Council colleagues and staff to foster common purpose
Facilitative role: "nominal head" (Webster)

Mayor-Council System -----> Mayoral role to activate city government and make it responsive to popular preferences and individual desires
Directive: "chief executive" (Webster)

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Parker, Testimony, 5/29/91
Charter Review Committee

Objective behind direct election of mayor in council-manager system is to promote leadership by giving mayor direct, city-wide popular support base.

Ask yourself: Is there a need to promote leadership in Sunnyvale?

Our size, voting patterns, and municipal excellence suggest no need for an independent political executive in the form of a directly elected mayor.

Sunnyvale Strengths

SV's council-manager system -----> offers an exemplary, results-oriented model of mayoral leadership more conducive to decade of '90s and beyond

- ☐ allows for the talents of many to contribute; promotes team concept; strength and visionary leadership through diversity
- ☐ is democratic; the people do elect their mayor; every Council-member is elected by citizenry
- ☐ allows mayoral position to be more accessible to more citizens
 - avoids higher costs of well-financed and professionalized mayoral campaigns
 - accountability on two levels- with both citizenry and Council colleagues
- ☐ avoids potential conflict between mayor and council majority
 - SV is best evidence that local policy leadership can best function through a cohesive team of councilmembers which selects its leader as mayor.
- ☐ limits mayoral concern over how much "'sovereignty'" must be yielded to regional government, a structure much talked about and in our future

Members: Kapowich, Anning, Gardner and Daley-McCrum

Question #1:

Should the Mayor be directly elected by the voters?

Recommendation:

No.

Reasons for not changing:

*1. There are no major problems in the city to create a reason for a change.

*2 This city is powerfully successful in its influence in the county and, in the State and Nation. Sunnyvale is nationally known for its excellence in the Council/Manager system of its government.

*3 The city's performance-based budgeting technique was introduced in the U.S.Congress as a bill in early 1991. The merits of this method were recognized by the City Council Members and OK'ed its implementation, demonstrating the effectiveness of the Council/Manager system

*4 Sunnyvale has a "we" form of government instead of an "I" format, which includes the City Council and Administration listening to the citizens ideas and opinions and taking action on them..

*5 The City Council Members are directly voted into office by the people. Therefore, the Council Elected Mayor is

f a Directly Elected Mayor.

Question #2

Should the City Council return to the prior method of selecting a mayor to serve a term of one year?

Recommendation:

No. Two years gives each Mayor an opportunity to more fully implement his/her ideas.

Question #3.

(A.) What would be the effect of a directly elected Mayor on the Mayor-Council relationship, (B). on the Council-Manager relationship and on how the City operates”

Recommendation to A:

*1. Research indicates that the Directly Elected Mayor tends to seek more “power” in the office, which could lead to serious conflicts within the City Council and destroy the excellent unified relationship which now exists.

*2. Whether political clout is necessary for a Sunnyvale Mayor is doubtful. The City operates in a very successful manner. with its Council/Manager type of government.

Former Council Members have put themselves in the political arena to become members of the State Assembly, are in high levels of the State Judicial System and advisors at the Federal Level.as well as elected to the S.C. C. Board of Supervisors, after having served on the Sunnyvale City Council.

*

Recommendation to B:

*1. It could threaten the excellent Council/Manager relationship as it now exists. A relationship that produced Sunnyvale’s very effective performance-based budget, which Congress itself is now considering with the direct advice of our City Manager and a former Council-elected Mayor.

Question #4.

Should rebuttal arguments for and against a directly elected may be included in the election materials sent to voters?

Recommendation:

Yes..

Please Note:

It is the opinion of the committee that if the question of a Directly Elected Mayor is put on the ballot, the following type of question be included on the ballot:

Question:

Should the current system of the Council/Manager form of government in which the Mayor is voted on by the City Council remain in place?

Rationale: We found question #1 to be misleading in the public's mind. People feel their right to voice is in question. and they don't realize they are voting for an inevitable change of Sunnyvale's current Council/Manager type of government.,

Parker, Testimony, 5/29/91
Charter Review Committee

Call for Action

Municipal leadership in the '90s can best be described through the following quote:

"As for the best leaders, the people do not notice their existence. The next best, the people honor and praise. The next, the people fear; and the next, the people hate. When the best leader's work is done the people say, 'We did it ourselves.'"

Lao-tzu

If there is anything that needs to be shaken in SV, it's finding ways to strengthen and increase citizen involvement and participation in our municipal system.

Response to Question from Mike K

Mayor-Council-Manager System -----> hybrid model where separation of powers is inherent; interim step to mayor-council system; is not a council-manager system and does not derive its benefits

Some stats: 2/3 California cities with council-manager system directly elect mayor; 40% allow mayoral vote in council meetings only in a tie; 21% have veto authority

↪ versus in council-manager system where 3% only vote in tie and 2% veto

"What is alarming is that the good accomplished by [direct election of mayor in council-manager system] is being undermined because in many of these same cities mayors have been separated from their Councils in the hope of promoting the type of strong political leadership found in mayor-council cities. ... hybrid mayor-council-manager form of government will create more leadership problems than it resolves."

Greg Protasel, "Leadership in Council-Manager Cities"

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Nelson, Davis, Knaebel

QUESTION 5.

Should Council Members who run for Mayor vacate their Council seat at the time of declaring for Mayor?

ANSWER.

Council Members who announce their candidacy [option: enter into a campaign] for directly elected Mayor should vacate their Council seat at the conclusion of the election at which they run for Mayor.

Explanation.

This will allow citizens interested in Council service the opportunity to run for the seat being vacated by a Council Member interested in the Mayor's job. This alleviates the possibility of having to hold a special election to fill the unexpired term of a Council Member who is elected as Mayor. This of course is a savings to the City. Additionally this will make running for Mayor a serious decision on the part of the Council Member wanting to make the race.

As reported by member Nelson, when members of the public were specifically asked about this issue they responded that they thought the Council Member should vacate their seat. Additionally all of the current members of the Council who appeared before the Committee advocated that there should not be a "safe seat" to run for Mayor from.

Finally, after talking to politicians from other Cities who have gone to the directly elected Mayor idea it was apparent that Council Members who had safe seats were prone to run for Mayor. Examples were Ash in Santa Clara, Lewis in San Jose, and a long list of others, in their joint electoral history.

QUESTION 6.

Should Council Members who run for Mayor declare their intention in ample time to allow potential candidates interested in Council service to qualify for November elections? (How much is "ample time"?)

ANSWER.

Option 1.

In the event that the voters of Sunnyvale vote to directly elect the Mayor, any Council Member who decides to run for election to Mayor must declare their intention in ample time to allow potential candidates interested in Council service to qualify for election. The declaration of intent should be

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made public at least 180 days prior to the close of the filing period for the election at which the election to Mayor would take place.

Option 2.

Any eligible individual who wishes to run for Mayor must declare their intention to run for election to Mayor at least 180 days prior to the close of the filing period for the election at which the election to Mayor would take place.

Explanation.

The requirement for incumbent City Council Members to make an early declaration of intent to run for Mayor would help to offset the advantage of incumbency in an election. Six months (180 days) early declaration of intent to run for Mayor would give all candidates ample time to prepare and run for the office, and allow for candidates for the seat being vacated by the Council Member, to also prepare and campaign for that seat.

QUESTION 7.

Which Council seat should be designated as the Mayor's seat?

ANSWER.

The seat to be declared the Mayor's seat should be picked by lot by the current Members of the City Council from among the seats up for election in 1993.

Explanation.

There does not seem to be any factors that weigh one seat against another for the purpose of designating one to be that of the Mayor. Selection by lot would eliminate any value judgements being placed on one seat's suitability over another.

QUESTION 8.

If approved by the voters, how should the transition to a directly elected Mayor occur?

ANSWER.

On the same ballot on which a measure is put before the Sunnyvale voters to directly elect the Mayor, there should be a measure that allows for the designation, by lot, of one Council seat from among those that have terms

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Sub Committee IV Report

Members: Kapowich, Anning, Gardner and Daley-McCrum

Question #1:

Should the Mayor be directly elected by the voters?

Response:

Recommendation is no.

Reasons for not changing:

*1. There are no major problems in the city to create a reason for a change.

*2. The city of Sunnyvale is nationally known for its excellence in the Council/Manager system of its government.

*3. Sunnyvale has received nationwide recognition for its smooth running city management.

*4. The city's performance-based budgeting technique was introduced in the U. S. Congress as a bill in early 1991.

The merits of this method were recognized by the City Council Members and O.K.ed its implementation., demonstrating the effectiveness of the Council/Manager system.

*5 Sunnyvale has a "we" form of government instead of an "I" format, which includes the City Council/City Management listening to the citizens ideas and opinions and taking action on them..

*6. The City Council Members are directly voted into office by the people. Therefore, the Council Elected Mayor is a Directly Elected Member of the City Council.

Question #2

Should the City Council return to the prior method of selecting a mayor to serve a term of one year?

Response:

No. Two years gives each Mayor an opportunity to more fully implement his/her ideas.

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Question #3.

(A.) What would be the effect of a directly elected Mayor on the Mayor-Council relationship, (B). on the Council-Manager relationship and on how the City operates”

Comment: It is the opinion of the committee members that this question was not clearly defined and left the members in a somewhat nebulous position.

Response to A:

*1. It has been noted through questioning individuals and researching other cities, that the Directly Elected Mayor would be apt to try and develop more political clout. and ease into a more “power” position, which could lead to serious conflicts within the City Council and destroy the current unified relationship that exists.

*2. Whether political clout is necessary for a Sunnyvale Mayor is doubtful. The City currently operates in a very successful manner. It should be noted that Former Council Members have asserted *themselves* in the political arena to become members of the S.C. C. Board of Supervisors, State Assembly, high levels of the State Judicial System and advisors at the Federal Level.

*

Response to B:

*1. It might change the way the Council./Manager Relationship as it now exists, by a directly elected Mayor trying to assert more power into his position This could then change the currently cooperative relationship as it now exists.

Question #4.

Should rebuttal arguments for and against a directly elected may be included in the election materials sent to voters?

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Response:

Yes..

Please Note:

It is the opinion of the committee that if the question of a Directly Elected Mayor is put on the ballot, the following type of question be included on the ballot:

Should the current system of the Council/Manager form of government remain in place, electing a Mayor from the elected City Council Members?

We found question #1 to be misleading in the public's mind. People feel their right to voice is in question. and they don't realize they are voting for a change of Sunnyvale's current Council/Manager type of government.,

**Should the Mayor be directly elected by the voters?
Minority Report**

The committee has heard public testimony demonstrating an interest in allowing for a direct elected mayor in Sunnyvale. Therefore, it is proposed that the Charter Review Committee recommend and support the citizens of Sunnyvale right to directly elect their mayor. The following are the main reasons for changing our current system to one that would allow for greater citizen participation in our city government.

A direct elected mayor would allow for the majority of the citizenry to have the opportunity have a choice in the leadership of the city. This would allow for the everyone to have a voice in the preference for mayor not just the city council.

A directly elected mayor chosen for a full four year term would allow for continuity in leadership with in the city and within the city council. In addition, it would give the city a focal point allowing the mayor to develop and foster regional contacts and interactions.

A directly elected mayor would have the opportunity to improve community/political communication through the visibility of leadership.

A directly elected Mayor would be more identifiable and have more clout to handle community/political issues.

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that expire at the time of the 1993 general election, to be designated as the Mayor's seat. These measures could be placed on the November 1991 ballot.

If the measure to directly elect the Mayor is passed by the voters, the lot drawing to determine the designated Mayor's seat should take place at the next regularly scheduled City Council meeting following the November 1991 election. The election of the Mayor should take place at the 1993 general election at which time the terms of seats now numbered one, two, and three expire.

Explanation.

This procedure would be the least disruptive of the existing election cycles for City Council seats.

**1991 CHARTER REVIEW COMMITTEE
LEGAL BACKGROUND**

In California there are two classes of cities, charter city or general law city. The vast number of cities are general law cities. Sunnyvale is a charter city with a seven member council.

Charter cities are free to use any form of organization and allocate duties, powers, and functions between elected and appointed officers of the city. Most cities use one of two basic forms:

1. Council-Manager. All administrative authority is vested in the City Manager and policy-making powers are reserved to the City Council. The Mayor may be elected by the voters or selected by the councilmembers.

2. Strong Mayor-Council. This entails a directly elected Mayor with executive powers and a Council with legislative powers.

The following lists identify charter cities in the Counties of Santa Clara, San Mateo, and Alameda. Charter cities with directly elected mayors are identified with an asterisk.

SANTA CLARA

Gilroy*
Mountain View
Palo Alto
San Jose*
Santa Clara*

SAN MATEO

Redwood City
San Mateo

ALAMEDA

Alameda*
Albany
Berkeley*
Hayward*
Oakland*
Piedmont
San Leandro

General law cities with directly elected mayors include Milpitas (Santa Clara), San Bruno (San Mateo), and Fremont, Newark, Pleasanton, and Union City (Alameda). In a general law city, the only questions presented to the voters are (1) Shall the electors elect the Mayor and four City Councilpersons? (2) Shall the term of office of Mayor be two years? (3) Shall the term of office of Mayor be four years? There are no other issues typically dealt with.

Successive term limitations have been struck down by the Court of Appeals for general law cities and charter counties. Successive term limits in charter cities have not been the subject of litigation.

A lifetime limit on Council terms of office in a charter city is currently the subject of a Court of Appeal case.

TESTIMONY FOR CHARTER REVIEW COMMISSION

BARBARA WALDMAN

Sunnyvale has a "COUNCIL-MANAGER" form of government where we have a seven member council elected at large for individual seats. The Mayor is elected by the Council to represent them and perform all the ceremonial duties required of a mayor. He as you already know is elected by the Council for a term of two years since 1987. Prior to 1987 he was elected for one year. The Council under this system establishes the policies and direction for the City, which are administered by our professional city manager Tom Lewcock.

The City Manager is hired by the Council to administer its policies; he in turn hires and directs all city personnel. The City Manager serves at the pleasure of the whole Council.

An important thing to remember is that all power in a Council Manager form of government is assigned to the Council as a whole. It is a parliamentary system, whether they represent majority or minority interest in the community, whether they have economic power or not. Each Councilmember has the same rights, obligations, and the same possibility to be effective as does every other council member. The issue here is what effect a directly elected mayor would have on this parliamentary system.

First a four year directly elected mayor would create another level of bureaucracy between the councilmembers and administration. Today each councilmember has direct and equal access to the administrative staff from the City Manager to administrative assistants. Each Councilmember's issues are given equal consideration and time. It has

been argued that there will be no change in the way staff handles council matters. While at first look it appears that way but in reality it is only a matter of time before the Mayor needs his own secretary and staff to handle his added workload. We can not afford to even consider such additions to our budget at this time when revenues not only for Sunnyvale but for all cities are falling below the anticipated expectations due to the slowing economy, added state mandates and expenses placed on cities by the State Government in its efforts to balance its own budget without raising more revenues.

Secondly, a directly elected Mayor would create another policy making level which could come into conflict with the Council's or individual councilmembers agendas. This is because a directly elected Mayor is perceived as the major policy maker and controls committee assignments.

San Jose is a perfect example of this, clearly Tom McEnery set the goals and policies for San Jose the last eight years with his vision for the downtown. Susan Hammer is establishing her goals for the next eight years. These goals all may be wonderful and valid but what happens to those in the community and on the Council who have different goals and visions? These goals can and often are thwarted by the Mayor through their power to make appointments and set priorities. If a councilmember does not agree with the Mayor the directly elected Mayor for two years has the power to deny appointments to regional committees which could be a vehicle for that councilmember to develop support for his concepts with in the community. One such example is my own if I had been denied the opportunity to represent Sunnyvale on the Inter-Governmental Council I would not have been in a position to create a county wide committee to

address this issue and we would not have the Child Care Employer's Option Manual or the City's Manual which is almost complete today. Therefore in order to be certain to get some of your issues addressed Councilmembers would be compelled to support the Mayors Agenda . A four year mayor could restrain and render a councilmember ineffective for his four year term thereby denying the constituency that voted for that councilmember equal opportunity to pursue their issues.

Thirdly, a directly elected four year Mayor would introduce partisanship in the elections, allowing political parties to have more dominance and control at the local level. Even when the office is declared non-partisan, political alignments are made known in the community through party participation, endorsements, and word of mouth. Because of the concentration of power in the Mayor, political parties would be encouraged to influence the election to be sure their philosophies dominate city policies. An example of this is Chicago where Mayor Daley was elected and through his party ties was able to gain control of the city political machine which is thriving today under his son's leadership. San Jose's elections clearly are dominated by party interest.

It is argued that the majority of cities with populations of our size are using the directly elected mayor system. How many of those cities though have shown an improvement in management of the city or the services rendered its citizens? How many receive financial management awards and have a reputation for excellence of management and service?

Another argument raised is that you obtain better regional representation through the continuity of a four year Mayor. Most

regional bodies call for a Mayor to be a cities representative or his designee. Due to the heavy demand most regional bodies are represented through Mayor's appointments, those going to the councilmembers he favors. I have found in my experience on the Inter Governmental Council, as President of the Santa Clara County Cities Association, three years on the Airport Land Use Commission and other bodies that it is not the office of mayor that makes one an effective representative on an interagency body but rather the representatives skills in presenting his case and tactfully negotiating with other representatives. I can cite several examples where the Mayors representation has become a source of contention between jurisdictions due to the Mayors lack of necessary skills and abrasive manner.

Another argument has been made that there would be one person that the citizens could continuously look to for help or to address their grievances. Under the present system the citizens have seven people that they may elicit to address their concerns, access which is not screened through a Mayor's office who may not agree with the constituents concerns.

There may come a time when Sunnyvale may want to reconsider the issue of a directly elected Mayor. I do not feel that this is the time to change the direction of the city. It is a time we should be spending on such issues as affordable housing, the homeless, childcare, the maintenance of healthy revenue sources, traffic and etc.

Thank you for allowing me this opportunity to address the Commission.

May 8, 1991

CHARTER COMMITTEE
WASHINGTON PARK
SUNNYVALE, CALIF.

My name is Cesar J. Perez I reside with my wife Suzanne and four wonderful Daughters at 1585 Klamath Dr.

I have been working and living in Sunnyvale since 1958, I'm very concerned but positive about the future of Sunnyvale-I'm very proud that I have had the opportunity to contribute my time and knowledge in it's growth-serving on numerous committees and commissions has given me an understanding of how the City works.

Also my business has afforded me the opportunity to "Sell Sunnyvale First" I am committed to that slogan--because-----I believe we live in the most outstanding city in the United States. My Company Sunnyvale Realty has played a small but important role in Sunnyvales growth. Their are NO retirement plans in our future (GOD WILLING?).

In the 30 years I have lived in Sunnyvale I have witnessed the political climate as open, conscientious, and above all else very concerned about our "Quality of Life".

When I first arrived in the city of Sunnyvale 1958--the Motto of the city was "The Time of Progress".

Fred Boomer, was Mayor, council members where Mark Russell, Robert Sapp, Walter Jones, Ernie Stout and Roy Gillmore--theirs was truly the beginning in the Growth of Sunnyvale--City Hall, corporation yard, new sewage treatment plant, Washington Park swimming facilities and continued support of new industry, business, and housing--these three elements formed the tax base that was needed to give us the quality of life we have in Sunnyvale today--A quote from that 1958 council--

"Safe guarding the citizens dollar is of primary importance to our city government"

It is now the year 1991--and this quote has never changed.

"We are blessed by having the right people at the right time."

Today-we are faced with political decisions that may change the direction that has been so successful.

Should we have a council with a weak mayor?(more accurately described)---

Because the Mayor is not chosen directly by the people, and because the council retains all real power-- It is commonly referred to as "A weak-Mayor." Should we have a strong-mayor (more accurately described) the relations between the mayor and city council are very much, like the governor and the Legislature.

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Also strong-Mayor:

1. Has the power to appoint many city officials, and can by Law in some instances remove them as well
2. Has veto power over actions of the city council.
3. Has the Budget prepared under their authority-this is a very substantial source of power.
4. Is elected by the voters independently of the city council.

TO SUMMARIZE

The mayor-council form of government in California is of two types: Strong-mayor and weak-mayor: the duties of weak mayors are largely ceremonial and the council retains primary responsibility for Both policy making and administration.

Strong-Mayors: the council must share its power with strong mayors.

When political scientist refer to a mayor as "Strong" or "Weak" they are not talking about the personal or leadership qualities of the mayor but rather--the amount of power granted to him/her by the municipality's Form of Governments.

There are some who say that a directly-elected mayor would benefit the city because it would add more prestige.

I personally do not except this position. I have great difficulty as to what benefit would come to Sunnyvale. But I can see a Lot of Benefit to the one who is elected mayor I am convinced that any change from the original concept of rotating the appointment of a mayor every year by council majority will create conflict and dilute the relationship between the council and city manager form of Government we now enjoy.

The chief strength in our present form of government is that the council must remain responsive to the will of the people in setting policy, while the city manager is left free to perform his/hers administrative duties without being side tracked by the political chores which are the natural and necessary lot of elected officials.

I repeat again that since 1958 we have provided our citizens a "Quality of life unsurpassed by any city in Santa Clara County or in the United State. "Isn't this our goal"?

I am asking you the charter committee of carefully consider my words.

I am recommending that you consider to "revert back to the system of electing the mayor on a year by year basis by a council majority vote.--

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My analysis of the 15 issues are as follows:

Issue 1. By reverting back to the year by year Mayor. You eliminate issues #2 through #11.

Issue 12. I'm in favor of two-term limit. "Eight is enough"!

Issue 13. This issue is fair and acceptable.

Issue 14. " "

Issue 15. No recommendation. (should be a council decision).

My final words are as a former prominent mayor once said.

"IF IT AIN'T BROKEN DON'T FIX IT".

I will be happy to answer any questions you may ask

CESAR J. PEREZ, JR.
1585 KLAMATH DR.
SUNNYVALE, CA 94087
(408)739-1923

May 8, 1991

Dear Members of the Charter Review Committee:

I apologize for not being able to present these comments in person, but I only found out very late this afternoon that a critical meeting of the County Redistricting Commission, of which I'm a member, has been rescheduled to a later time. Hence, my inability to arrive at your meeting before its conclusion.

Let me preface my remarks by sharing my conviction that a term limitation for elected officials is good; it works in Sunnyvale, as evidenced by the fact that five of the current City Councilmembers have not yet completed one full term; it will work on the State level as well.

However, I am opposed to Lifetime Term Limitations not because of Constitutional reasons - I'll leave that argument up to the judges and the courts - but because of common decency and common sense.

Here are just a few reasons why Lifetime Term Limitations are a bad idea for Sunnyvale:

Ron Gonzales
Harry Cude
Dolowries Wulfhorst
Gil Gunn
John Mercer
Dianne McKenna

If Lifetime Term Limitations were in place now, none of the above former Councilmembers could run again for the City Council.

Is it because they did a bad job?

Were they guilty of unlawful conduct while in office?

They would be precluded from running for a Council seat for the sole reason that they had honorably served their city for eight years.

They would automatically be put in the same category as a convicted felon.

But the most compelling reason for not instituting a lifetime term limitation for City Councilmembers is very simple: the current system is working.

Just think: two members of the City Council who had to retire from office because of the two-term limitation ran for election after having been out of office two or more years.

One won.

One lost.

The system works, and works beautifully.

Thank you.

Lynn Briody