

MEMORANDUM

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TO: Members of the Porterville Charter Review Committee

FROM: Julia Lew, Porterville City Attorney

SUBJECT: Recommended Legal and Other Minor Modifications to Charter

The following contains a discussion of several legal issues with the existing charter, along with suggested revisions. Suggested additions are underlined, and suggested deletions are presented in ~~striketthrough~~.

SECTION 5

Section 5 contains provisions for holding city elections, but it does not contain any provisions specific to elections related to charter amendments.

AB 1344 (2011) changed the requirements for adopting and amending charters. Charters and charter amendments now must be presented to the voters at a statewide general, statewide primary, or regularly scheduled municipal election date. This changed prior law which allowed for special elections for charter amendments.

Under the existing charter, special elections are to be held substantially in the same manner as general elections – which are to be held at the same time as the statewide primary. Thus, there is no conflict between the existing charter and AB 1344.

The charter could, however, be amended so that it matches the language of AB 1344. Under the language of the existing charter, an amendment could only be approved at the same time as a statewide primary. If the city were to adopt the language of AB 1344, the charter would allow an amendment to be submitted to the voters at the time of a statewide general election as well. If there is a charter provision that becomes outdated or illegal due to changes in state or federal law, or if any charter provision

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becomes the subject of a lawsuit, it may be desirable to present a charter amendment to the voters at the earliest possible time.

SECTION 8

We recommend the following change to Section 8:

¶ 1:

The elective officers of the city of Porterville shall be five ~~councilmen~~ council members, who shall be elected from the city at large at a general municipal election.

SECTION 9

Section 9 contains the provisions for installing newly-elected council members in office. The current version of the charter indicates that council members take office on the Monday next succeeding the election day. This is impractical because the results of the election are not necessarily certified within this time. If the election is consolidated (i.e., done concurrently with the County) then the County canvasses the votes and must present the results to the City within 28 days. The City Council then must declare the results and install the newly elected members at the first regular meeting, or special meeting, following the presentation of the results from the County. (See Elec. Code §§ 10262, 10263; see AB 2790 (2004).) The law governing this area was updated in 2004, after the most recent charter amendment, and so the charter should be updated accordingly.

We recommend the following changes:

¶2:

The members of the council shall be elected by the qualified voters of the city at a general municipal election to be held in the said city at the same time as the primary election for state offices for the state of California. They shall hold office for the period of four (4) years from and after the Monday next succeeding the day of their election date upon which they are installed in office in accordance with this section and until their successors are elected, and qualified; installed in office. ~~provided the respective terms of any council member presently serving or elected at the time of the adoption of this amendment shall be extended one additional year to the even-numbered year following the expiration of their respective terms.~~

¶5:

The council shall reorganize at ~~its next~~ the meeting following each municipal election wherein the newly-elected members are installed and shall choose one of ~~their~~ its number to serve as president of the council to be known as mayor.

¶6:

~~The council shall meet at its usual meeting place on the first Monday after any municipal election, duly canvass the returns and declare the result thereof, and install the newly elected officers, if any. Where the canvass of the vote is to be completed by the city elections official, the canvas shall be completed no later than the fourth Friday after the election. Upon completion of the canvass, the elections official shall certify the results to the city council, which shall meet at its usual place of meeting no later than the fourth Friday after the election to declare the results and to install the newly elected officers. For a consolidated election, the city elections official, upon receipt of the results of the election from the elections official conducting the election, shall certify the results to the city council, which shall meet at its usual place of meeting no later than the next regularly scheduled city council meeting following the presentation of the canvass of the returns, or at a special meeting called for this purpose, to declare the results and to install the newly elected officers.~~

Under existing law the County Elections Official has 28 days following the election to canvass the votes and provide the results to the City. I have not included this particular timeframe because it could conceivably change. The rest of the paragraph is essentially verbatim to Elections Code section 10262 and 10263. The first part of ¶ 6 is probably unnecessary because the City will consolidate its elections with the County. However, I see no harm in having the option to have a city-conducted election in the future.

To be clear, the City may adopt different provisions from what is provided above. However, the City will not be able to compel the County to complete its canvas by the following Monday. Thus, as a practical matter, the installation of the new council should be tied to the County's time for canvassing the votes. The committee could recommend a longer period after the County completes its canvassing, or the committee could recommend a specific date that is at least 28 days after election day. The committee could also recommend a shorter (or longer) time period for city-conducted elections.

SECTION 12

We recommend the following changes to Section 12:

¶ 2:

The ayes and noes shall be taken and recorded upon the passage of all ordinances, ~~and resolutions, or other actions~~ and entered upon the record of the proceedings of the council. ~~Upon the request of any member of the council, the ayes and noes shall be taken and recorded upon any vote.~~ All members present at any meeting must vote; provided that no such member of the council shall cast a vote when to do so would be contrary to the applicable provisions of state law, including laws pertaining to conflict of interest.

¶ 7:

No ordinance shall be passed by the council at any time other than at a regular meeting, ~~or~~ and until its publication at least once in the official newspaper of the city at least three days before its final passage.

¶ 9:

Except as otherwise provided by general law, or this charter, no action providing for the granting of any franchise, or for the establishing or changing fire zones, or for the ~~imposing~~ establishing of any penalty, shall be taken except by ordinance.

SECTION 18

Section 18 involves the setting of compensation of city officials and employees. AB 1344 (2011) extends to charter cities an existing provision applicable to general law cities, which prevents any contract with a local agency executive from providing for a cash settlement (i.e., severance pay) that exceeds the amount remaining on the contract for up to 18 months.

The existing charter does not contain any specific limitation relative to contractual severance pay. The existing charter does indicate that officials and employees shall not be entitled to any compensation following resignation or removal from office, but the section does not address, and does not apply to, a negotiated severance. It is therefore advisable to have a limitation on cash settlements that is consistent with AB 1344.

We recommend the following change:

¶ 3:

The salary of any appointive official or employee of the city shall cease forthwith with his/her removal or resignation from office or employment, and he/she shall only be entitled to compensation for that expired proportion of the month or term of service during which he/she shall have performed his/her duties. Nothing in this section shall preclude an employment contract from providing for a cash settlement upon termination of the employment contract, provided that the maximum cash settlement shall not exceed an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract, or if the unexpired term of the contract is greater than 18 months, then the maximum cash settlement shall not exceed an amount equal to the monthly salary of the employee multiplied by 18.

SECTION 21

Section 21 contains a requirement that the city manager become a resident of the city within a reasonable time of taking office.

The California Constitution (Art. XI, § 10.5) expressly states that charter cities may not require employees to be residents of the city, but that employees may be required to reside within a specified distance from the city for purposes of responding to emergencies. The Attorney General has issued a formal opinion indicating that appointed city managers are employees for purposes of this section. (See 59 Ops.Cal.Atty.Gen. 136.) There is some argument that a charter city may identify its city manager as an "officer" and not an "employee", and therefore the constitutional provision would not apply. However, in its opinion, the Attorney General argues that the purpose of the constitutional provision would be defeated if a city could simply refer to its employees as "officers", so as to avoid the requirement. This argument has never been tested in court, but the court would probably consider the Attorney General's opinion. Most likely, a court would find that a residency restriction of an appointed city manager is void and unenforceable.

We therefore recommend the following change:

¶ 1:

The city manager shall be the administrative head of the city government. ~~The city manager shall establish residency in the city of Porterville within a reasonable period of time within the discretion of the council.~~ His/her powers and duties shall be as follows:

SECTION 59

We recommend the following changes to Section 59:

Heading:

Sec. 59. ~~Employment~~ Hiring of Certified Public Accountant To Audit City Books.

¶ 1:

The city council shall ~~employ~~ contract with a certified public accountant annually to investigate the accounts and transactions of all city officers and employees having the collection, custody or distribution of public money or property, or the power to approve, allow or audit demands on the city treasury.