



CITY COUNCIL AGENDA REPORT

MEETING DATE: July 3, 2007

ITEM NUMBER:

SUBJECT: Ballot Initiative for Elected Mayor

DATE: June 21, 2007

FROM: City Attorney's Office and City Clerk's Office

PRESENTATION BY: Kimberly Hall Barlow, City Attorney

FOR FURTHER INFORMATION CONTACT: Kimberly Hall Barlow, City Attorney, 714-754-5399

RECOMMENDED ACTION:

Determine whether to direct preparation of a ballot initiative to let City voters determine whether to have a directly elected Mayor, including the term, any applicable term limits, and any enumerated powers of the Mayor. If an initiative is to be placed on the ballot, determine on which election to place the item before the voters and direct staff to take steps to draft the measure and call the election.

BACKGROUND:

Recently, former Council Member and Mayor Gary Monahan requested that the Council consider placing an item on the ballot for voter determination as to whether the City should have a directly elected Mayor. Mayor Mansoor requested that this item be placed on the agenda for the first meeting in July.

Staff previously conducted a survey of all Orange County cities to ascertain which communities currently have directly elected Mayors. The survey also includes additional detail as to the authorities and additional compensation, if any, for the position. A copy of the survey results is attached as Attachment 1.

ANALYSIS:

Currently, the Mayor is selected by a majority of the City Council from among currently serving Council Members. This is the standard method among general law cities. Cal. Govt. Code § 36801: "The city council shall . . . choose one of its number as mayor, and one of its number as mayor pro tempore." However, a general law city is permitted to have a mayor that is directly elected by the voters, if certain procedures are followed.

The electors of the City may determine whether to have a directly elected mayor and may also determine the length of the term of such elected mayor. Cal. Govt. Code § 34900. Upon voting on the issue of whether to have an elected mayor, "[i]f a majority of the votes cast on the proposition is for it, the office of mayor shall thereafter be an elective office." Cal. Govt. Code § 34902 (a). The ballot measure for the election on the issue must be "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." Cal. Govt. Code § 34901.

If the approval of an elected mayor results in the council member terms not being 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." Cal. Govt. Code § 34906. Thereafter, 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.

Generally speaking, "[t]he mayor is a member of the city council and has all of the powers and duties of a member of the city council." Cal. Govt. Code § 34903. An elected mayor has the same powers as an appointed mayor. Cal. Govt. Code §§ 40601- 40604. However, an elected mayor, "with the approval of the city council, shall make appointments to boards, commissions and committees unless otherwise specifically provided by statute." Cal. Gov't Code § 40605. This means that an elected mayor selects individuals for appointments, but subject to the City Council's "right to reject mayoral appointments." 81 Op. Atty. Gen. Cal. 75 (1998). These appointments include "regional boards, commissions, and committees" and all "appointments to city council subcommittees." Id. The City Council may withhold approval of an appointment submitted to it by the mayor, but may not dictate to the mayor who the appointee must be. An elected Mayor's power extends to the power to appoint members of the City's Planning Commission, but subject to the approval of the City Council. 89 Op. Atty. Gen. Cal. 178 (2006).

In addition, an elected mayor may receive a salary in addition to the salary established for members of the council. California Government Code section 36516.1 allows a mayor to "be provided with compensation in addition to that which he receives as a councilman. Such additional compensation may be provided by an ordinance adopted by the city council or by a majority vote of the electors voting on the proposition at a municipal election." The amount of any such additional compensation is unlimited if it is established by the voters. Compensation established by ordinance is limited as set forth in California Government Code section 36516.

If there are additional powers or duties which an elected mayor would be intended to have in Costa Mesa, Council would need to identify what additional powers and/or duties would be proposed for an Elected Mayor in order to research whether those specified duties could be granted by the electorate or legislative body of a general law city, so that those intended to be granted could be specified in any proposed ballot

measure.¹ The Council should also determine whether a proposed ballot measure should provide for additional compensation to an elected mayor. If not provided for in the ballot measure, additional compensation may be provided in the future by ordinance.

Currently, there are five elected council members, who are elected at large in staggered terms. At the last election, two council members were elected and at the next election, three council members will be elected. If a directly elected mayor is created with a two-year term, rather than a four-year term, there is a possibility, depending upon when the directly elected mayor position is created, that the staggered terms will not be balanced.

In particular, if the directly elected mayor position is created prior to the next regular municipal election, at which three council members are chosen, then one of the three positions would be the directly elected mayor. The result would be staggered elections of three council members (two council members and one mayor) and three council members (two council members and one mayor) if a two year mayoral term is selected by voters; or, three council members (two council members and one mayor) and two council members (one council member and one mayor) if a four year mayoral term is selected by voters. This circumstance would not present a problem of unbalanced staggered elections.

However, if a directly elected mayor position is created prior to the election of only two council members, then when the election occurs, one of the two positions would be the mayor and the other one would be a council member. If the Mayor is given a two year term, the result would be staggered elections of four council members (three council members and one mayor) and two council members (one council member and one mayor). In this circumstance, the staggered elections are off-balance.

In order to avoid the latter situation, the Government Code permits the City, on a one-time basis only, to designate one of the city council positions, other than the mayor's position, which would serve only a two-year term. This action would serve the purpose of balancing out the staggered elections. The designation by the City Council of the one-time, two-year term council member position is required to be done prior to the first day for circulating nomination papers for the general municipal election relating to the directly elected mayor position and the two-year term council position. Cal. Govt. Code § 34906. The designated one-time, two-year council position would return, at all subsequent elections, to a four-year term.

We have reviewed the City's voter approved term limits for City Council members. It is our opinion that the language of that section would not apply to a directly elected Mayor. If any term limits were to apply to the directly elected Mayor, those limits would have to be included in the ballot measure regarding creation of, the term of office for, duties and compensation for, a directly elected Mayor.

If an election is to be held on a date other than the City's General Municipal election it would be considered a special election. As specified in California Government Code section 1003, a special election is permitted in order to place a municipal initiative

¹ The only certain way to have a mayor with more expansive powers than those called out in the Government Code (the so-called "Strong Mayor form of government"), would be for the City to become a charter city and establish the position of elected mayor with enumerated powers.

before the voters. A special election may be held on an established or non-established election date and conducted as a “stand-alone” or a consolidated election.

The City may conduct a special election pursuant to California Government Code section 1405 (a), which states that the election shall be held not less than 88 nor more than 103 days after the date of the order of election. The date may or may not be an established election date as prescribed by the election code. Typically this election is conducted solely for the purpose of the individual jurisdiction and therefore selection of a specific date is primarily based on the needs of the City. When establishing a date it is suggested to adopt the resolutions at the earliest possible period of 103 days before the election to allow all the required materials (ballot measure language, direct arguments, attorney’s impartial analysis) to be submitted to the Orange County Registrar of Voters by no later than the 88th day before the election (note that only the rebuttals to the arguments may come after that deadline). The cost for an election is based on services, and materials for the number of voters provided in a jurisdiction. The estimated cost for our City to conduct a “stand-alone election” is about \$199,000.

As an alternative, “when it is legally possible to hold a special election on an initiative measure . . . within 180 days prior to a regular or special election occurring wholly or partially within the same territory the election . . . may be held on the same date as, and be consolidated with that regular or special election [Cal. Govt. Code § 1405(1)]. In this latter scenario, the elections that have been identified for possible consolidation (prior to the November 2008 municipal election) are the Presidential Primary to be held February 5, 2008, and the Statewide Primary Election, to take place on Tuesday, June 3, 2008.

For a consolidated election the period for calling of the election is within 180 days before the established election. In practical terms, to consolidate with the February 5, 2008 Presidential Primary, the necessary resolutions for the special election could be adopted as early as the August 21, 2008 City Council meeting, or by a suggested deadline of October 16, 2008. The later date would allow for sufficient time to provide all the required materials, including the rebuttal arguments, to the County by the November 9, 2008 deadline (88th day before the election).

For the June 3, 2008 Statewide Primary Election, the resolutions could be adopted as early as the January 2, 2008 City Council Meeting, with a suggested deadline by February 12, 2008, (112 days from the date of the election). The cost of the consolidated election will vary based on the number of entities that are participating in the election and therefore sharing in costs. The cost for a consolidation election is estimated to be about \$90,000 to \$105,000.

ALTERNATIVES CONSIDERED:

The City Council could determine not to place an initiative on the ballot regarding establishment of an elected mayor position. The City Council could place a ballot item on the ballot for the next municipal election, or call a special election for this purpose.

FISCAL REVIEW:

As noted above, the cost for holding the election on a ballot measure will vary depending on the timing and type of election called. There is currently no budget item in the 2007-08 budget for a municipal election, so an appropriate budget adjustment would need to be made.

LEGAL REVIEW:

This report has been prepared by the City Attorney.

CONCLUSION:

If the Council wishes to place an item on the ballot to determine whether the electorate wants an elected mayor, Council should give direction as to the following items: Any specific duties which an elected mayor would perform; whether additional compensation should be provided for in a ballot measure; and which election the ballot item should be considered.

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ATTACHMENTS: 1 [Orange County Cities – Mayors Survey](#)