



Agenda Item No. \_\_\_\_\_

File Code No. \_\_\_\_\_

ATTACHMENT

# CITY OF SANTA BARBARA

## COUNCIL AGENDA REPORT

**AGENDA DATE:** March 14, 2017 (Updated November 14, 2017)

**TO:** Mayor and Councilmembers

**FROM:** City Administrator's Office/City Clerk's Office  
City Attorney's Office

**SUBJECT:** Consideration Of Charter Revisions To Address District Elections, Council Member And Mayoral Succession, And Even-Year Elections

**RECOMMENDATION:** That Council consider providing direction to staff to prepare proposed Charter amendments for the November 2017 municipal election which would:

- A. Clarify the district succession rules for councilmembers elected by district who may subsequently be elected mayor while still in office;
- B. Propose moving City municipal elections from odd years to even years, including one-time extension of Charter section 500.1 "two (2) consecutive four (4) year terms" limit; and
- C. Incorporate district election and decennial census-based redistricting requirements from the 2015 *Banales* voting rights case settlement into the Charter.

### EXECUTIVE SUMMARY:

The Charter provisions on succession after a councilmember is elected mayor do not anticipate the effects of district elections. Council may wish to propose Charter revisions to address this issue.

The costs of holding odd year elections have become unreasonably high due to factors beyond the City's control. Council may wish to propose a Charter revision to switch to even-year elections.

The Charter should be revised to reflect the district election and census-based redistricting processes that resulted from settlement of the *Banales* California Voting Rights Act litigation in 2015. These changes would not change the rules established by the settlement, but would conform the Charter to the settlement.

## DISCUSSION:

At its December 14, 2016 public work session on “Confirmation of City Workload Areas of Focus,” the City Council directed preparation of an issue paper on Charter revisions necessitated as a result of the City’s 2015 settlement agreement that changed the City from at-large to by-district elections, including the process for succession in Council districts when a councilmember is elected mayor. In addition, in response to information from the City Administrator/City Clerk, the City Council directed the issue paper to include information on making a switch from odd-year to even-year elections due to the limited availability of odd-year election services since the enactment of SB 415.

### **A. District Succession Rules for Council Members Elected by District Who May Subsequently be Elected Mayor**

City Charter section 503 establishes the current rules for succession of councilmembers who are elected mayor. It was last amended in 1982. The first paragraph of section 503 obviously did not anticipate district elections. In essence, the Charter expresses a preference for appointment of the next highest vote getter to the Council after a councilmember is elected mayor, or if there is no next highest vote getter, any person may be appointed to fill the remainder of the term of the open council seat.

The first paragraph of section 503 now provides:

“Section 503. Vacancies.

A vacancy on the City Council, occurring as the result of the election of a member of the City Council to the office of Mayor, ***shall be filled by appointment by the City Council, within thirty (30) days of the election, of the unelected candidate who received the highest number of votes for election to the City Council at said election.*** Said person shall serve the remaining term of the City Councilmember who was elected to the office of Mayor.”

The district elections problem arises because there would never be a qualified unelected candidate remaining after a mayoral election. This is best understood by imagining two different mayoral election scenarios.

#### **Scenario One: Mayoral Election Plus Three Council Districts**

The mayoral election inevitably will be held at the same time as three of the council districts.<sup>1</sup> State law prohibits a candidate from filing nomination papers for more than one municipal office, therefore none of the three concurrently open districts could yield a

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<sup>1</sup> Currently, the mayoral election is concurrent with Districts 4, 5 & 6.

mayor who had been a person who had sought to be a councilmember in one of the open districts.<sup>2</sup> There would be an open district seat if an incumbent councilmember (in a district where an election was occurring) chose to run for mayor, and that open seat would be filled by other nominated candidates, except in the unlikely event that no one ran for the open seat. In terms of Charter section 503, there could never be an unelected candidate who received the highest number of votes for election from any of the three concurrently open districts because there would never be a council vacancy created in a district by the mayoral election of a councilmember from that district. Likewise, if an incumbent councilmember from one of the other three districts not up for election ran for mayor, there would be no candidate from that district with the “highest number of votes at said election” because there would be no remaining candidate qualified by residency for the newly-vacant district.

#### Scenario Two: Three Council Districts Only

In this scenario, the three council seats in the districts that are not synchronized with the mayoral election are up for election. The first paragraph of Charter section 503 would simply not apply because none of the three council seats could be elected mayor at that time. The incumbent mayor could run for one of the open district seats (if she resided in that district), but the first paragraph of section 503 does not apply.

#### City Attorney Analysis of the Effect of the Existing Charter

As noted above, Charter section 503 did not anticipate councilmember succession to mayor in the context of district elections. However, for reasons discussed below, the City Attorney is of the opinion that section 503 could be applied to district election mayoral succession without a Charter revision. Nonetheless, there could be a small risk of legal challenge to the City Attorney’s opinion unless the Charter is clarified.

The second paragraph of Charter section 503 provides:

“A vacancy on the City Council, or in the Office of Mayor, from whatever cause arising other than expiration of term or the election of a member of the City Council to the Office of Mayor, shall be filled by appointment by the City Council within thirty (30) days of the occurrence of such vacancy unless it occurs less than one hundred (100) days before a general municipal election, in which case the office shall remain vacant until the election. ***In the event there is no unelected City Council candidate at the election at which a member of the City Council is elected Mayor, the City Council vacancy shall be filled as provided in this paragraph.*** The person appointed shall serve until the next general municipal election at which time any unexpired term shall be filled by election. In the event that a

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<sup>2</sup> A candidate cannot file nomination papers for two municipal offices in the same election. (Elec. Code, §10220.5.)

vacancy occurs after the final date for publishing the notice of election for a general municipal election and the term of office does not expire until the next succeeding general municipal election, the vacancy shall be filled by appointment by the City Council, within thirty (30) days after the election, of the unelected candidate who received the highest number of votes for election to the City Council at said election.” (Emphasis added.)

Given the discussions under Scenarios One and Two above, there would always be “no unelected City Council candidate” after a sitting councilmember is elected mayor. Therefore, the bold italics language in the second paragraph of section 503 would apply and a Council vacancy created by either i) a Scenario One election at which an incumbent councilmember chose to run for mayor and no one else ran for the resulting open district council seat; or ii) a Scenario Two election at which one of the incumbent councilmembers ran successfully for mayor mid-term, thereby forfeiting his or her Council seat under the incompatible office doctrine.<sup>3</sup> In either instance, the City Attorney is of the opinion that the resulting Council vacancy would be filled by Council appointment for the remainder of the vacant council seat term.

The difficulty with this legal interpretation is that it essentially writes out of existence the Charter’s preference for appointed “highest vote getters” when council vacancies are created by a council member being elected mayor. Presumably, the Charter’s current approach was perceived to be “more democratic” than Council appointment of any person of its choice because the voters would have had the opportunity to assure that at least the “second best” candidate was appointed.

#### Options: Appointment or Special Election?

The City Council has a number of options for addressing this issue. First, under state law the City Council may fill a council vacancy with any qualified person within 60 days by appointment or by calling a special election. (Gov. Code, § 36512; Elec. Code, §10229.) Of course, an appointee would have to be qualified as a resident of the district to which he or she is appointed. Notwithstanding state law’s provision of a special election option, the City Attorney believes that Charter section 1302 precludes using a state law special election because to do so would directly conflict with Charter section 503. A special election option could be added with voter-approved Charter amendments.

In sum, under the current City Charter the Council must fill by appointment any vacancy created by an incumbent council member being elected mayor mid-term. The appointment must occur within 30 days of the vacancy. With respect to the November 2017 election, if an incumbent Council Member from Districts 1, 2 or 3 is elected Mayor, the vacancy would occur on January 9, 2018 when the new Council is seated, unless

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<sup>3</sup> No one can be a councilmember and mayor simultaneously because the offices are incompatible. (Gov. Code, § 1099.)

there is an earlier resignation. Absent an early resignation (which would trigger an earlier 30 day appointment period), the resulting appointment deadline is February 8, 2018.

## **B. Even Year Elections and Term Limits**

In December 2016, the City Administrator/City Clerk advised the City Council that as a result of SB 415 (which requires most general law cities to go to even-year elections by 2018)<sup>4</sup> and the general shift in Los Angeles County to even-year elections, the cost of conducting odd-year, “off-cycle” elections would be increasing dramatically. This cost increase is due to the Los Angeles County shift causing the predominant private local election support firm to lose a substantial number of its stand-alone election clients, resulting in serious questions about the financial viability of the firm after this year, and the County of Santa Barbara’s substantially higher charges for the same services. For example in 2013 the City’s election cost \$200,331 and in 2015 the election cost \$156,962. The County of Santa Barbara would want \$396,000 for the 2017 election. As a result, Council directed that this issue paper explore a move to even-year elections as a matter of administrative necessity rather than any policy choice.

A major issue with moving to even-year elections is whether to increase or decrease term lengths to meet the new election timeframe. This issue is affected by the City’s 2015 settlement in the *Banales* district elections lawsuit. Section II.5.a. of the settlement provided that: “The term of office of the three councilmembers elected in 2015 shall be four years, **and until their successors are qualified.**” This means those terms cannot be shortened. Likewise, section II.5.b. provides that: The term of office of councilmembers elected in 2017 shall be four years, **and until their successors are qualified.**” Accordingly, in order to switch to even-year elections, the six district terms must be increased to 5 years if the change is to be effective before the six initial *Banales* terms are complete. This term increase will create a conflict with the term limits established in Charter section 500.1 that would need to be addressed because each district might have councilmembers serving nine years consecutively. The Council could, of course, commence the switch to even-year elections after 2019 for Districts 1, 2, and 3, and after 2021 for Districts 4, 5, and 6.

With respect to the mayor, the *Banales* settlement has no effect. However, Government Code section 34459 provides that charter amendments are not effective until accepted and filed by the Secretary of State. This would likely occur long after the mayor takes office which, assuming charter amendments are proposed this year, would occur on January 9, 2018. Accordingly, the mayor elected in 2017 would have an expectation of

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<sup>4</sup> SB 415 enacted the California Voter Participation Rights Act, Elections Code sections 14050 et seq. This law requires general law cities, community colleges and school districts to use even-year elections by January 1, 2018, if the voter turnout for a regularly scheduled election has been at least 25 percent less than the average voter turnout within that political subdivision for the previous four statewide general elections.

at least a four-year term, and that term would need to be extended to 5 years as well if the Council wishes to keep the current pairing of the mayoral election with Districts 4, 5, and 6.<sup>5</sup> This change would also require a one-time term limit adjustment to address the potential for nine years of consecutive service.

The Table A on the next page illustrates the switch to even year elections:

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<sup>5</sup> Elections Code section 10403.5 permits lengthening or shortening terms by up to 12 months to accommodate a switch to even-year elections. However, this section expressly applies only to general law cities that adopt election dates by ordinance.

**TABLE A**

	<b>1<sup>st</sup> District</b>	<b>2<sup>nd</sup> District</b>	<b>3<sup>rd</sup> District</b>	<b>Mayor at Large</b>	<b>4<sup>th</sup> District</b>	<b>5<sup>th</sup> District</b>	<b>6<sup>th</sup> District</b>
<b>Year Elected</b>	2015 (1 <sup>st</sup> )	2015 (2 <sup>nd</sup> )	2015 (2 <sup>nd</sup> )	2013 (2 <sup>nd</sup> )	2013 (2 <sup>nd</sup> )	2013 (2 <sup>nd</sup> )	2013 (1 <sup>st</sup> )
<b>Term Ends</b>	2019	2019	2019	2017	2017	2017	2017
<b>Effect of <i>Banales</i> Settlement</b>	Term must be no less than 4 years <sup>6</sup>	Term must be no less than 4 years	Term must be no less than 4 years	No effect	Term must be no less than 4 years <sup>7</sup>	Term must be no less than 4 years	Term must be no less than 4 years
<b>2017 Election?</b>	No	No	No	Yes	Yes	Yes	Yes
<b>Even Year Term Options</b>	2020	2020	2020	2022	2022	2022	2022
<b>Council Member Impact</b>	Dominguez	Rowse	Murillo	Schneider	[Hotchkiss] <sup>8</sup>	[White]	[Hart]
	1 year extension <sup>9</sup>	1 year extension	1 year extension	Termed out	Termed out	Termed out	1 year extension if re-elected to district

<sup>6</sup> *Banales* Settlement, II. 5.a): “The term of office of the three Council Members elected in 2015 **shall be four years, and until their successors are qualified.**”

<sup>7</sup> *Banales* Settlement, II. 5.b): “Subject to Paragraphs 6 and 7 below, the three City Council district seats not filled in 2015 shall be up for election in November 2017. The term of office of Council Members elected in 2017 **shall be four years, and until their successors are qualified.** Thereafter, the City Council elections in November 2019 and November 2021 shall also be held using the electoral district map agreed to by the Parties or ordered by the Court.”

<sup>8</sup> The bracketed Councilmembers are listed in these districts for convenience only – they are not actually representing or residing in these districts.

<sup>9</sup> All 1 year extensions require amendment of Charter section 500.1 regarding term limits.

**C. Incorporate District Election Requirements from the 2015 *Banales* Case Settlement into the Charter**

Council may wish to authorize Charter revisions to incorporate the district elections process created by the *Banales* settlement. This is not mandatory, but would be helpful in avoiding confusion, particularly in connection with a move to even-year elections. Under the settlement, the Council (but not the voters) is prohibited from proposing a Charter amendment to go back to at-large elections until 2025. We would also note that the settlement establishes an independent redistricting commission consisting of three retired judges for the 2020 census driven redistricting. Thus, both the Charter and settlement are silent on how redistricting will be conducted in 2030. There may be some advantage in addressing the question now in hopes that the City would be protected from additional, future preemptive state legislation on redistricting.

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**APPROVED BY:** City Administrator's Office