



# **CITIZENS ADVISORY CHARTER REVIEW COMMITTEE**

**Chair – Shane Smith, District 6**

**Vice Chair – Sara Hill, District 3**

**Stephanie Butticci, District 1**

**Liliana Nava, District 2**

**Ryan Heller, District 4**

**Robert Haden, District 5**

**Loretta Spence, At-large**

**Sarah Boyle, At-large**

**Tim O'Neill, At-large**

**Final Report to City Council  
September 3, 2019**

## **I. Preamble**

Our preeminent statutory document, a City Charter guides and governs the municipal process and determines what form of government will represent the people of a Charter City of California. The City of Merced's Charter Review Committee was originally formed to update the City Charter as needed. Historically this committee has formed and met to introduce needed changes to the fundamental document empowering our municipal government to serve the citizens of Merced. This committee has been entrusted with the noble undertaking of guiding the future of this community through careful examination of the Charter in its current form, while anticipating the future needs of our Community.

## **II. Chair's Introductory Message**

On behalf of my Committee colleagues, I thank City Council and Staff for this opportunity to "re-imagine" aspects of how we govern ourselves as a City.

The Committee's deliberations were at times vigorous yet always respectful and mindful of the importance of the City Charter as a guiding document for our community. In the end, I believe we have advanced common-sense proposals that will help improve efficiency and accountability within City Government, update the nature of the City's elected offices in step with changing times, and extend by-district selection of City leaders to Charter-level commissions. We intend each of our amendments to apply prospectively only.

Other substantive proposals did not earn support from a majority of our Committee. Our discussion of them nonetheless warrants Council's attention and, perhaps, foreshadow issues that will be considered when Merced residents again convene to review their Charter a generation from now.

I look forward to presenting the Committee's work to you at an upcoming Council meeting.

- Shane Smith (D-6)

Chair, Citizens' Advisory Charter Review Committee

## **III. Committee Proposed Amendments to Sections 400, 402, 604, 707, and 711 of the City Charter and Formation of New Sections (Referred to as 7XX)**

### **A. Section 400**

Article IV, Section 400(B) would be amended to provide four-year terms for the Office of the Mayor:

#### **Sec. 400. - Number and term.**

- A. The City Council shall consist of a Mayor elected from the City at large and six City Council Members elected by single-member district election at the times and in the manner provided in this Charter.

- B. The Mayor shall serve a term of ~~two (2)~~ **four (4)** years and until his/her successor is elected and qualified. The Mayor shall be limited to no more than two, ~~two-year~~ **four-year** terms. For purposes of this subsection, a "term" shall be defined to include serving fifty percent plus one day of a term as Mayor, while service as Mayor for fifty percent or less of a term shall not constitute a term for purposes of term limits.
- C. Individual City Council Members shall serve a term of four (4) years and until his/her successor is elected and qualified. Individual City Council Members shall be limited to no more than two, four-year terms. For purposes of this subsection, a "term" shall be defined to include serving fifty-percent plus one day of a term as a City Council Member, while service as a City Council Member for fifty percent or less of a term shall not constitute a term for purposes of term limits.
- D. Once the Mayor or an individual City Council Member has served the maximum number of terms in that respective office, he/she shall be ineligible to be elected or appointed to that office again.
- E. District boundaries shall be drawn by ordinance.

**B. Section 402**

Article IV, Section 402 would be amended to provide compensation to the City Council and Mayor:

**Sec. 402. – Compensation and Reimbursement.**

- A. The members of the City Council, including the Mayor, shall receive ~~no compensation~~ **a monthly stipend** for their services as such, ~~but shall receive reimbursement on order of the city council for council authorized traveling and other expenses when on official duty~~ **and shall receive reimbursement for expenses incurred while performing official duties of their office.** ~~In addition, each member shall receive the sum of twenty dollars per month, which amount shall be deemed to be reimbursement of other out-of-pocket expenditures and costs imposed upon him in serving as a city councilman.~~ Absence of a ~~councilman~~ **council member, including the Mayor**, from all regular and special meetings of the council during any calendar month shall render such ~~councilman~~ **council member** ineligible to receive such stipend for such calendar month.
- B. There shall be established a Citizens' Stipend Setting Commission consisting of seven (7) members to be appointed by the City Council from the qualified

electors of the City. Six (6) members will be appointed by district and one (1) member will be appointed at large.

1. The Commission shall hold two (2) public hearings between March 1st and June 30th of every even-numbered year and shall recommend, by majority vote and in writing, to the Council the amount of the monthly stipend which it deems appropriate for the members of the Council for the two (2) year period beginning January 1st of the next year. The amount recommended for each council member shall be the same.
2. The Commission shall hold two (2) public hearings between March 1st and June 30th of a Mayoral election year and shall recommend, by majority vote and in writing, to the Council the amount of the monthly stipend which it deems appropriate for the Mayor for his/her entire term beginning in January of the next year. The stipend recommended for the Mayor shall, at a minimum, be the same as the other council members; however, the Commission may recommend providing the Mayor with reasonable compensation beyond his/her stipend as a member of the City Council.
3. The Council shall, by resolution, adopt the stipends as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount. Stipends of the council members and Mayor may be reduced at any time by two-thirds (2/3) vote of the Council. Stipends shall remain in effect until amended by a subsequent resolution adopted pursuant to the provisions of this section.

**C. Section 604**

Article VI, Section 604 would be amended to give the Finance Officer a more direct role in reporting the financial condition of the City to City Council:

**Sec. 604. - Finance officer—Powers and duties.**

The Finance Officer shall have power and be required to:

- A. Have charge of the administration of the financial affairs of the City under the direction of the City Manager;
- B. Compile the budget expense and revenue estimates for the ~~City Manager~~ **City Council, based upon the City Manager's proposed budget; and at the end of the fiscal year, prepare and submit a complete report on the finances of the City to the City Council in consultation with the City Manager;**

- C. Supervise and be responsible for the disbursement of all moneys and have control over all expenditures to insure that budget appropriations are not exceeded; audit all purchase orders before issuance; audit and approve before payment, all bills, invoices, payrolls, demands or charges against the City government and, with the advice of the City Attorney, when necessary, determine the regularity, legality and correctness of such claims, demands or charges;
- D. Maintain a general accounting system for the City government and each of its offices, departments and agencies;
- E. Keep separate accounts for the items of appropriation contained in the City budget, each of which accounts shall show the amount of the appropriation, the amounts paid therefrom, the unpaid obligations against it and the unencumbered balance; require reports of the receipts and disbursements from each receiving and expending agency of the City government to be made daily or at such intervals as he/she may deem expedient;
- F. Submit to the City Council and the City Manager a monthly statement of all receipts and disbursements in sufficient detail to show the exact financial condition of the City; and as of the end of each fiscal year, submit a complete financial statement and report;
- G. Collect all taxes, assessments, license fees and other revenues of the City, or for whose collection the City is responsible, and receive all money receivable by the City from the county, state or federal government, or from any court, or from any office, department or agency of the City;
- H. Have custody of all public funds belonging to or under the control of the City or any office, department, or agency of the City government, and deposit all funds coming into his/her hands in such depository as may be designated by Resolution of the City Council, or, if no such Resolution be adopted, by the City Manager, and in compliance with all of the provisions of the State Constitution and laws of the State, governing the handling, depositing and securing of public funds;
- I. Supervise the keeping of current inventories of all property of the City by all City departments, offices and agencies;
- J. Establish a centralized purchasing system for all City offices, departments and agencies; and,
- K. Prepare rules and regulations governing the contracting for, purchasing, storing, distribution, or disposal of all supplies, materials and equipment required by any office, department or agency of the City government and recommend them to the City Manager and the City Council for adoption by Ordinance; and prepare

administrative policies and procedures implementing this Section and recommend them for review and approval by the City Manager.

**D. Section 707**

Article VII, Section 707 would be amended so that membership of the Planning Commission will be comprised of residents of each City district:

**Sec. 707. - Planning commission.**

There shall be a City Planning Commission consisting of seven members to be appointed by the City Council from the qualified electors of the City, none of whom shall hold any paid office or employment in the City government. **Six (6) members will be appointed from each of the six (6) districts and one (1) member will be appointed at large. Should a district appointment remain vacant for more than ninety (90) days, the City Council has the authority and may elect to appoint an otherwise-qualified at large member to fill the district vacancy.** The number of members to comprise the commission may be changed by Ordinance of the City Council to not less than five nor more than nine members.

The services of the City Engineer, City Attorney, Chief Building Official, Director of Development Services and other City staff shall be made available to such commission.

**E. Section 711**

Article VII, Section 711 would be amended to add language making it consistent with the amendment of Section 707:

**Sec. 711. - Recreation and parks commission.**

There shall be a recreation and parks commission consisting of seven members to be appointed by the city council from the qualified electors of the city and no member of said commission shall hold any paid office or employment in the city government. **Six (6) members will be appointed from each of the six (6) districts and one (1) member will be appointed at large. Should a district appointment remain vacant for more than ninety (90) days, the City Council has the authority and may elect to appoint an otherwise-qualified at large member to fill the district vacancy.** The number of members to comprise the commission may be changed by ordinance of the city council to not less than five nor more than nine members. In the event the city council contracts with other agencies interested in recreation and parks for the joint exercise of any of such functions, such contract may provide for representation on the commission of otherwise qualified representatives of such agencies during the existence of such contract or extensions thereof.

**F. Newly Composed Section 7XX**

New, as-yet-unnumbered Sections 7XX would be added to Article VII to create and define a Tax Transparency Commission empowered to review each existing and any future special tax measures:

**Sec. 7XX. – Tax Transparency Commission.**

There shall be a Tax Transparency Commission consisting of not less than seven (7) nor more than nine (9) members to be appointed by the City Council from the qualified electors of the City. Six (6) members will be appointed from each of the six (6) districts and the remaining member(s) will be appointed at large, and no member of said commission shall hold any paid office or employment in the city government. Should district appointments remain vacant for more than ninety (90) days, the City Council has the authority and may elect to appoint an otherwise-qualified at large member to fill the vacancy. The Tax Transparency Commission shall meet quarterly.

**Sec. 7XX. – Tax Transparency Commission—Powers and Duties.**

The Tax Transparency Commission shall have authority to:

- A. Review the projected revenue and expenditures for the funds generated by each general or special tax measure.
- B. Make budget recommendations to the City Council in accordance with and to maintain compliance with each general or special tax measure.
- C. Review annual audits of each general or special tax measure and report any findings to the City Council.

**G. Section 1112**

Article XI would be amended by deleting the requirement for a cash basis fund:

**~~Section 1112. – Cash basis fund.~~**

~~The City Council shall maintain a revolving fund to be known as the "Cash Basis Fund," for the purpose of placing the payment of running expenses of the City on a cash basis. An operating reserve shall be built up in this Fund from any available sources in an amount that the City Council deems sufficient with which to meet all lawful demands against the City for the first five months, or other necessary period, of the succeeding fiscal year prior to the receipt of ad valorem tax revenues. Transfers may be made by the City Council from such Fund to any other fund or funds of such sum or sums as may be required for the purpose of placing such funds, as nearly as possible, on a cash basis.~~

~~All moneys so transferred from the Cash Basis Fund shall be returned thereto before the end of the fiscal year.~~

#### **IV. Proposals Discussed Without Adoption**

At least three Committee members voted to discuss a number of proposals that were not ultimately adopted by a majority of the full Committee. A summary of those proposals in order of the relevant Charter section is as follows:

**Article IV, Section 400(D):** At the July 25 meeting, Chair Smith proposed that a mayor who had served two terms in that office be given the opportunity to again serve as mayor after a “cooling-off” period. He argued that, as leadership training initiatives like Leadership Merced develop residents for governance roles earlier in their careers, the average age of council members will trend younger over time and, by likely extension, the average age of mayors will trend younger as well. The current Section 400(D) prevents someone who held the mayor’s office earlier in life from returning to serve again as mayor. By a 7-2 straw poll vote, the Committee asked the City Attorney to craft a potential revision to Section 400(D) in line with the Chair’s proposal. That language appears in the agenda for the August 15 meeting. At that meeting, however, Chair Smith withdrew support for his own proposal. He noted that, upon reflection, allowing a termed-out mayor to seek re-election cuts against a key purpose of the City’s voter-approved move to by-district Council elections, namely, developing leaders from diverse City geographies who may bring fresh perspectives and ideas to their office. Chair Smith also noted that the Committee had essentially re-affirmed that purpose when voting to recommend shifting Planning and Parks Commission membership to a by-district format. No other member of the Committee spoke in favor of bringing the proposal to a vote, and no vote was taken for want of a motion.

**Article V, Section 501 and Article VI, Section 604:** At the July 25 meeting, Member Heller proposed transferring certain powers currently held by the City Manager to the Finance Officer. A majority of the Committee agreed that some clean-up language in the Charter’s statement of the Finance Officer’s duties should be considered further. However, there was no majority support for further discussion of Member Heller’s proposal to transfer the power to advise the City Council on the financial condition and needs of the City from the City Manager (current Sections 501(C) and (D)) to the Finance Officer (proposed additions to Section 604(B)), nor to redirect the Finance Officer to report to City Council instead of the City Manager (current Section 604(A)). Member Heller’s proposed language appears in the agenda packet for the July 25 meeting.

**Article VI, Section 605:** At the July 25 meeting, Member Heller proposed eliminating the City Council’s ability to consolidate Charter officers. That proposal did not receive majority support from the Committee and so discussion of it ended without a motion. Member Heller’s proposed revisions to Section 605 appears in the agenda packet for the July 25 meeting.



**Article VI, Section 605:** At the July 25 meeting, Member Heller proposed limiting the duration of any contract with an external vendor for services ordinarily held by a Charter officer to one-year. He argued that the practice has been abused in other municipalities. A majority of the Committee wished to continue discussion of that proposal until the August 15 meeting. At that meeting, the proposal was amended by Member Heller upon suggestion of Chair Smith to allow a majority of Council to renew such a contract for an additional year, with no cap on the number of times a contract could be extended. Mr. Heller had argued that the time limit itself was less important than the requirement that City Council re-justify such a contract arrangement in public session at regular intervals. Nonetheless, upon motion by Member O'Neill, seconded by Member Butticci, the Committee voted 6-3 to take no action on Section 605. Member Heller's proposed language appears in the agenda packet for the July 25 meeting.

**Article VII, Section 705:** At the July 9 meeting, Chair Smith suggested that members of Charter boards and commissions deserve some sort of stipend to compensate them for their time spent preparing for and contributing to the stewardship of the City. He argued that, like council members, appointed commissioners give up time that could be devoted to paying work and incur out-of-pocket expenses indirectly related to their service, such as childcare. Appointed commissioners also must deal with similar stresses related to their office. At the July 25 meeting, however, Chair Smith stated that he had chosen not to advance this idea further in order to give City Council and, perhaps, the voters a clearer path to consider the Committee's proposed amendments to Article IV, Section 402 and its system for compensating the City Council and Mayor.

**Article XI, Section 1111:** At the July 9 meeting, Member O'Neill proposed that the Charter impose a robust preference for local vendors in City contracting. Thereafter City Staff provided the Committee with the text of Resolution No. 2018-18 adopting a Local Business Preference Policy, and its accompanying Ordinance No. 2485, each of which had passed with the unanimous approval of the City Council. At the July 25 meeting, in view of that the Resolution and Ordinance, the Committee voted on motion of Member Haden, seconded by Member O'Neill, to recommend no changes to Section 1111.

**Article XI et seq.:** At the July 9 and July 25 meetings, at the suggestion of Ex-Officio Member Murphy, the Committee considered creating an Audit Subcommittee comprised of less than a quorum of City Council members. That group would be tasked with reviewing the annual independent financial audit in consultation with the City's auditors, and then presenting any irregularities or other areas of concern to the full Council in a public session. The Committee variously observed that audit committees are a common feature of non-profit organizations and favored the idea of requiring a group of council members to identify financial concerns so that they could be reviewed by City Council. In the end, however, the Committee tended to believe that each council member is responsible for the financial well-being of the City, and so the proposed Audit Subcommittee might have the unintended consequence of permitting a quorum

of the City Council to pay less attention to the independent financial audit than they should. The Committee took no further action on this proposal.