



City Council Meeting

07-13-20

**Item
6.C.**

Council Agenda Report

To: Mayor Farrer and the Honorable Members of the City Council

Prepared by: Trevor Rusin, Assistant City Attorney

Date prepared: June 17, 2020 Meeting date: July 13, 2020

Subject: Procedures Required for Election of a Directly Elected Mayor or Strong Mayor

RECOMMENDED ACTION: Receive report and provide desired direction, if any.

FISCAL IMPACT: The fiscal impact is dependent upon what action the Council takes on this matter. Transitioning to a directly elected mayor would incur costs related to amending the proposed district election maps and the costs associated with adding a ballot measure, but there would be some savings as the council already intends to place a measure on the ballot regarding district elections. However, if the City desires to pursue the strong mayor option by becoming a charter city, significant costs would be involved due to the substantial substantive and procedural steps involved. A complete fiscal impact analysis will need to be prepared if the Council desire to switch to a strong mayor form of government.

WORK PLAN: This item was not included in the Adopted Work Plan for Fiscal Year 2020-2021.

BACKGROUND: The City Council has requested information regarding the procedures and requirements involved in directly electing a mayor or moving to a “strong mayor” form of government. As the “strong mayor” form of government would require the City to become a charter city, the procedures involved in that transition are summarily laid out at the end of this report.

Types of California Cities

California permits two types of cities: general law cities and charter cities. Of the 482 cities in California, 125 are charter cities and the rest are general law cities. Malibu is a general law city which means the Government Code governs the procedures for how

the City is organized and exercises its powers, including the election of the City Council.¹

In a charter city, the city's charter establishes the form of government and defines its reach and role in "municipal affairs,"² even if there are conflicting state laws.³ However, charter cities are limited by state law if the issue pertains to a matter of "statewide concern."⁴ Examples of powers that charter cities generally exercise control over through their charters include these:

- Establishing voting and quorum requirements
- Setting councilmembers' salaries⁵
- Opting out of general laws related to enacting ordinances⁶
- Regulating the manner for conducting elections, consistent with Constitution
- Exempting the city from the Public Contracts Code's public bidding requirements⁷
- Customizing regulations related to land use and zoning decisions⁸

Forms of Municipal Government

There are two main forms of city government: the "Council-Manager" and the "Strong Mayor" form of government. The "Council-Manager" form of government must be adopted by general law cities and may be adopted by charter cities. The "Strong Mayor" form of government may only be adopted by charter cities.

Council-Manager Form of Government

The Council-Manager form of government is a structure where the powers of the city are shared between and among the elected city council and a professional city manager. Under this form of government, the city manager is appointed by, and serves at the pleasure of, the city council. The mayor leads public meetings, signs ordinances,

¹ Gov. Code § 36501.

² A "municipal affair" is not defined in the California Constitution but it does set out a nonexclusive list of four "core" categories that are, by definition, municipal affairs. These categories are 1) regulation of the "city police force"; 2) "subgovernment in all or part of a city"; 3) "conduct of city elections"; and 4) "the manner in which . . municipal officers [are] elected." Beyond this list, case law has established limits of what is and is not a municipal affair.

³ Gov. Code §§ 34450 et seq.; Cal. Const. art. XI, § 5(b).

⁴ Cal. Const. art. XI, §§ 3 & 5. Some examples of matters deemed by the courts to be of "statewide concern" include educational school systems, traffic and vehicle regulations, franchises for telephones, licensing of trade or professional members, the Brown Act, and the California Environmental Quality Act.

⁵ Cal. Const. art. XI, § 5(b). For general law cities, state law strictly limits the compensation and benefits that a councilmember may receive. Charter cities are not subject to this limitation.

⁶ *Brougher v. Board of Public Works* (1928) 205 Cal. 426.

⁷ Pub. Cont. Code section 1100.7.

⁸ *Brougher*, 205 Cal. 426.

resolutions and contracts, etc., and serves as the public face of the city. While the mayor is the presiding officer at council meetings, the council makes decisions as a whole body and individual councilmembers have no authority to bind the city. The mayor is usually selected by a vote of the members of the council.⁹ This form of government is utilized by both charter and general law cities.

The city manager, in turn, is delegated administrative and managerial authority over the city's governance, generally being responsible for hiring and firing most city officers and employees. This two-tiered structure of authority means the city manager is accountable and reports to the council, and most other positions are accountable and report to the city manager. The Council-Manager form of government was part of the progressive era reforms at the turn of the 20th century in California designed to combat corruption in local government. The central idea was to create a professional manager to de-politicize the administration of the laws.

Directly Elected Mayor

The Council-Manager form of government functions either where the mayor is selected from among the councilmembers or where the mayor is directly elected by the voters. A directly elected mayor is an option for general law and charter cities. For Malibu to adopt a directly elected mayor, the city council could put a ballot measure before the voters asking them to choose whether the mayor should be directly elected and whether the term should be two or four years.¹⁰ If a majority of the votes cast answers the questions affirmatively, the office of mayor becomes an elective office.¹¹

An elected mayor is a member of the city council and has all the powers and duties of a member of the city council.¹² An elected mayor may draw a salary in addition to the salary established for the members of the council if approved by the voters or by an ordinance adopted by the council.¹³ A significant difference is that an elected mayor, with the approval of the city council, generally makes all appointments to boards, commissions, and committees unless specifically provided otherwise by statute.¹⁴ Currently, each elected councilmember makes an appointment to each commission or board.

Strong Mayor

The strong mayor form of government is an entirely different form of government. It is available only to charter cities and must be approved by the voters. As the name

⁹ Gov. Code § 36801.

¹⁰ Gov. Code § 34900 *et seq.*

¹¹ Gov. Code § 34902(a).

¹² Gov. Code § 34903.

¹³ Gov. Code § 36516.1; 89 Ops. Cal. Atty. Gen. 159 (2006).

¹⁴ Gov. Code § 40605.

implies, the difference between this form of government and the others is the breadth of the mayor's power.

In a strong mayor form of government, the mayor will have the authority to hire and fire the city manager and the department heads and may have the authority to present a budget to the city council (much as the governor presents a budget to the state legislature). Political power is concentrated in the mayor and the role typically entails many of the managerial and administrative duties otherwise encompassed by the city manager under the Council-Manager system of government. Notably, in a strong mayor form of government, the mayor does not vote as an equal member of the council, instead only casting a vote in the case of a tie or as otherwise provided in the city charter. The City voters could define the powers of the mayor through the charter; so there is more flexibility.

In this regard, the position of mayor is often treated and compensated as a full-time job. In contrast to general law cities, charter cities have the ability to provide significantly more compensation to councilmembers and the mayor. General law cities are limited by express compensation ceilings that are determined by population size. According to the International City/County Management Administration only five California cities use the "Strong Mayor" form of government. These five are among California's largest cities with a combined population of 7.2 million residents (22% of the population).

Transitioning from a General Law City to a Charter City

To become a charter city, a city must adopt a charter. There are two ways to adopt a charter: (1) The city's voters elect a charter commission (which has the responsibility of drafting and debating the charter); or (2) the city council drafts the charter for voter approval.¹⁵ In either case, the charter is not adopted by the city until it is ratified by a majority vote of the city's voters.¹⁶

If the city chooses to draft the charter, after the proposed charter has been drafted, it may be sent to the voters for ratification at the next established statewide general election, provided there are at least 88 days remaining before the election.¹⁷ Before a proposal to adopt a charter is submitted to the voters, the city council must hold at least two public hearings on the matter. Notice of the public hearings shall be given by publication in a newspaper designated by the council and circulated throughout the city, and by posting notice in three public places within the city at least 21 calendar days prior to the date of each public hearing. The second public hearing shall be held at least 30 days after the first public hearing.

¹⁵ Gov. Code § 34458.

¹⁶ Gov. Code §§ 34457 & 34462.

¹⁷ Gov. Code § 34458.

At least one of the public hearings shall be held outside of normal business hours to facilitate public participation. The governing body shall not conduct a vote on whether to approve the submission to the voters of the proposal to adopt a charter until 21 days after the second public hearing.

If the city opts to elect a charter commission, an election to create a charter commission and choose charter commissioners may be called by a majority vote of the city council to be held at any general or special election. Charter commission members must be registered voters in the city.¹⁸

At the election the voters will first vote on the question: "Shall a charter commission be elected to propose a new charter?" Second, they will vote for candidates for the office of charter commissioner. If the first question receives a majority vote, the 15 charter commissioner candidates with the highest number of votes will then organize as a charter commission.¹⁹

Once the charter commission is elected, it is their duty to draft a charter for the city. The charter commissioners shall propose a charter to the city council. Once a final draft of the charter is approved by city council, a majority of the charter commissioners must sign and file the charter with the city clerk.²⁰ After the charter has been filed with the city clerk, the proposed charter must be submitted to the voters at the next established statewide general election, provided there are at least 95 days before the election.²¹ The charter must be sent to the voters within two years of the vote that formed the charter commission.²²

In either case (i.e., the charter is drafted by the city council or by a charter commission), the majority of voters must vote in favor of the proposed charter for the charter to be adopted.²³

ANALYSIS:

The City of Malibu is a general law city that adheres to the Council-Manager form of government. The City Council consists of five members that are elected at-large, with a Mayor and Mayor Pro Tempore selected by the Council from among its ranks.

If the Council desires to transition to a "Strong Mayor" form of government it must first become a charter city. Due to the procedural requirements and election deadlines, the City does not have time to draft a charter that can be put on the November 2020 ballot.

¹⁸ Gov. Code § 34451.

¹⁹ Gov. Code § 34453.

²⁰ Gov. Code §§ 34455 & 34458.

²¹ Gov. Code § 34457.

²² Gov. Code § 34462.

²³ Gov. Code § 34459.

The City could, however, begin the process with the intention of placing its proposed adoption on a future ballot. Alternatively, the Council could put on the November 2020 ballot a measure asking the voters to elect a commission who would propose a charter for the City as described above.

If the Council desires to move to a directly elected mayor, there remains time to put that matter on the November 2020 ballot. However, as the County requires all election resolutions, including ballot measures, to be submitted by August 7, 2020, it will require an additional City Council meeting to be set. If the Council moves forward with the ballot measure it has been considering that asks the voters whether they desire to move to by-district elections (instead of the current at-large election system), the City will also need to adjust the draft maps that have been prepared for that measure to reflect four districts (instead of five) and a directly elected mayor.²⁴ This will require a special meeting (or meetings) to be set quickly in order to make the August 7, 2020 deadline.

ATTACHMENTS: None.

²⁴ By-district elections can be done with either five, seven, or nine districts, or four, six, or eight districts with a directly elected mayor. Gov. Code § 34871.