

## MEMO

To: Charter Review Committee, City of Santa Clara  
CC: Brian Doyle, Interim City Attorney  
Rod Diridon, Jr., City Clerk  
From: David Cary  
Date: October 23, 2017

**Subject: Charter Amendments, district residency, interim election method, etc.**

I would like to share some information and recommendations regarding the October 19, 2017 draft charter amendments, which cover the following topics:

- district and city residency requirements for city council members, including existing provisions in state law (Charter Section 600)
- using limited voting (a.k.a. single non-transferable vote), as the interim election method (Charter Section 700.2)
- avoiding ambiguity about electing the city council by district rather than from district (Charter Section 700.1)
- other minor wording improvements (Charter Section 700.2)

In recent years I have developed some expertise on these topics. However I am not a lawyer, let alone a lawyer specializing in California election law for local jurisdictions. The advice I offer is not intended as a substitute for the professional opinions of the City Attorney and City Clerk. I am also not a resident of Santa Clara. Additional information about my relevant background is at the end of the body of this memo.

### **District and City Residency Requirements**

**Recommendation:** Avoid the added sentence about district residency in the first paragraph of Charter Section 600 if current state law provides satisfactory policy. If that sentence is kept, explicitly address one way or the other about how losing district residency because of redistricting should be handled.

In order to evaluate what you propose for the charter, it is essential for you to have a good understanding of the relevant provisions of state law, both to understand what the requirements are if the charter is silent on a subject and to evaluate how any charter language might interact with state law.

Key provisions of state law regarding city and district residency requirements for city council members elected by district include:

- A candidate must be a registered voter of the district at least 15 days before filing for candidacy. [1]
- With one exception, a council member elected by district must reside in the district for the duration of the term. [2]
- The one exception is if a council member's domicile is removed from the district because of redistricting. In that case, the council member is allowed to serve the remainder of the term as provided other conditions are still met (for example, for example, still residing in the city). [3]

There is significant wisdom to simply rely on these general law provisions which are widely used in California and seem to work rather well. If there are special circumstances in Santa Clara that call for alteration to these policies, care should be taken that charter amendments are reasonably unambiguous and do not have unintended consequences. For example, the added sentence in first paragraph of proposed Charter Section 600, could be construed as removing the exception when someone is removed from a district by redistricting.

Note also that attempts to push the limits of district residency can have political consequences (loss of voter support, loss of support from fellow council members), legal consequences (loss of seat on council), and criminal consequences (charged and convicted of misrepresenting true residence). These usually serve as sufficient deterrence to such abuses. Specifics of how one establishes residency for voting and district residency purposes can be rather complex with a lot of gray areas. However at least some of the unwanted and more brazen scenarios discussed at the October 5, 2017 CRC meeting are clearly illegal. The added sentence in the first paragraph of Charter Section 600 does not appear to restrict some of the remaining gray areas.

### **Interim Election Method**

**Recommendation:** In Charter Section 700.2, should state that the interim election method shall be single non-transferrable vote (or using some other designation such as limited voting with at most one-vote per ballot). Allow the details to be specified by ordinance, as with RCV/STV. If instead a general law election method is used, do not attempt to reference a specific Elections code section; it would be sufficient to just say that the election method is defined by general law.

Rather than relying on the general law vote-for-N plurality election method, Charter Section 700.2 should specify or at least allow for use of single non-transferable vote (a.k.a. limited voting) as the interim method.

Single non-transferrable vote has the advantages that:

- It is a semi-proportional representation election method.

- It can be run on the existing voting system without any upgrades or improvements.
- There is virtually no transition for voters.

The ballot for a single non-transferable vote contest looks the same and is marked the same as any other regular single-winner contest. Votes are also counted the same way. The only difference is that for a two-winner contest, the two candidates with the highest vote totals would be elected.

While single non-transferable vote may be somewhat less effective as a semi-proportional method than say cumulative voting, it is still much better than the default general law method of vote-for-N-with-N-winners.

Note that the general law election methods are not neatly defined in a single Elections Code section. Instead, they are specified across numerous parts of the Elections Code and Government Code. As a result, having the charter reference a single specific section of the Elections Code is not recommended.

### **Avoid ambiguity: by district versus from district**

**Recommendation:** To avoid any possible ambiguity about whether Charter Section 700.1 in any way specifies or allows election of city council members from district, make at least one of the following changes to the charter amendments:

- In the first sentence of Charter Section 700.1, change "shall be elected from two districts" to "shall be elected by district using two districts"
- At the end of 700.1(e), change "shall be elected for a four year term" to "shall be nominated and elected by district for a four year term".

The terminology "elected by district" and "elected from district" have specific meanings defined in the Government Code. Elections from district do not provide a CVRA safe harbor and from an effective representation perspective are nearly as bad as at-large vote-for-N elections and elections using numbered seats. Avoiding any opportunity to misconstrue the intent of 700.1 on this issue can and should be accomplished with these innocuous changes. Since items (b) through (d) are stated in terms of both nomination and election, extending that pattern to item (e) avoids any ambiguity about whether something different was intended for item (e). However, nominations are implicitly covered by general law and could be omitted from all of those items. [4]

## Other minor wording improvements

**Recommendations:** In Charter Section 700.2, item (b), make the following changes:

- Clarify the relationship between the terms “ranked choice voting” and “single transferable vote” to avoid any interpretation that they are distinct alternatives. For example, change “Ranked choice voting or single transferable vote shall be used” to “Ranked choice voting, also known as single transferable vote, shall be used” or to “Ranked choice voting, also known as single transferable vote when applied to multi-winner contests, shall be used”.
- Change “will not be ready to implement ranked-choice balloting” to “will not be ready to implement ranked choice voting” in order to use consistent terminology.
- As a matter of style, consistently use “ranked choice voting” rather than the hyphenated “ranked-choice voting”.

There is a growing national consensus to use “ranked choice voting” as an umbrella term for both single-winner contests, when it is also known as “instant runoff voting”, and for multi-winner contests, when it is also known as “single transferable vote”. Santa Clara will typically use ranked choice voting for multi-winner contests, though on occasion it will be applied for single-winner contests, for example in 2020 to synchronize terms within a district or at other times to fill a vacancy.

Some jurisdictions that only use ranked choice voting for single-winner contests have developed a local understanding that the term “ranked choice voting” is only applicable to single-winner contests and that single transferable vote is something entirely different. In fact, single transferable vote algorithms applied to single-winner contests typically identify the same winners as the simpler and somewhat more specialized algorithms for single-winner instant runoff voting contests.

Rather than leaving room for an interpretation that “ranked choice voting” and “single transferable vote” refer to distinct alternatives, indicating that they at least overlap in scope aligns the charter language with more modern trends in terminology.

Similarly there are other election methods that use a ranked ballot but which are not ranked choice voting. Since the term “ranked choice voting” is not specifically defined in the Charter, the use of “ranked-choice balloting” unnecessarily introduces an additional term with an opportunity for misinterpretation.

Whether or not to hyphenate “ranked choice” in “ranked choice voting” is a matter of style. Using the term without a hyphen seems to increasingly be the norm. The charter should at least follow a consistent pattern.

## **My background**

I am quasi-retired from a career of applying computer technology and software development to areas of corporate accounting and operation activities in financial services. I am active in democracy education and advocacy, particularly in areas of systemic voter empowerment.

I have developed greater familiarity with California's Elections Code and Government Code while researching and drafting California legislation that defined ranked choice voting in the Elections Code and allowed use of RCV by a wide range of local government jurisdictions, including both general law and charter cities (SB 1288, 2016, co-sponsors California Common Cause and Californians for Electoral Reform). That legislation was passed by the state Legislature. It has attracted attention nationally both for its modern set of RCV features and for the clarity and completeness of the RCV specification. I have worked with California election officials to improve their existing uses of RCV. I am currently working with the National Institute of Standards and Technology (NIST) to write the next generation of standards for federal certification of voting systems.

While I often collaborate with a variety of people and organizations, I am writing this memo as an individual and I am not representing anyone else.

## NOTES

### 1. California Elections Code, Section 10226:

The nomination papers and affidavits shall be substantially in the following form:

#### ... AFFIDAVIT OF THE NOMINEE

\_\_\_\_\_ being duly sworn, says that he or she is the above-named nominee for the office of \_\_\_\_\_, that he or she will accept the office in the event of his or her election, ... and that his or her residence address is .

(Print residence address as provided by affiant)

### California Government Code, Section 34882:

A person is not eligible to hold office as a member of a municipal legislative body unless he or she is otherwise qualified, resides in the district and both resided in the geographical area making up the district from which he or she is elected and was a registered voter of the city at the time nomination papers are issued to the candidate as provided for in Section 10227 of the Elections Code.

### 2. California Government Code, Section 34882, see above.

### 3. California Elections Code, Section 21606:

(a) The term of office of any council member who has been elected and whose term of office has not expired shall not be affected by any change in the boundaries of the district from which he or she was elected.

...

### 4. California Government Code, Section 34883:

Registered voters signing nomination petitions or voting for a member of the legislative body shall be residents of the geographical area making up the district from which the member is to be elected.

**Subject:** Removing ambiguities from the proposed Santa Clara charter amendment [Santa Clara CRC]  
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Hi Brian. I took a look at the packet for Monday's CRC meeting that is available at <http://santaclaraca.gov/Home/Components/Calendar/Event/55385/3422?toqqle=all>

The proposed charter language specifies that, in 2018, 2020, and 2022, only the voters in a district get to "nominate and elect" the council members who represent that district (proposed sections 700.1(b), (c), and (d)). However, proposed section 700.1(e) does not have a similar restriction, leaving the charter open to interpretation that, beginning in 2024, everyone in the city gets to vote on each district's representatives.

Adding a phrase similar to "by the voters of the respective district" or "by the voters of the district represented by the Council Member" or "after being nominated and elected by the voters of the district represented by the Council Member" to the end of 700.1(e) might correct the defect.

But to make it very clear, I would suggest rewriting 700.1(d) and (e) to read as follows:

(d) In the election to be held in November 2022, and every four years thereafter, the voters of District 1 shall nominate and elect three (3) Council Members who meet the qualifications set forth in Section 600 of this Charter for four year terms each.

(e) In the election to be held in November 2024, and every four years thereafter, the voters of District 2 shall nominate and elect three (3) Council Members who meet the qualifications set forth in Section 600 of this Charter for four year terms each.

There may also be a need for something like the following:

700.1(g) If, pursuant to section 703, a vacancy in the City Council is filled by election, only the voters in the district where the vacancy exists shall nominate and elect the Council Member.

I'm also concerned that the language in proposed section 700.2(b) does not quite convey the intent of the recommendation made by the CRC at its meeting of July 10, 2017. Instead of this:

700.2(b) Ranked choice voting or single transferable vote shall be used [...]

I would recommend this:

700.2(b) The Single Transferable Vote form of Ranked Choice Voting shall be used [...].

**POST MEETING MATERIAL**

I hope you find this helpful.

Removing ambiguities from the proposed Santa Clara charter am...

Sincerely,

--Steve Chessin

President, Californians for Electoral Reform

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