

San José Charter Review Commission

1) Proposal Name

Proposal Name:	Future Charter Review Commissions
Submitted by:	Frank Maitski
Date submitted:	September 16, 2021

2) Proposal Details

<p>1) What problem(s) are you trying to address? <i>Before suggesting a solution, it is important to be clear about the problem you aim to solve.</i></p>	<p>The current Charter Review Commission was established by the Mayor and City Council as a singular event. The previous San Jose Charter Review Commission, similarly established, completed its final report in 1985. Hence, over 35 years have passed since San Jose’s charter was thoroughly reviewed. San Jose experienced significant change during that time. An earlier review of the charter may have been more appropriate.</p> <p>Historically in San Jose, the charter has only been reviewed when requested by the Mayor and/or City Council, usually from public concern over a specific issue. Considering the dynamic change of the San Jose community, a periodic review of the city charter is more appropriate to determine if any changes are needed, rather than waiting for a specific issue or problem to initiate the review.</p> <p>Additionally, the recommendations of the Charter Review Commission are advisory, only, to the City Council. The twenty-three members of the Charter Review Commission, supported by a substantial public review of its process, provide significant representation of the San Jose community at large. If most, or all, of the Charter Review Commission members support an amendment to the Charter, the Council still has the authority to reject it. This proposal provides a mechanism for proposed charter amendments supported by a super majority of Commissioners to be placed directly on the ballot, unless a super majority of the City Council votes to deny placing it on the ballot.</p>
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2) How has this problem possibly benefited or burdened people, especially BIPOC, low-income, undocumented and immigrant, those experiencing houselessness, etc.?

Is there data that speaks to the impact of this problem? What does the disaggregated data tell us?

This proposal benefits the San Jose community at large by providing a requirement for residents to review the City Charter at least every 10 years and providing a mechanism to place proposed amendments directly on the ballot if supported by a super majority of Commissioners.

3) What change are you proposing?

Describe the revision to [San José's Charter](#) that you are proposing. Include relevant

Add the following section to the City Charter:

Section 1002.1 Charter Review Commission

A Charter Review Commission shall be appointed at the second regular meeting of council in the year 2028 and of each succeeding tenth year thereafter, and at any time council may call for such a commission, to review and recommend amendments to this Charter. The Charter Review Commission shall be reflective of the City in terms of its racial and ethnic diversity, age and geography. It shall be comprised of twenty-three (23) residents of the City. The mayor shall nominate three (3) Charter Review Commission members, and each member of the Council shall nominate two (2) Charter Review Commission members from their District, who shall all be subject to confirmation by the

Charter section numbers.

Council. The term of the Charter Review Commission shall be no more than two years unless extended by the City Council. The Charter Review Commission shall determine its own rules of procedure. No member of the Charter Review Commission shall serve as an elective officer of the City during the member’s service on the Charter Review Commission. The Mayor or Council may request that the Charter Review Commission review specific sections of the Charter, but the work and recommendations of the Charter Review Commission shall not be limited to such specific sections. The Charter Review Commission shall be provided all reasonable resources it identifies are needed to complete its review. The Commission shall provide a written report of its findings to the City Council.

Nothing in this section shall limit the authority of council to submit any proposed charter amendment to a vote of the people unless otherwise provided for in this charter.

A vacancy exists on the Charter Review Commission upon a member’s resignation, death, inability to serve or failure of a member without cause to attend three successive regular meetings. If there is a vacancy on the Charter Commission, the Mayor or Council member who made the original nomination, or that member’s successor in office, shall nominate a person to fill the unexpired term of office, subject to confirmation by Council.

All Charter amendments proposed by the Charter Review Commission supported by an affirmative vote of at least seventeen (17) members of the Charter Review Commission, after a public hearing process prescribed by the Council, shall be submitted to the voters of the City of San Jose at the next primary or general election that is at least 120 days after the date the recommendations are presented to the City Council, unless rejected by a vote of 8 or more City Council members. All Charter amendments proposed by the Charter Review Commission supported by an affirmative vote of a majority but less than seventeen (17) members of the Charter Review Commission shall be considered as recommendations to the City Council. The Council may, but is not required to, refer such proposed amendments to the voters of the City of San Jose.

4) Is this change feasible?

Think through the revision you are proposing. Is

Yes, similar sections in other city charters exist that establish charter review commissions on a regular basis.

it legally possible? Is it practical? If there are questions you cannot answer, list them here.

5) Who might benefit from or be burdened by this change?

Is there data that speaks to the potential impact of this change? What are the potential unintended consequences of this change?

The general San Jose community benefits the most with this proposal since it establishes a mechanism in the City Charter for the residents to review it on a regular basis, and adds authority to place amendments directly on the ballot. The Mayor and City Council could possibly be considered burdened by this proposal since it shifts some authority directly back to a citizen’s commission.

6) What are the arguments against this proposal?

Summarize the arguments you expect or data you have found in opposition to this recommendation.

The Charter is the foundation of San Jose’s government and sets forth guiding principles for its governance. As such, the Charter should be kept as general as possible to allow the Mayor and Council flexibility to address the needs of the community through policy. The Charter should not be used to directly set policy, address the “issue of the day,” or advance a political agenda of any person.

A mandated periodic review of the Charter provides an opportunity for the Charter amendment process to be used inappropriately. Limiting review of the Charter minimizes this risk and focuses future reviews on charter issues identified by the Mayor and/or Council, presumably by input from the community.

The Mayor and City Council are the elected representatives of the community with a full time focus on its needs. As such, they are closer to issues that may require an amendment to the charter, and are in a better position to determine when a Charter

	<p>Review Commission is needed.</p> <p>The proposal also includes a mechanism for proposed charter amendments to be placed directly on the ballot by a supermajority vote of the Commission, unless specifically rejected by a majority vote of the City Council. This allows for more “direct democracy” of the citizens and less “representative democracy” of the Council, similar to California’s initiative process. Some believe California’s initiative process is over used with many proposals poorly developed. The impact of Proposition 13 is used as an example. This proposal is somewhat similar and could have similar results.</p> <p>There is also a concern that a future Charter Review Commission could become unduly politicized if granted more authority than an advisory body.</p>
<p>7) Must this be a Charter revision? <i>Can this problem be addressed without changing the charter (e.g., Council action, cultural change)? If not, should this be a policy recommendation to be included in the Commission’s report?</i></p>	<p>No, a City Ordinance could be enacted that establishes the same requirement for a periodic Charter Review Commission, with the same terms. However, a City Ordinance is much easier to repeal than a Charter amendment providing more assurance that periodic Charter reviews will continue. Also, it is unlikely a City Ordinance would include a provision allowing Charter amendments to be placed on directly on the ballot without approval of the Council.</p>

8) Are there other examples of this change?

If you have found other examples of this change, please share them and any outcomes that have been observed.

The charters for the cities of Portland, Oregon, and Columbus, Ohio, include sections that require a periodic Charter Review Commission.

3) Proposal Research & Citations

List below the results of any research conducted to inform this memo.

Questions	Recommending Person Response to Questions	Subcommittee Notes (i.e. Agreements, questions, additions, concerns, next step, etc.)
<p>List of citations <i>All data must be cited so that Commissioners who are not part of the Subcommittee in question may locate the source of information as needed.</i></p>	<p><i>"Guide for Charter Commissions," Sixth Edition; National Civic League.</i></p> <p>City Charter of Portland, Oregon</p> <p>City Charter of Columbus, Ohio</p>	

<p>Any speakers who presented to the subcommittee must be listed.</p> <p><i>Include name, title, affiliations, etc., along with a brief summary of the information presented by them.</i></p>		
<p>Relevant Links</p> <p><i>Provide links or locations of the information in this research as much as possible, otherwise provide attachments.</i></p>	<p>https://www.nationalcivicleague.org/resources/guide-charter-commissions-2011/guide-to-charter-commissions/</p> <p>https://www.portland.gov/charter</p> <p>https://library.municode.com/oh/columbus/codes/code_of_ordinances</p>	