



Memorandum

DATE: February 26, 2018

TO: City Council Ad Hoc Committee on Terms of Commissioners

FROM: City Manager, City Clerk, and City Attorney

SUBJECT: Review of Process for Filling Vacancies on Advisory Boards and Commissions

In this memorandum, staff concludes that City Charter sections 902 and 905 prescribe the manner in which Council is to make appointments to its advisory boards and commissions. A 1973 Council resolution, consistent with the Charter, provides some flexibility regarding the filling of vacancies occurring among the membership of those advisory boards and commissions. The language in the Charter and the resolution result in the following findings:

1. The Council is required to fill vacant, unexpired terms only for the remainder of the term; and
2. The Council's current policy, per the 1973 resolution, allows for a vacancy to be filled with an appointment to a partial term of two years (or less) followed by two successive (back-to-back) four-year terms for a total maximum of ten years. The 1973 resolution essentially says a partial term of two years or less is not considered a full term.

At the committee's previous meeting on December 6, 2017, there was extensive discussion regarding flexibility and options the Council might have available in order to fix or extend terms of appointed commissioners. This issue arose during the July 2017 meetings at which the Council considered applications for appointment and reappointment to various boards and commissions such as the Planning Commission, Library Commission, Community Services Commission, Personnel Commission, Economic Development Committee and so on. These advisory bodies are deemed to be jurisdictional in nature and therefore subject to the provisions in Article IX of the City Charter. (The Keep Hayward Clean and Green Task Force is not considered a City Charter advisory body.)

As noted in the July 2017 appointment process, and during the December 6, 2017 committee meeting, Charter sections 902 and 905 provide, in summary, directive language and constraining language regarding the appointment of members to the above advisory bodies and the filling of vacancies occurring during the terms of service of sitting

commissioners. Section 902 generally requires appointment of commissioners for four-year terms, with a maximum of two consecutive terms. Section 902 also creates a mechanism for the staggering of the terms to avoid having the terms all end at the same time. Section 905 requires vacancies on the advisory bodies to be filled by the Council – a vacancy resulting in a remaining unexpired term is to be filled by an appointment for the remainder of the unexpired term.

With a break in service, usually for at least one year, a member of an advisory body who has served two successive four-year terms (or a partial term of two years plus two successive four-year terms) can be reappointed by the Council to the same board or commission. The Council, however, retains the discretion in such instance, and reappointment should not be presumed. Clarifying language to such effect could be included in the Council's Appointed Officials Handbook.

Absent a change in the Charter, staff finds sections 902 and 905, along with the 1973 resolution, to be crisp and clear regarding the Council's options regarding these appointments. There is no ability, for example, to give a full four-year term to a commissioner who is being appointed to fill a vacancy with a remaining unexpired term. The Charter treats all advisory bodies similarly with respect to these constraints. Maintaining strict requirements for the Planning Commission, while relaxing the requirements for other boards and commissions, is not permissible. It is also notable that section 902 contains language directing terms to be staggered. While this language applies to the initial formation of advisory bodies, it is reasonable to conclude that terms are to be staggered subsequent to the expiration of initial terms. This policy favors continuity and predictability in the decision-making process, and it prevents abuse by the Council in the appointment or reappointment process.

Attachments:

- Attachment I Article IX of the City Charter
- Attachment II Resolution No. 73-235

ARTICLE IX. APPOINTIVE BOARDS AND COMMISSIONS.**SECTION 900. IN GENERAL.**

There shall be the boards and commissions enumerated in this Article which shall have the powers and duties stated herein. The number of members to comprise any board or commission shall be determined by ordinance or resolution of the Council. No member of any board or commission shall be a member of any other board or commission or hold any paid office or employment, in the City Government. In order to be eligible for any appointment to any board or commission, a person shall be a qualified elector of the City.

In addition, the Council may create by ordinance or resolution such boards or commissions as in its judgment are required and may grant to them such powers and duties as are consistent with the provisions of this Charter. (AMENDED: STATS. 1959 CH. 82)

SECTION 901. APPROPRIATIONS.

The Council shall include in the annual budget such appropriations of funds as in its opinion shall be sufficient for the efficient and proper functioning of the boards and commissions.

SECTION 902. APPOINTMENTS. TERMS.

The members of each of such boards or commissions shall be appointed by the Council. They shall be subject to removal by motion of the Council adopted by at least four affirmative votes. Unless otherwise provided by this Charter, the members thereof shall serve for a term of four years and until their respective successors are appointed and qualified. No member thereof shall serve more than two consecutive full terms on any one board or commission.

The members first appointed to such boards and commissions shall so classify themselves by lot that each succeeding July 1st the term of one of their number shall expire. If the total number of members of a board or commission to be appointed exceeds four, the classification by lot shall provide for the grouping of terms to such an extent as is necessary in order that the term of at least one member shall expire on each succeeding July 1st, and that the number of terms expiring in any year does not exceed by more than one the number expiring in any other year.

SECTION 903. EXISTING BOARDS AND COMMISSIONS.

The members of the boards and commissions holding office when this Charter takes effect shall continue to hold office thereafter until their respective terms of office shall expire and until their successors shall be appointed and qualified. The successors of each such member shall be appointed for terms of such duration, not exceeding four years, as will carry into effect the plan for staggered terms prescribed in the preceding section.

SECTION 904. MEETINGS. CHAIRMAN.

As soon as practicable, following the adoption of this Charter and following the first day of July of every year thereafter, each of such boards and commissions as exist shall organize by electing one of its members to serve as presiding officer at the pleasure of such board or commission. Each board or commission shall hold such regular and special meetings as such board or commission may require. All proceedings shall be open to the public.

The affirmative or negative vote of a majority of the entire membership of such board or commission shall be necessary for it to take any action, except to adjourn.

The City Clerk shall be responsible for the recording of the minutes for each of such boards and commissions and shall keep a record of its proceedings and transactions. Each board or commission may prescribe its own rules and regulations which shall be consistent with this Charter. Copies of such rules and regulations and the minutes of each board and commission shall be kept on file in the office of the City Clerk where they shall be available for public inspection. Each board or commission shall have the same power as the Council to compel the attendance of witnesses, to examine them under oath and to compel the production of evidence before it.

SECTION 905. COMPENSATION. VACANCIES.

The members of boards and commissions shall serve without compensation, but may receive reimbursement for necessary traveling and other expenses incurred on official duty when such expenditures have received authorization by the Council.

Any vacancies in any board or commission, from whatever cause arising, shall be filled by appointment by the Council. Upon a vacancy occurring, leaving an unexpired portion of a term, any appointment to fill such vacancy shall be for the unexpired portion of such term. If a member of a board or commission absents himself from three consecutive regular meetings of such board or commission, unless by permission of such board or commission expressed in its official minutes, or is convicted of a crime involving moral turpitude, or ceases to be a qualified elector of the City, his office shall become vacant and shall be so declared by the Council.

SECTION 906. PLANNING COMMISSION. POWERS AND DUTIES.

There shall be a Planning Commission which shall have the power and be required to:

1. Recommend to the Council, after a public hearing thereon, the adoption, amendment or repeal of a Master Plan or any part thereof for the physical development of the City.
2. Exercise such functions with respect to land subdivisions, planning and zoning as may be prescribed by ordinance or resolution, not inconsistent with the Charter.

HAYWARD CITY COUNCIL

RESOLUTION NO. 73-235 C.S.

INTRODUCED BY COUNCILMAN Birchfield

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD DECLARING A POLICY TO LIMIT SERVICE UPON BOARDS AND COMMISSIONS OF THE CITY OF HAYWARD TO NOT MORE THAN TWO AND ONE-HALF CONSECUTIVE FULL TERMS OF FOUR YEARS APIECE ON ANY ONE BOARD OR COMMISSION.

WHEREAS, Section 902 of the Charter of the City of Hayward prohibits members of boards and commissions of the City of Hayward from serving as many as three consecutive full terms of four years apiece on any one board or commission; and

WHEREAS, said Charter limitation does not prohibit members of boards and commissions from serving more than two consecutive full terms but less than three consecutive full terms of four years apiece on any one board or commission; and

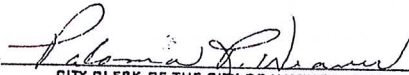
WHEREAS, by reason of the foregoing it is possible for members of boards and commissions to serve two consecutive full terms of four years apiece plus a major part of a third upon any one board or commission,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that said Council does hereby declare as a policy of this Council a limitation of not more than two and one-half consecutive full terms of four years apiece on any one board or commission for service thereon by members thereof.

IN COUNCIL, HAYWARD, CALIF., July 24, 1973

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCILMEN Pappas, Neveau, Weinreb, Santana, Birchfield.
MAYOR Howell.
NOES: COUNCILMEN None.
ABSENT: COUNCILMAN Oakes.

ATTEST: 
CITY CLERK OF THE CITY OF HAYWARD, CALIF.