




CITY COUNCIL



AGENDA REQUEST

AGENDA OF:	12-15-09	AGENDA REQUEST NO:	VII-D
INITIATED BY:	JOE MORRIS CITY ATTORNEY	RESPONSIBLE DEPARTMENT:	LEGAL
PRESENTED BY:	JOE MORRIS CITY ATTORNEY	DEPARTMENT HEAD:	JOE MORRIS  CITY ATTORNEY
		ADDITIONAL DEPARTMENT HEAD (S):	NA

SUBJECT / PROCEEDING:	CHARTER ELECTION PROPOSITIONS
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EXHIBITS:	PROPOSED ELECTION ORDINANCE, CHART SHOWING IMPLEMENTATION OF THREE-YEAR TERMS
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CLEARANCES APPROVAL

LEGAL:	JOE MORRIS, CITY ATTORNEY 	EXECUTIVE DIRECTOR:	NA
PURCHASING:	NA	ASST. CITY MANAGER:	NA
BUDGET:	NA	CITY MANAGER:	ALLEN BOGARD 

BUDGET

EXPENDITURE REQUIRED: \$	NA
CURRENT BUDGET: \$	NA
ADDITIONAL FUNDING: \$	NA

RECOMMENDED ACTION

Review and discuss.

EXECUTIVE SUMMARY

The City Council has completed its review of all the Charter Commission's recommendations. Staff has prepared a draft of an election ordinance for the May 8, 2010 City election that contains the propositions for the Charter amendments as they would appear on the ballot. After each ballot proposition, I have included language showing how the Charter would be amended if the proposition is approved. This information could be used to educate the voters before the election and at the polls. The proposed ordinance contains eleven propositions. By comparison, the 2004 Charter election contained four propositions, the 1999 Charter election had 15 propositions, and the 1992 Charter election had 19 propositions.

State law imposes, among other requirements, that each ballot proposition for a charter amendment may only include one subject and must allow voters to approve or disapprove any one or more amendments without having to approve or disapprove all of the Charter amendments. Most of the charter propositions contained in the ordinance would, if approved, simply amend one section of the Charter. However, Proposition No. 3, relating to extending council terms to three years, would necessarily require changes to four sections of the Charter, including the section on term limits, and the addition of transition provisions. I have included a chart, which you reviewed previously, that shows how the three-year terms would be implemented for each council position.

The complete rewrite and substantive changes to Article III, relating to the Initiative, Referendum, and Recall, are addressed in Propositions No. 5 through No. 9. They are separated into five propositions so that approval or disapproval of any one proposition will not impact the approval or disapproval of the other amendments for Article III.

I will present a Power Point on each of the 11 propositions for your review and discussion and receive your comments so I may prepare a final ordinance.

EXHIBITS

ORDINANCE NO. __

AN ORDINANCE OF THE CITY OF SUGAR LAND, TEXAS, CALLING AN ELECTION FOR SATURDAY, MAY 8, 2010, TO ELECT A MAYOR AND TWO COUNCIL MEMBERS AND TO VOTE ON CITY CHARTER AMENDMENTS; PROVIDING FOR EARLY VOTING, NOTICE OF THE ELECTION, AND OTHER RELATED ELECTION MATTERS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SUGAR LAND, TEXAS:

Section 1. That under Section 3.004 of the Election Code, it orders an election to be held on May 8, 2010, for the purpose of:

- (a) Electing a mayor and two council members to at-large Positions 1 and 2;
- and

- (b) Voting on amendments to the City Charter, as authorized by Chapter 9 of the Local Government Code.

Section 2. That after listing the candidates for the election, the propositions listed below will be printed on the ballot permitting voters to vote "Yes" or "No" on each proposition, as provided by law.

Section 3. That for purposes of providing information to the public, following each proposition in this ordinance, the resulting change in the part of the Charter proposed to be amended is shown by strikethroughs for deleted language and underlining for added language.

PROPOSITION NO. 1.

Should Section 1.03 of the City Charter be amended by repealing the provision that prohibits the City from granting a franchise for the use of a public right-of-way for more than fifty years?

If approved, Section 1.03 (e) of the City Charter will read as follows:

Sec. 1.03.General Powers. The City shall have the power:

(e) To the full extent allowed by law, to require that any person, utility, or company making use of the city's streets or property to provide any service to the public first obtain the written consent of the city by license, permit, franchise, ordinance or otherwise. ~~A franchise shall not be valid for more than fifty (50) years.~~

PROPOSITION NO. 2

Should Section 1.09 (f) of the City Charter, which now prohibits persons residing in an area annexed for limited purposes from voting in city elections be repealed as being in conflict with State law?

If approved, Section 1.09 (f) of the City Charter, which now reads as follows, would be repealed:

~~(f) The property owners and inhabitants of an area annexed for limited purposes may not vote in any City election or exercise any of the other rights or privileges enjoyed by the property owners and inhabitants within the full purpose corporate limits of the City area, except as otherwise provided for in this Charter, the ordinance annexing an area for limited purposes, or as provided by other law.~~

PROPOSITION NO. 3

Should Sections 2.01, 2.03, 2.05(b), and 2.06 of the City Charter be amended to extend the terms of the mayor and council members from two years to three years; to provide for filling council vacancies by election as required by State law; to provide for term limitations of three consecutive three-year terms; to provide for incidental amendments to account for a change to three-year council terms; and to provide for transition provisions?

If approved, Sections 2.01, 2.03, 2.05 (b) and 2.06 of the City Charter will read as follows:

Sec. 20.1. Election and Term.

(a) The council shall consist of a mayor and six (6) council members elected by the voters for a term of three ~~two~~ (3~~2~~) years...

(b) The mayor and two (2) council members shall be elected at-large every three years beginning with the uniform election date in May 2012 ~~in even-numbered years~~. The remaining four (4) council members shall be elected by district every three years beginning with the uniform election date in May 2011 ~~in odd-numbered years~~.

(c) Council elections shall be held in May ~~of each year~~ on the date specified by state law.

Sec. 2.03. Term Limitations.

A person may not be elected in a city election to any council position to serve more than three ~~four consecutive terms~~. ~~times in any consecutive nine year period~~.

Transition Provision: The limitation on serving three consecutive terms in Section 2.03 does not prohibit a person from serving four terms of any length as mayor or as an at-large or district council member over a period not to exceed 10 consecutive years in that position, if:

1. The person was currently serving as mayor or an at-large council member when that person was reelected at the election in May 2012 to serve his or her first three year term in that position; or
2. The person was currently serving as a district council member when that person was reelected at the May 2011 election to serve his or her first three year term in that position.

Sec. 2.05. The Mayor.

(b) Mayor pro tem. In May of each year ~~Following each city election in May~~, the council shall appoint one of its members as mayor pro tem. The mayor pro tem acts as mayor during mayor's absence and has the power to perform every act the mayor could perform if present.

Sec. 2.06. Vacancies.

A vacancy in any council position, including the mayor's position, will be filled by election of the voters, as provided by law.

(a) ~~If the office of mayor becomes vacant, the following provisions apply:~~

~~———— (1) — If, at the time of the vacancy, more than fifteen (15) months remain on the term, a city election shall be held for mayor at the next May council election. Pending the city election, the council shall appoint one of its members as mayor, whereupon the position of the appointed member becomes vacant.~~

~~———— (2) — If, at the time of the vacancy, three (3) months or more, but fifteen (15) or less months remain on the term, the council shall appoint one of its members as mayor to serve for the duration of the mayor's term, whereupon the position of the appointed member becomes vacant.~~

~~———— (3) — If, at the time of the vacancy, less than three (3) months remain on the term, the mayor pro tem shall act as mayor and receive the compensation of the mayor, but the mayor pro tem's position does not become vacant.~~

~~———— (b) — If the office of a council member, other than the mayor's position, becomes vacant, the~~

~~council shall within thirty (30) days of the vacancy appoint a qualified person to fill the vacancy. If, at the time of the vacancy, more than fifteen (15) months remain on the term, an election shall be held for the position at the next May council election. Otherwise, the appointee shall serve the remainder of the unexpired term of that position.~~

PROPOSITION NO. 4

Should Section 2.01 (d) of the City Charter, which now provides that a person elected to city council takes office at the next meeting following the meeting at which the city council declares the election results, be amended to provide that a person takes office at the meeting at which the city council declares the election results?

If approved, Section 2.01 (d) of the City Charter will read as follows:

(d) The city secretary shall promptly notify all persons elected to office. ~~The persons elected A candidate who is elected in a regular, special or runoff city election shall, after taking the~~ shall take their oaths of office as prescribed in section 10.02 of this charter, take office, and enter upon his duties at the next council meeting and begin their duties at the meeting at which the city council declares the results of the election.

PROPOSITION NO. 5

Should Sections 3.01 and 3.02 of the City Charter, which now require initiative and referendum petitions to be signed by registered voters equal in number to at least 30% of those voting in the last regular city election, be amended to require that initiative and referendum petitions be signed by at least 10% of the City's registered voters?

If approved, Sections 3.01 and 3.02 of the City Charter will read in part as follows:

SEC. 3.01. POWER OF INITIATIVE. THE INITIATIVE POWER MAY BE USED TO ENACT A NEW ORDINANCE, OR TO REPEAL OR AMEND SECTIONS OF CURRENT ORDINANCES. ANY INITIATIVE ORDINANCE OR AMENDMENT MAY BE SUBMITTED TO THE COUNCIL BY A PETITION SIGNED BY ~~QUALIFIED~~ REGISTERED VOTERS OF THE CITY EQUAL IN NUMBER TO AT LEAST ~~THIRTY (30)~~ TEN (10) PERCENT OF THE CITY'S REGISTERED VOTERS. ~~THOSE VOTING (IN) THE LAST REGULAR CITY ELECTION.~~ IF THE COUNCIL FAILS TO ADOPT AN ORDINANCE OR AMENDMENT SO PROPOSED, THEN THE VOTERS SHALL HAVE THE POWER TO ADOPT OR REJECT IT AT A CITY ELECTION.

SEC. 3.02. POWER OF REFERENDUM. THE ELECTORS SHALL HAVE THE POWER TO APPROVE OR REJECT ANY ORDINANCE PASSED BY THE COUNCIL, OR SUBMITTED BY THE COUNCIL TO A VOTE OF THE ELECTORS. WITHIN FORTY-FIVE (45) DAYS AFTER THE ENACTMENT BY THE COUNCIL OF ANY ORDINANCE WHICH IS SUBJECT TO A REFERENDUM, A PETITION SIGNED BY ~~QUALIFIED ELECTORS~~ REGISTERED VOTERS OF THE CITY EQUAL IN NUMBER TO AT LEAST ~~THIRTY (30)~~ TEN (10) PERCENT OF THE CITY'S REGISTERED VOTERS ~~ELECTORS VOTING IN THE LAST REGULAR MUNICIPAL ELECTION~~ MAY BE FILED WITH THE CITY SECRETARY REQUESTING THAT ANY SUCH ORDINANCE BE EITHER REPEALED BY THE COUNCIL OR SUBMITTED TO A VOTE OF THE ELECTORS.

PROPOSITION NO. 6

Should the existing conflict between Section 3.08 and Section 3.10 of the City Charter, relating to the city council's repeal of initiative ordinances approved by the voters, be resolved by amending Section 3.10 to allow the city council to repeal an initiative ordinance after one year following its adoption and by deleting the conflicting provision of Section 3.08?

If approved, Sections 3.08 and 3.10 will read in part as follows:

Sec. 3.08. Form of Ballot for Initiative and Referred Ordinances.

.... If a majority of the votes cast is in favor of a submitted ordinance, it shall thereupon be effective as an ordinance of the city. ~~An ordinance so adopted may be repealed or amended at any time after the expiration of two (2) years by a two thirds [vote] of the council.~~ A referred ordinance which is not approved by a majority of the votes cast shall be deemed thereupon repealed.

Sec. 3.10. Repealing Ordinances.

... no ordinance adopted at the polls under the initiative shall be amended or repealed by the council within ~~six (6) months~~ one (1) year of the adoption of said ordinance... .

PROPOSITION NO. 7

Should Section 3.10 of the City Charter, which now allows the city council to re-enact an ordinance repealed by a referendum election after six months following its repeal, be amended to allow the city council to re-enact the repealed ordinance after one year following its repeal?

If approved, Section 3.10 of the City Charter will read in part as follows:

Sec. 3.10. Repealing Ordinances.

... no ordinance repealed at the polls under the referendum shall be re-enacted by the council within ~~six (6) months~~ one (1) year of the repeal of said ordinance.

PROPOSITION NO. 8

Should Section 3.13 of the City Charter be amended to reduce the minimum number of registered voters required to sign a recall petition requesting an election to remove a council member from office from 25% of the registered voters to 20% of the registered voters?

If approved, Section 3.13 of the City Charter will read as follows:

SEC. 3.10. RECALL PETITIONS. THE RECALL PETITION ... MUST BE SIGNED BY AT LEAST ~~TWENTY-FIVE (25)~~ TWENTY (20) PERCENT OF THE QUALIFIED VOTERS OF THE CITY FOR THE RECALL OF THE MAYOR OR ANY COUNCIL MEMBER ELECTED AT-LARGE, OR ~~TWENTY-FIVE (25)~~ TWENTY (20) PERCENT OF THE QUALIFIED VOTERS IN THE DISTRICT FOR THE RECALL OF A COUNCIL MEMBER ELECTED FROM THAT DISTRICT. ...

PROPOSITION NO. 9

Should Article III of the City Charter, relating to the right of the citizens to use the Initiative, Referendum, and Recall, be revised: to provide for four divisions by subject matter; to comply with current State laws; to

provide for uniform petition procedures and requirements; to require that petition signatures be collected within 45 days; and to use language that reflects modern usage and style?

If approved, Article III of the City Charter will read as set forth in Exhibit A. (changes not shown).

PROPOSITION NO. 10

SHOULD SECTION 4.02 OF THE CITY CHARTER BE AMENDED TO PROVIDE THAT THE CITY COUNCIL MUST CONSENT TO THE APPOINTMENT AND TERMINATION OF THE CITY SECRETARY?

If approved, Section 4.02 of the City Charter will read as follows:

SEC. 4.02. CITY SECRETARY. THE CITY MANAGER SHALL, WITH THE CITY COUNCIL'S CONSENT, APPOINT A CITY SECRETARY WHO SHALL SERVE AT THE PLEASURE OF THE CITY MANAGER AND MAY, WITH THE CITY COUNCIL'S CONSENT, BE DISMISSED BY THE CITY MANAGER, WITH OR WITHOUT CAUSE. ...

PROPOSITION NO. 11

Should Section 4.03 of the City Charter be amended to provide that the city council must consent to the appointment and termination of the city attorney and that in providing legal services to the city, the city attorney shall exercise independent professional judgment?

If approved, Section 4.03 of the City Charter will read as follows:

SEC. 4.03. CITY ATTORNEY. THE CITY MANAGER SHALL, WITH THE CITY COUNCIL'S CONSENT, APPOINT A CITY ATTORNEY WHO SHALL SERVE AT THE PLEASURE OF THE CITY MANAGER AND MAY, WITH THE CITY'S COUNCIL'S CONSENT, BE ~~SUBJECT TO DISMISSAL~~ DISMISSED BY THE CITY MANAGER, WITH OR WITHOUT CAUSE. THE CITY ATTORNEY SHALL PROVIDE LEGAL SERVICES TO THE CITY. ALTHOUGH THE CITY ATTORNEY SHALL REPORT TO THE CITY MANAGER, THE CITY ATTORNEY SHALL EXERCISE HIS OR HER INDEPENDENT PROFESSIONAL JUDGMENT ON LEGAL MATTERS AS REQUIRED BY THE RULES OF THE LEGAL PROFESSION.

Exhibit A

If Propositions 5 through 10 are approved, Article III will read as follows:

ARTICLE III. INITIATIVE, REFERENDUM, AND RECALL

Division 1. General Provisions

Sec. 3.01. Power of Initiative, Referendum, and Recall.

(a) The City's registered voters may exercise the following powers through petition by requesting that:

(1) Initiative. The council enact a new ordinance and, if the council fails to do so, hold an election to approve or reject the new ordinance.

(2) Referendum. The council may repeal all or part of an existing ordinance, and, if the council fails to do so, hold an election to approve or reject the ordinance.

(3) Recall. A council member resign from office for the reasons set forth in the petition and, if the member fails to do so, hold an election on the recall.

(b) The power of the initiative and referendum does not apply to ordinances relating to:

(1) Financial matters, including the budget, the levy of taxes, or the issuance of bonds or debt instruments;

(2) The salaries of officers or employees;

(3) Matters which are not legislative in character or which have been withdrawn or excluded by general law from the operative field of initiative or referendum; and

(4) Matters where a State or Federal law provides for an election and related election procedures.

Sec. 3.02. Requirements for All Petitions.

(a) In this Article, "Initial Petition Date" means the date the first signature was obtained on any of the copies of an initiative, referendum, or recall petition.

(b) A petition consists of all the written information, signatures, and documents required by this Article. More than one copy of a petition may be circulated at one time, but each copy of the petition must comply with the requirements of this Article.

(c) All petitions must be uniform in size and style.

(d) All petitions must comply with the requirements of Chapter 277 of the Texas Election Code, a copy of which is available from the city secretary.

(e) All petitions must contain the names and addresses of the same five registered voters, who serve as a “Committee of the Petitioners,” and are responsible for the circulation and filing of the petition, but need not personally gather the signatures for the petition.

(f) All petitions must include an affidavit, in a form provided by the city secretary, from each person circulating a petition, stating that:

- (1) The affiant circulated that copy of the petition;
- (2) All the signatures were made in that person’s presence; and
- (3) It contains a stated number of signatures.

(g) One of the members of the Committee of Petitioners must submit a copy of the petition being circulated that contains the earliest dated signature to the city secretary within five business days of the Initial Petition Date. The city secretary will record the Initial Petition Date for purposes of verifying that the petition signatures were gathered within the time period required by this Article.

Sec. 3.03. Requirements Applicable to Specific Petitions.

(a) An initiative petition must contain the full text of the ordinance sought to be enacted.

(b) A referendum petition must contain the full text of the ordinance or provision sought to be repealed.

(c) A recall petition must identify by name the council member whose removal is sought and the grounds for seeking removal. Each recall petition may only request the recall of one council member, but more than one recall petition may be submitted at one time for the recall of more than one member.

Sec. 3.04. Petition Signatures.

(a) To be certified as sufficient for consideration by the council:

- (1) An initiative or referendum petition must be signed by at least 10% of the City’s registered voters as of the Initial Petition Date;
- (2) A recall petition for the recall of the mayor or an at-large council member must be signed by at least 20% of the City’s registered voters as of the Initial Petition Date; and
- (3) A petition for the recall of a council member elected from a single-member district must be signed by at least 20% of the City’s registered voters residing in that district as of the Initial Petition Date.

(b) To be counted toward the number of required signatures for an initiative, referendum, or recall petition, the person signing the petition must:

- (1) Have been a registered voter on the Initial Petition Date;
- (2) Have signed the petition before the 46th day following the Initial Petition Date; and
- (3) Meet any requirements of State law for being counted.

(c) If the number of signatures on a petition exceeds the number of signatures as stated in the circulator's sworn statement for that petition, the latest signatures, by date, that exceed that number will not be counted.

(d) If the information provided with a signature is sufficient to verify that the person signing the petition was eligible to sign the petition on the date signed, the failure to follow any technical requirements of this Article or State law will not invalidate the signature.

(e) A signature on a petition may be withdrawn as provided by Chapter 277 of the Texas Election Code.

Sec. 3.05. Submission and Review of Petition.

(a) All copies of the same petition must be compiled and filed as a single instrument with the city secretary at one time.

(b) The city secretary will examine the petition within 30 days of the date filed.

(c) The city secretary will certify the results of the examination to the council no later than the next regular council meeting following the expiration of the 30-day period.

(d) If the city secretary certifies that the petition is sufficient, the council will take the action appropriate for the type of petition as specified in this article.

(e) If the city secretary certifies to the council that the petition is insufficient:

- (1) The council will take no action on the petition; and

- (2) The city secretary will notify the Committee of Petitioners of the insufficiencies.

(f) Any supplemental petition submitted to the city secretary to address any insufficiencies will be governed by Chapter 272 of the Election Code. The city secretary will examine the supplemental petition and follow the same general procedures applicable to the initial petition, subject to the provisions of Chapter 272.

Sec. 3.06. Initiative and Referendum Elections.

(a) Any number of ordinances may be voted on at the same election in response to one or more petitions for an initiative or referendum election.

(b) If two or more ordinances approved at the same election have conflicting provisions, the provision contained in the ordinance receiving the greater number of affirmative votes prevails.

Division 2. Initiative

Sec. 3.07. Petition and Council Action.

(a) If the city secretary certifies to the council that an initiative petition is sufficient, the council must:

- (1) Approve the initiated ordinance without amendment within 60 days of receiving the city secretary's certification;
- (2) Submit the initiated ordinance to the voters at the earliest election date allowed by law; or
- (3) Submit the initiated ordinance to the voters at the earliest election date allowed by law along with an alternative ordinance proposed by the city council.

Sec. 3.08. Effect of Election.

(a) If a majority of the votes are cast in favor of an ordinance, the ordinance becomes effective upon the effective date of the ordinance declaring the results of the election.

(b) The council may not repeal or amend an initiated ordinance within one year following the effective date of the initiated ordinance.

(c) If an initiated ordinance is defeated at the election, a petition for a new initiated ordinance on the same general subject matter may not be filed with the city secretary within two years following the date of the election.

Division 3. Referendum

Sec. 3.09. Petition and Council Action.

(a) A referendum petition must be submitted to the city secretary within 180 days following the date the council approves an ordinance for which a referendum is sought.

(b) If the council fails to repeal the ordinance within 60 days of the date the city secretary notifies the council that the petition is sufficient, the council must call an election for the earliest date allowed by law.

Sec. 3.10. Effect of Election.

(a) If a majority of the voters fail to vote in favor of retaining an ordinance that is subject to a referendum petition, the ordinance is deemed repealed on the date the council approves the ordinance declaring the result of the election.

(b) The council may not re-enact the same or substantially similar ordinance within one year of the date the referendum ordinance is repealed.

Division 4. Recall

Sec 3.11. Resignation or Election. If a recall petition is certified by the city secretary to be sufficient and the council member whose removal is sought does not resign within five calendar days after the city secretary's certification to the council, the council must order a recall election for the earliest date allowed by law.

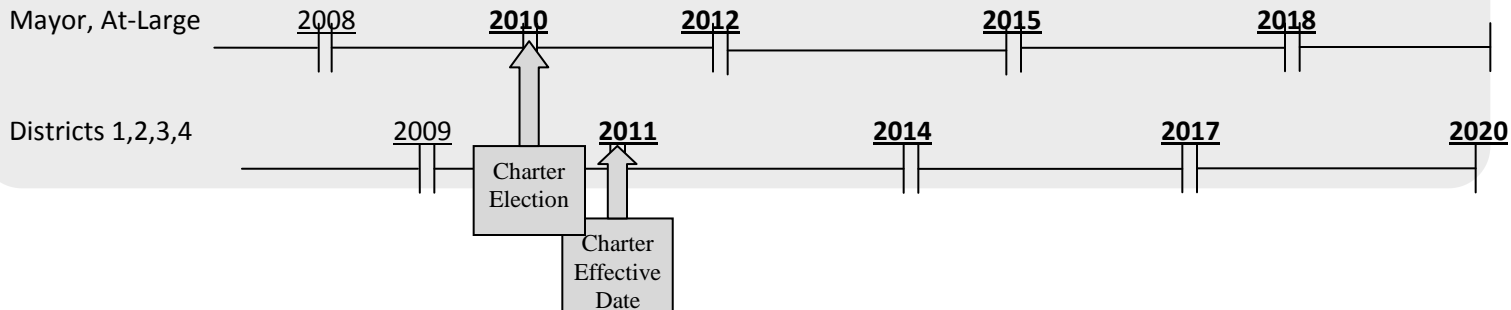
Sec. 3.12. Results of Recall Election. If the majority of the votes cast at the recall election are in favor of the removal of the council member recalled, the council member recalled is deemed to have vacated his office at the time and date the council votes to approve the ordinance declaring the results of the election. A council member removed by recall may not be appointed for the unexpired term of the office vacated.

Sec. 3.13. Limitations on Recall.

(a) A recall petition may not be filed against a council member within six months of the date he or she takes office.

(b) A council member is not subject to more than one recall election during any one term of that office.

PROPOSED ELECTION SCHEDULE - 3-Year Term – Effective May 2011 for Single-Member District Election and May 2012 for Mayor/At-Large Election



Proposed Term Limits Applied to Current Office Holders

