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Measure L:

Sacramento Checks and Balances Act of 2014

Report

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I. EXECUTIVE SUMMARY

Most cities are structured through one of two different forms of government: “council-manager” and “strong-mayor.”¹ In council-manager cities, the mayor and each council member has equal strength in developing policy.² The city manager handles the day-to-day community operations, including making all personnel decisions.³ The strong-mayor system is modeled after state and federal governments, so the mayor leads as a governor or the president would, and the city council acts as the legislature.⁴ As a result, the mayor does not have a vote, but does have veto power.⁵ Most large city governments, including New York City, Los Angeles, Chicago, and San Francisco, have a strong-mayor form of government.⁶

Measure L, which is on the ballot in the city of Sacramento, aims to change the government structure from council-manager to strong-mayor.⁷ Revisions under Measure L would include removing the mayor’s vote on the city council, but giving the mayor veto power over ordinances and the city budget; vesting power akin to that of a chief executive officer in the mayor, rather than the city manager; conferring the power to make personnel decisions, including appointing and removing the city manager, to the mayor; and imposing term limits on the mayor and council members.⁸

Proponents state a strong-mayor government would create more accountability, place checks and balances on the government, and help modernize Sacramento.⁹ Opponents, however, insist putting the ultimate power over city government into the hands of one elected official will make it easier for special interests to influence decision making.¹⁰ In addition, they feel the “system is working well...if it’s not broken, don’t break it.”¹¹ This article will discuss

¹ STRONG MAYOR-COUNCIL INSTITUTE, STRUCTURES, <http://strongmayorcouncil.org/structures.html> (last visited Sept. 13, 2014).

² Cal. City Mgmt. Foundation and Int’l City/County Mgmt. Ass’n, *Council-Manager or “Strong Mayor”: The Choice is Clear* (2001), <https://icma.org/Documents/Document/Document/302618>.

³ *Id.*

⁴ *Structures*, STRONG MAYOR-COUNCIL INSTITUTE, <http://strongmayorcouncil.org/structures.html> (last visited Sept. 13, 2014).

⁵ *Id.*

⁶ STRONG MAYOR-COUNCIL INSTITUTE, TOP 25 CITIES (2012) available at http://strongmayorcouncil.org/images/City_List_Top_25_2011_Publication.pdf.

⁷ SACRAMENTO, CAL. CITY COUNCIL RES. NO. 2013-0362, EXHIBIT A (2013), available at http://portal.cityofsacramento.org/~media/Corporate/Files/City-Clerk/Elections/07142014_MeasureText_Charter.pdf.

⁸ CITY OF SACRAMENTO, IMPARTIAL ANALYSIS OF MEASURE L PREPARED BY SACRAMENTO CITY ATTORNEY 1–2 (2014), available at http://portal.cityofsacramento.org/~media/Files/City-Clerk/Elections/MeasureL_ImpartialAnalysis.pdf [“IMPARTIAL ANALYSIS”].

⁹ CITY OF SACRAMENTO, ARGUMENT IN FAVOR OF MEASURE L, available at http://portal.cityofsacramento.org/~media/Files/City-Clerk/Elections/MeasureL_For.pdf [“IN FAVOR”].

¹⁰ CITY OF SACRAMENTO, REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE L, available at http://portal.cityofsacramento.org/~media/Files/City-Clerk/Elections/MeasureL_RebuttalAGAINST.pdf [“REBUTTAL TO FAVOR”].

¹¹ “*Strong Mayor*” Forum, Sierra Curtis Neighborhood Ass’n (Sept. 22, 2014) [“Forum”] (statement of council member Steve Hansen) (notes on file with the *California Initiative Review*).

Sacramento’s current government, the history of strong-mayor in Sacramento, how Measure L would change the law, constitutional and charter implications of the initiative, and public policy considerations.¹²

II. CURRENT LAW

In California, all incorporated cities are what are known as “general law” cities, unless the electorate of a city opts to be what is called a “charter city.”¹³ Sacramento is a charter city.¹⁴

A. Charter Cities

In operation, a city’s charter is analogous to a state’s or country’s constitution.¹⁵ A city charter provides both broad authority and vestment of powers in a governing body, as well as acts as “an instrument of limitation on the broad power of charter cities over municipal affairs.”¹⁶ The city’s electorate must approve the charter and any revisions.¹⁷ Only conflicting provisions in the state or federal constitutions, or any state statute on a matter of statewide concern can preempt the laws contained in a city’s charter.¹⁸

The California Constitution grants cities the authority to adopt a charter.¹⁹ Once a charter is adopted, a charter city has the power to create and regulate a police force and conduct municipal elections, and broad authority over its governmental structure, including all aspects of employment.²⁰

The 482 incorporated cities in California have either one of two forms of municipal governmental structure: the “council-manager” structure or the “strong-mayor” structure.²¹ General law cities must operate under the council-manager structure.²² While charter cities have the option of adopting either structural format, of California’s 120 charter-cities, “only five use the true strong-mayor form.”²³

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¹² *Infra* Sections II–VI.

¹³ CAL. CONST. art. XI, § 3.

¹⁴ See EILEEN TEICHERT AND MATTHEW RUYAK, PROPOSED 2012 CHARTER REVISION ANALYSIS 6 (2012), available at http://www.cityofsacramento.org/cityattorney/documents/StaffReport1_17_12.pdf [“2012 ANALYSIS”] (stating the charter “operates as a ‘Constitution’”).

¹⁵ See *id.* at 7 (stating the charter “operates as a ‘Constitution’”).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ CAL. CONST. art. XI, § 3.

²⁰ 2012 ANALYSIS, *supra* note 14, at 7.

²¹ *Id.*

²² CAL. GOV’T CODE § 34409 (West 2014).

²³ 2012 ANALYSIS, *supra* note 14, at 7.

B. Current Sacramento Charter Law

Like all city charters, Sacramento's presiding document identifies a governing body, and vests widespread powers in it.²⁴

1. The City Council: Article III

In its most-current version, Sacramento's charter vests authority in the nine-member city council to act as the governing body of the city.²⁵ The council comprises eight members, each elected from one of eight districts within the city limits.²⁶ The ninth member of the council is the mayor.²⁷ The city council is the legislative body within municipal government, and is vested with various powers including the power to propose and adopt city ordinances to be contained within the municipal code, reapportion and redistrict council-seat districts, conduct investigations into the affairs of city government, and conduct legislative business at public meetings.²⁸ Currently, council members are not subject to any term limits.²⁹

2. The Mayor: Article IV

The mayor is the "presiding officer of the city."³⁰ While he or she is a voting member of the council, the mayor also assumes the leadership role in relations between city government and the citizens of Sacramento.³¹ In effect, the mayor of Sacramento is seemingly intended as a position that will guide the council in the administration of its legislative duties, ensuring the priorities of the city's citizens are furthered, all while maintaining a position of equal-footing with other members of the council.³² The charter also grants specific powers and duties to the mayor, including that he or she may propose ordinances and resolutions for the council to consider and shall appoint and may remove members of boards, commissions, and advisory agencies.³³ The mayor is elected to a term of four years.³⁴ Currently, there are no term limits for this office.³⁵

3. The City Manager: Article V

Under the charter, the city manager is vested with the role and responsibility of being the city's chief executive officer, overseeing the numerous departments that make up Sacramento's municipal government.³⁶ In essence, the city manager is responsible for the city's day-to-day

²⁴ SACRAMENTO, CAL. CHARTER, art. II §§ 10, § 20–21.

²⁵ *Id.*, art. III, § 20–21.

²⁶ *Id.*, art. III, § 21.

²⁷ *Id.*

²⁸ *Id.*, art. III, §§ 24–25, 31–32, 34.

²⁹ *Id.*, art. III, §26.

³⁰ *Id.*, art. IV, § 40.

³¹ *Id.*, art. IV, § 40(b)(2).

³² *Id.*, art. IV, § 40(b)(2)–(5).

³³ *Id.*, art. IV, § 40(b)(6)–(7).

³⁴ *Id.*, art. IV, § 42–43.

³⁵ *Id.*, art. IV, § 43.

³⁶ *Id.*, art. V, § 61(b).

administration.³⁷ In addition, the charter vests in the city manager various powers and duties, including the responsibility to ensure that all laws and ordinances are enforced; to act as an advisor to the city council; to oversee and manage contracts, leases, and permits that the city council enters into for goods and services; and to propose the annual city budget.³⁸

Sacramento's charter anticipates the need for separation of powers because it expressly prohibits the council from circumventing the city manager to work with any part of city government under the manager's direction and supervision, including any attempts to appoint or hire any city officer or employee.³⁹ Similarly, the charter provides for checks on the authority of the city manager through its grant of investigatory power to the city council.⁴⁰ In order to remove the city manager from office, at least six city council members must approve his or her termination.⁴¹

4. *The Annual Budget: Article IX*

Under the existing charter, the city manager develops and proposes the city's budget for presentation to the city council not less than 60 days prior to start of each fiscal year.⁴² The city council then considers the budget recommendations during public hearings, and ultimately votes by resolution to adopt a budget for the upcoming fiscal year.⁴³

III. HISTORY OF STRONG-MAYOR

A. Strong-Mayor Government in Other Cities

Many city government structures were originally based on the executive and legislative branches of the federal government, but moved toward council-manager governance in the wake of a number of mayoral corruption scandals in the early 1900s.⁴⁴

Since the early 1990s, cities with more than 100,000 residents have steadily adopted strong-mayor systems.⁴⁵ One reason is that growing cities have growing numbers of interest groups, and it is easier to have one person as a point-of-contact for those groups.⁴⁶

³⁷ 2012 ANALYSIS, *supra* note 14, at 17.

³⁸ SACRAMENTO, CAL. CHARTER, art. V, § 61(a), (c), (g), (i).

³⁹ *Id.*, art. V, § 62.

⁴⁰ *Id.*, art. V, § 62(a).

⁴¹ *Id.*, art. V, § 63.

⁴² *Id.*, art. IX, § 111(a).

⁴³ *Id.*

⁴⁴ J.T. Long, *A Short History of the Strong Mayor in California*, PUBLIC CEO (Sept. 3, 2009), <http://www.publicceo.com/2009/09/a-short-history-of-the-strong-mayor-in-california/>.

⁴⁵ *Structural Trends*, STRONG MAYOR-COUNCIL INSTITUTE, <http://strongmayorcouncil.org/structuraltrends.html> (last visited Sept. 13, 2014).

⁴⁶ Lisa Nisenson, *Romper Room: The Strong Mayor Versus Strong City Manager Debate*, THIS WEEK IN SARASOTA (July 27, 2012), <http://www.thisweekinsarasota.com/2012/07/romper-room-the-strong-mayor-versus-strong-city-manager-debate/>.

Not all cities have embraced the trend.⁴⁷ Columbia, South Carolina voters defeated a strong-mayor initiative last year despite support from the governor, Chamber of Commerce, and other mayors across the state.⁴⁸ Large cities like Baltimore, Dallas, Indianapolis, Phoenix, and San Antonio maintain their council-manager systems.⁴⁹ El Paso, Texas abandoned its strong-mayor system in 2004, while Topeka, Kansas and Cedar Rapids, Iowa chose to adopt council-manager governance when replacing their commission governments.⁵⁰ Portland retains a council-manager form of government because voters there think “shared leadership is better than centralized power.”⁵¹

In California, five cities have adopted a strong-mayor system: Fresno, Los Angeles, Oakland, San Diego, and San Francisco.⁵² Their structures vary; for example, Fresno and Oakland still have a city manager, while the other cities place all management decisions in the mayor’s hands.⁵³

There is mixed feedback regarding California’s strong-mayor systems.⁵⁴ Critics of Oakland’s system assert the charter is vague and creates uncertainty regarding which public official has responsibility over certain departments.⁵⁵ Former Fresno mayor Karen Humphrey regrets her role in that city’s adoption of a strong-mayor system.⁵⁶ On the other hand, San Diego’s strong-mayor governance successfully made it through a five-year trial period.⁵⁷ Voters permanently adopted the structure in 2010, but made some changes, including adding a ninth council seat to prevent tie votes.⁵⁸ There have, however, been abuses of power in San Diego since that permanent adoption.⁵⁹

⁴⁷ Pat Lynch, *Strong Mayor*, EAST SACRAMENTO PRESERVATION (Sept. 22, 2014), <http://eastsacpreservation.org/strong-mayor/>.

⁴⁸ *Id.*

⁴⁹ STRONG MAYOR-COUNCIL INSTITUTE, TOP 25 CITIES (2012) available at http://strongmayorcouncil.org/images/City_List_Top_25_2011_Publication.pdf.

⁵⁰ *Structural Trends*, STRONG MAYOR-COUNCIL INSTITUTE, <http://strongmayorcouncil.org/structuraltrends.html> (last visited Sept. 13, 2014).

⁵¹ Lynch, *supra* note 47.

⁵² J.T. Long, *A Short History of the Strong Mayor in California*, PUBLIC CEO (Sept. 3, 2009), <http://www.publicceo.com/2009/09/a-short-history-of-the-strong-mayor-in-california/>.

⁵³ *Id.*

⁵⁴ See, e.g., J. Douglas Allen-Taylor, *Undercurrents: Oakland’s ‘Strong-Mayor’ Charter Ambiguous as to Mayor’s Duties*, BERKELEY DAILY PLANET (Feb. 11, 2010, 9:46 AM), <http://www.berkeleydailyplanet.com/issue/2010-02-11/article/34636?headline=Undercurrents-Oakland-s-Strong-Mayor-Charter-Ambiguous-As-to-Mayor-s-Duties--By-J.-Douglas-Allen-Taylor-> (voicing concerns that the mayor’s power is unclear).

⁵⁵ *Id.*

⁵⁶ *Forum*, *supra* note 11 (statement of council member Steve Hansen).

⁵⁷ *A History of San Diego Government*, OFFICE OF THE CITY CLERK, <http://www.sandiego.gov/city-clerk/aboutus/history.shtml> (last visited Oct. 5, 2014).

⁵⁸ *Id.*

⁵⁹ Monica Garske, R. Stickney, and Gene Cubbison, *Former San Diego Mayor Bob Filner Sentenced*, NBC SAN DIEGO (Dec. 9, 2013, 8:17 PM), <http://www.nbcsandiego.com/news/local/Former-Mayor-Bob-Filner-to-Be-Sentenced-Monday-234905381.html>.

Despite the opinions on each side regarding the effectiveness of a strong-mayor structure in other California cities, research has shown the system to be equally as effective as council-manager governance.⁶⁰ Both forms of government generally champion citizens' needs in equal ways.⁶¹ No form of government is perfect, but both can be successful as long as those elected put the needs of the people first.⁶²

B. Sacramento's Prior Strong-Mayor Governments

In 1849, the electorate of the soon-to-be formed City of Sacramento voted to adopt the Sacramento City Charter, thereby establishing Sacramento as a municipality.⁶³ The charter reflected voters' desires to move away from the alcalde court system, which the Treaty of Guadalupe Hidalgo established, and to implement a form of governance more reflective of the democratic process in the local governments of the eastern states from which they had emigrated.⁶⁴ The form of government created was analogous to today's strong-mayor form of government.⁶⁵ Borrowing from the Spanish tradition, the 1849 charter created a "council-alcalde" system.⁶⁶ An "alcalde" is a traditional municipal magistrate who had both judicial and administrative functions.⁶⁷ In the modern Spanish language, *alcalde* is the equivalent of the English word *mayor*.⁶⁸

The council-alcalde form of government in Sacramento was brief; the Legislature passed a law in 1858 that consolidated city and county governments into one municipal system.⁶⁹ In

⁶⁰ Sam Sturgis, *Strong Mayor, Weak Mayor, No Mayor—In Terms of Policy, It May Not Matter Much*, CITY LAB (July 31, 2014), <http://www.citylab.com/politics/2014/07/strong-mayor-weak-mayor-no-mayor-in-terms-of-policy-it-may-not-matter-much/375347/>.

⁶¹ *Id.*

⁶² Lisa Nisenson, *Romper Room: The Strong Mayor versus Strong City Manager Debate*, THIS WEEK IN SARASOTA (July 27, 2012), <http://www.thisweekinsarasota.com/2012/07/romper-room-the-strong-mayor-versus-strong-city-manager-debate/>.

⁶³ Kathryn Gaeddert, Introduction, *For the Record: Catalog of the Public Records, City of Sacramento 1849–1982, Sacramento County, 1848–1982*, CENTER FOR SACRAMENTO HISTORY, at 3 (Mar. 1, 1982), available at <http://pdf.oac.cdlib.org/pdf/samcc/forrecor.pdf>.

⁶⁴ *Id.*

⁶⁵ Interview with Phil Isenberg, former mayor, City of Sacramento, in Sacramento, Cal. (Oct. 2, 2014) ["Isenberg interview"] (notes on file with the *California Initiative Review*); *Your City in Action! The City of Sacramento Charter Revision*, LIBRARY BUZZ (Aug. 20, 2009), <http://apps.lib.csus.edu/blogs/blog/2009/08/20/your-city-in-action-the-city-of-sacramento-charter-revision/>.

⁶⁶ Isenberg interview, *supra* note 65; *Your City in Action! The City of Sacramento Charter Revision*, LIBRARY BUZZ (Aug. 20, 2009), <http://apps.lib.csus.edu/blogs/blog/2009/08/20/your-city-in-action-the-city-of-sacramento-charter-revision/>.

⁶⁷ *Alcalde*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/13206/alcalde> (last visited Oct. 5, 2014).

⁶⁸ *Id.*

⁶⁹ Isenberg interview, *supra* note 65; NELLIE MAY HENDERSON COLE, *CONSOLIDATION OF SACRAMENTO CITY AND COUNTY GOVERNMENT, 1858–1863* (1958).

1863, that radical change was overturned, and Sacramento returned to a mayor-council form of governance, which lasted until 1911.⁷⁰

Although the city governance change several times throughout the century, it took until 1989 for a citizen commission to recommend a strong-mayor system in Sacramento, along with a return to a consolidated city and county government.⁷¹ Thus, the “new” concept of a strong-mayor system in Sacramento is actually not new at all, but rather reflects the ebb and flow of ideas regarding forms of governance.⁷²

C. Recent Sacramento Strong-Mayor Proposals

Prior to Measure L, there were three strong-mayor proposals, beginning with a version Sacramento Mayor Kevin Johnson advocated for shortly after taking office in 2008.⁷³

1. 2009 Citizen Initiative

In 2009, the city council voted to support a citizen-proposed strong-mayor initiative if enough citizen support was gathered through petition circulation to place it on the June 2010 ballot.⁷⁴ The measure would have given the mayor power akin to that of a chief executive officer. The mayor would have taken on the duties of the city manager, including preparing budgets and appointing and removing the city manager, clerk, treasurer, and attorney, as well as most other city employees.⁷⁵ The mayor no longer would have been a member of the city council, but would have been able to veto council decisions.⁷⁶ To ensure that there would not be a tie vote in city council decisions, a ninth district would have been added.⁷⁷

At the same time that the council voiced its support for the initiative, the council recognized that the measure, as drafted, could have been unconstitutional.⁷⁸ The initiative would have altered nine articles of the Sacramento City Charter.⁷⁹ The breadth of these changes would

⁷⁰ Isenberg interview, *supra* note 65; *Your City in Action! The City of Sacramento Charter Revision*, LIBRARY BUZZ (Aug. 20, 2009), <http://apps.lib.csus.edu/blogs/blog/2009/08/20/your-city-in-action-the-city-of-sacramento-charter-revision/>.

⁷¹ Ed Salzman, *Mayors Move to Power in California City Halls*, L.A. TIMES (July 23, 1989), http://articles.latimes.com/1989-07-23/opinion/op-115_1_city-council-member.

⁷² Isenberg interview, *supra* note 65.

⁷³ Craig Powell, *Welcome Back, Strong Mayor*, INSIDE PUBLICATIONS (Nov. 30, 2013), <http://www.insidepublications.org/index.php/inside-city-hall/522-welcome-back-strong-mayor> [“Powell”] Mayor Kevin Johnson, CITY OF SACRAMENTO, <http://portal.cityofsacramento.org/Mayor-Council/Districts/Mayor> (last visited Sept. 1, 2014).

⁷⁴ EILEEN TEICHERT, STRONG MAYOR INITIATIVE LEGAL ISSUES AND OPTIONS 3 (2009), *available at* http://sacramento.granicus.com/MetaViewer.php?view_id=22&clip_id=2085&meta_id=184461 [“TEICHERT”].

⁷⁵ *Id.* at 3–4.

⁷⁶ *Id.* at 4.

⁷⁷ *Id.*

⁷⁸ *Id.* at 3.

⁷⁹ *Id.* at 7.

have amounted to a city charter revision, rather than an amendment.⁸⁰ Since the California Constitution does not allow a city to revise its charter through the initiative process unless its city council places the measure on the ballot, the proposed initiative could have been found unconstitutional.⁸¹ Despite a warning from the city attorney regarding the possible unconstitutionality of the measure, it was placed on the ballot.⁸²

As a result, Bill Camp of the Sacramento Central Labor Council filed suit for a preliminary injunction to prevent a vote on the initiative before its constitutionality was adjudicated.⁸³ The parties ultimately agreed that the initiative the electorate proposed was beyond voters' power, so city officials removed it from the ballot, but the council did create a charter review committee to make recommendations for future charter revisions.⁸⁴

2. 2010 Council Proposal

When the citizen-driven initiative was enjoined, the city council did consider placing a new charter revision on the June 2010 ballot.⁸⁵ That version would not have given the mayor power to appoint the city attorney and other employees.⁸⁶ However, it would still have limited the number of terms to which the mayor and council members could be elected and given the mayor appointment power for the city manager position.⁸⁷ The revisions would have had a "sunset," or expiration date, without voter re-approval.⁸⁸ The city council did not vote to place the measure on the ballot, much to Mayor Johnson's disappointment, because members said the mayor had not presented any evidence that the existing council-manager system was not working.⁸⁹

⁸⁰ *Id.* at 5, 7–10.

⁸¹ *Id.* at 5, 10.

⁸² *Camp v. Sacramento*, No. 34-2009-00065404, at 3 (Cal. Super. Ct. Sacramento Jan. 21, 2010) (order granting preliminary injunction).

⁸³ *Id.*

⁸⁴ *Camp v. Sacramento*, No. 34-2009-00065404 (Cal. Super. Ct. Sacramento filed Dec. 15, 2010) (stipulated judgment); WILLIAM EDGAR ET AL., SACRAMENTO CHARTER REVIEW COMMITTEE FINAL REPORT 24 (2009), http://www.cityofsacramento.org/charter/documents/CRC_Final_Report.pdf ["EDGAR"].

⁸⁵ KUNAL MERCHANT, REPORT BACK: CHARTER REFORM PACKAGE 2 (2010), available at http://sacramento.granicus.com/MetaViewer.php?view_id=22&clip_id=2205&meta_id=191740.

⁸⁶ Kathleen Haley, *Johnson Aims to Put Strong Mayor Plan on November Ballot*, SACRAMENTO PRESS (Feb. 16, 2010, 2:02 PM), <http://sacramento.press.com/2010/02/16/johnson-aims-to-put-strong-mayor-plan-on-november-ballot/>.

⁸⁷ *Id.*

⁸⁸ KUNAL MERCHANT, REPORT BACK: CHARTER REFORM PACKAGE 1 (2010), available at http://sacramento.granicus.com/MetaViewer.php?view_id=22&clip_id=2205&meta_id=191740.

⁸⁹ Nick Miller, *Sacramento City Council Approves Strong Mayor Vote for 2014 at Drama-Free Meeting (Boring! So Let's Watch an Old Video of K.J. Chewing out his Colleagues)*, SACRAMENTO NEWS & REVIEW (Nov. 6, 2013, 2:34 PM), <http://www.newsreview.com/sacramento/pageburner/blogs/post?oid=11973042>; *Sacramento Council Votes Against Strong-Mayor Plan*, RECORDNET.COM (June 23, 2010, 8:42 AM), http://www.recordnet.com/apps/pbcs.dll/article?AID=/20100623/A_NEWS/100629945.

3. 2012 Expanded Council Proposal

After the initial attempts to place a measure on the 2010 ballot did not move forward, Mayor Johnson introduced a different proposal in 2012, which similarly did not make it to the ballot.⁹⁰ The new mayoral powers that would have been granted were largely the same, but the plan would have added a ninth council district and council seat, as well as created an “at-large” council member position, bringing the total number of council seats to ten.⁹¹ The at-large member would have been elected city-wide, just like the mayor, and would have cast votes on behalf of the entire city since the mayor would no longer be able to vote.⁹² Because there would have been an even number of council members, however, the mayor would have been able to cast tie-breaker votes.⁹³

4. 2014 Measure L

For the latest iteration, Sacramento Tomorrow took over the movement to promote a strong-mayor government in the city.⁹⁴ The group and its 28 advisory committee members worked to create a new proposal, and planned to reach out to the community for feedback.⁹⁵ Very little feedback was sought, however, and voters did not have a chance to review the group’s recommendations.⁹⁶

In November 2013, the Sacramento City Council approved a resolution to place a revision to the city charter on the November 2014 ballot.⁹⁷ That resolution ultimately became Measure L.⁹⁸ The resolution is very similar to Mayor Johnson’s last proposal, but with slight changes, including a limit of three terms for the mayor, rather than two.⁹⁹ Four council members—Angelique Ashby, Steve Cohn, Jay Schenirer, and Allen Warren—and Mayor Johnson voted in support, while council members Darrell Fong, Steve Hansen, Kevin McCarty, and Bonnie Pannell opposed the resolution.¹⁰⁰ Council member Hansen is now leading the charge against Measure L with support from former Sacramento mayors Anne Rudin and Heather Fargo, the League of Women Voters, and the Democratic Party of Sacramento County,

⁹⁰ See Powell, *supra* note 73 (stating that the court stopped the first proposal in 2009 and the city council did not support proposals in 2010 and 2012).

⁹¹ Antonio Harvey, *City Council Votes Against Strong Mayor, For Charter Commission*, SACRAMENTO OBSERVER (Feb. 8, 2012), <http://sacobserver.com/2012/02/city-council-votes-against-strong-mayor-for-charter-commission/>.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Powell, *supra* note 73.

⁹⁵ *Id.*

⁹⁶ *Id.*; Interview with Matthew Ruyak, Assistant City Attorney, City of Sacramento, in Sacramento, Cal. (Sept. 3, 2014) (notes on file with the *California Initiative Review*).

⁹⁷ SACRAMENTO CITY COUNCIL RES. NO. 2013–0362, at 3 (2013).

⁹⁸ Ryan Lillis, *Sacramento Councilman Steve Hansen to Lead Opposition to Strong-Mayor Plan*, SACRAMENTO BEE (Aug. 19, 2014, 12:00 a.m.), <http://www.sacbee.com/2014/08/19/6637677/sacramento-councilman-steve-hansen.html> [“Lillis-Hansen”].

⁹⁹ Powell, *supra* note 73.

¹⁰⁰ SACRAMENTO CITY COUNCIL RES. NO. 2013–0362, at 3 (2013).

while Mayor Johnson has found allies in state Senator Darrell Steinberg, former Sacramento mayor Phil Isenberg, former New York City Mayor Michael Bloomberg, and several unions.¹⁰¹

IV. PROPOSED LAW

Measure L seeks to enact significant changes to the roles of the city council, mayor, and city manager, as well as how the budget is proposed and approved.¹⁰²

A. The City Council: Article III

Measure L would reduce the size of the city council from nine to eight council members, removing the mayor as a member.¹⁰³ As such, this new composition of council members has the potential to lead to ties on ordinances and other measures that come before the body for a vote.¹⁰⁴ Measure L does not provide a provision to remedy tie votes that result from a council of eight members.¹⁰⁵

The council would also be required to elect a president and vice president from amongst its members.¹⁰⁶ In the mayor's absence from the city, the president and vice president would serve as mayor in their respective order, and would assume all the vested rights and powers of the mayor with the significant exceptions of "the power of any veto or any other discretionary privilege that is enjoyed" by the mayor.¹⁰⁷

The enactment of Measure L would impose term limits on council members.¹⁰⁸ Specifically, each city council member would only be permitted to serve three, four-year terms.¹⁰⁹ This change would not apply retroactively to terms already served by existing council members.¹¹⁰

¹⁰¹ Lillis-Hansen, *supra* note 98; CITY OF SACRAMENTO, ARGUMENT AGAINST MEASURE L, *available at* http://portal.cityofsacramento.org/~media/Files/City-Clerk/Elections/MeasureL_Against.pdf ["AGAINST"]; CITY OF SACRAMENTO, REBUTTAL TO ARGUMENT AGAINST MEASURE L, *available at* http://portal.cityofsacramento.org/~media/Files/City-Clerk/Elections/MeasureL_Against.pdf ["REBUTTAL TO AGAINST"].

¹⁰² SACRAMENTO, CAL. CITY COUNCIL RES. NO. 2013-0362, EXHIBIT A (2013), *available at* http://portal.cityofsacramento.org/~media/Corporate/Files/City-Clerk/Elections/07142014_MeasureText_Charter.pdf.

¹⁰³ *Id.* § 21 (amending SACRAMENTO, CAL. CHARTER, art. III, § 21 and adding SACRAMENTO, CAL. CHARTER, art. IV, § 47).

¹⁰⁴ *Forum*, *supra* note 11 (statements of council member Steve Hansen and Nancy Miller, partner, Miller & Owen).

¹⁰⁵ *Id.*

¹⁰⁶ SACRAMENTO, CAL. CITY COUNCIL RES. NO. 2013-0362, EXHIBIT A, § 21 (2013), *available at* http://portal.cityofsacramento.org/~media/Corporate/Files/City-Clerk/Elections/07142014_MeasureText_Charter.pdf (amending SACRAMENTO, CAL. CHARTER, art. IV, § 45).

¹⁰⁷ *Id.* § 19 (amending SACRAMENTO, CAL. CHARTER, art. IV, § 45).

¹⁰⁸ *Id.* § 7 (amending SACRAMENTO, CAL. CHARTER, art. III, § 26).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

In addition, Measure L seeks to add two requirements relating to community interaction and involvement.¹¹¹ First, Measure L would require that the city council hold at least two of its city council meetings per year outside of its chambers.¹¹² The purpose of this requirement is to “improve citizen involvement and accessibility to [council] meetings.”¹¹³ The revision would also require voter approval for increases in council member compensation that exceed five percent.¹¹⁴ Second, Measure L would require the city council to establish by ordinance a “Neighborhood Advisory Committee,” with the intended purpose of “considering the interests of the city’s neighborhoods.”¹¹⁵ The text of Measure L does not elaborate on the intended duties or responsibilities of this committee, and thus it is not clear what the scope of this newly-established body would be.¹¹⁶

B. The Mayor: Article IV

Under Measure L, the position of mayor would be transformed from being a largely symbolic “presiding officer,” to the role of the city’s chief executive officer.¹¹⁷ In addition, the basic description of the mayor’s role would be expanded to provide that he or she “shall have the executive and administrative authorities, powers, and responsibilities of the city as provided herein, including but not limited to the power and duty to execute and enforce all laws, ordinances, and policies of the city.”¹¹⁸ Measure L would make specific changes to the mayor’s “authorities, powers, and responsibilities,” as they relate to the city’s annual budget, the mayor’s place and role within the governance structure, the mayor’s administrative powers, and the mayor’s interaction and community involvement.¹¹⁹ A mayor would be limited to three, four-year terms.¹²⁰ This limit, however, would not apply retroactively to the current mayor’s previously-served terms.¹²¹

1. The Mayor’s Interaction with the City Council

As discussed above,¹²² Measure L would remove the mayor as a voting member of the city council, thereby reducing the number of council members from nine to eight.¹²³ In the mayor’s new role, he or she would retain the right, but would not be obligated, to “attend and be

¹¹¹ *Id.* §§ 11, 16 (amending SACRAMENTO, CAL. CHARTER, art. III, §§ 31, 38).

¹¹² *Id.* § 11 (amending SACRAMENTO, CAL. CHARTER, art. III, § 31).

¹¹³ *Id.*

¹¹⁴ *Id.* § 10 (amending SACRAMENTO, CAL. CHARTER, art. III, § 29).

¹¹⁵ *Id.* § 16 (adding SACRAMENTO, CAL. CHARTER, art. III, § 38).

¹¹⁶ *Id.*; Interview with Steve Hansen, council member, City of Sacramento, Cal. (Sept. 30, 2014) [“Hansen interview”] (notes on file with the *California Initiative Review*).

¹¹⁷ SACRAMENTO, CAL. CITY COUNCIL RES. NO. 2013-0362, EXHIBIT A, § 17 (2013), available at http://portal.cityofsacramento.org/~media/Corporate/Files/City-Clerk/Elections/07142014_MeasureText_Charter.pdf (amending SACRAMENTO, CAL. CHARTER, art. IV, § 40).

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* § 18 (amending SACRAMENTO, CAL. CHARTER, art. IV, § 43).

¹²¹ *Id.*

¹²² *Supra* Part IV.A.

¹²³ *Id.* § 21 (amending SACRAMENTO, CAL. CHARTER, art. III, § 21).

heard” at city council meetings.¹²⁴ The mayor would not have a right to vote on matters before the council.¹²⁵ Because the mayor is no longer a member of the council, the newly composed council of eight members presents the opportunity for tie votes on ordinances and other measures that come before the body.¹²⁶ Measure L, however, does not provide a remedy for how tie votes will be broken.¹²⁷

2. *The Annual Budget*

Measure L would transfer the responsibility and power to propose the city’s annual budget from the city manager to the mayor.¹²⁸ The mayor would be required to propose an annual budget to the city council no later than 90 days before the start of each fiscal year.¹²⁹ Following the city council’s review, alteration of, and passage of a budget, under Measure L, the mayor would possess line-item veto power, which means that he or she would have the power to unilaterally strike specific portions of the council’s approved budget in part or in entirety.¹³⁰

3. *New Executive Powers – The Mayoral Veto Power*

In addition to the mayor’s existing authority to propose ordinances and resolutions for the city council to consider, Measure L would give the mayor veto power over any ordinances the council passed.¹³¹ This mayoral veto power is akin to the veto power of other executive heads, such as the president and the governor.¹³²

Measure L would limit the mayor’s veto power.¹³³ Specifically, the mayor would not have veto power over “urgency” ordinances—those that would either take effect immediately upon adoption or less than 30 days after adoption—relating to an election, an emergency, or an ordinance adopted pursuant to a state law.¹³⁴ In addition, the mayor would lack veto power over

¹²⁴ *Id.* § 17 (amending SACRAMENTO, CAL. CHARTER, art. IV, § 40(b)(4)).

¹²⁵ *Id.*

¹²⁶ *Forum, supra* note 11 (statements of council member Steve Hansen and Nancy Miller, partner, Miller & Owen).

¹²⁷ *Id.*

¹²⁸ SACRAMENTO, CAL. CITY COUNCIL RES. NO. 2013-0362, EXHIBIT A, § 17 (2013), available at http://portal.cityofsacramento.org/~media/Corporate/Files/City-Clerk/Elections/07142014_MeasureText_Charter.pdf (amending SACRAMENTO, CAL. CHARTER, art. IV, § 40(b)(6)).

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*; SACRAMENTO, CAL. CHARTER, art. IV, § 40(b)(5).

¹³² *AGAINST, supra* note 101.

¹³³ SACRAMENTO, CAL. CITY COUNCIL RES. NO. 2013-0362, EXHIBIT A, § 21 (2013), available at http://portal.cityofsacramento.org/~media/Corporate/Files/City-Clerk/Elections/07142014_MeasureText_Charter.pdf (adding SACRAMENTO, CAL. CHARTER, art. IV, § 47).

¹³⁴ *Id.*; SACRAMENTO, CAL. CHARTER, art. III, § 32(g).

ordinances adopting the recommendations of the Independent Citizens' Redistricting Commission, which Measure L's revisions would create.¹³⁵

The mayor would be required to review all adopted ordinances and resolutions and approve or veto them within ten days of the city council's adoption.¹³⁶ If the mayor were to take no action on a measure, it would be deemed approved.¹³⁷ If the mayor were to exercise the veto power, however, he or she must include an explanation of the basis for that decision.¹³⁸ The council would have 30 days to reconsider a vetoed matter, but could only override the mayor's veto if the reconsidered ordinance or resolution receives at least six council votes in favor of its adoption.¹³⁹

4. *City Manager Appointment*

A significant new authority under Measure L would be the mayor's right to appoint the city manager, a power currently vested in the city council.¹⁴⁰ While the city council's right to confirm the appointee would restrict this power, the mayor's ability to remove the city manager would not be subject to any outside approval and would not require good cause.¹⁴¹ Furthermore, Measure L would require the mayor to hold an open meeting at which citizens may ask questions regarding the qualifications of the candidates for city manager before making an appointment.¹⁴²

5. *Community Interaction*

If enacted, Measure L would require that the mayor address the citizens of Sacramento on an annual basis through a "State of the City" address.¹⁴³ Similar to the executive addresses of the president and governors, the mayor's State of the City statement would not just address the

¹³⁵ SACRAMENTO, CAL. CITY COUNCIL RES. NO. 2013-0362, EXHIBIT A, § 21 (2013), *available at* http://portal.cityofsacramento.org/~media/Corporate/Files/City-Clerk/Elections/07142014_MeasureText_Charter.pdf (adding SACRAMENTO, CAL. CHARTER, art. IV, § 47); *Id.* § 6 (2013) (amending SACRAMENTO, CAL. CHARTER, art. III, § 25).

¹³⁶ SACRAMENTO, CAL. CITY COUNCIL RES. NO. 2013-0362, EXHIBIT A, § 21 (2013), *available at* http://portal.cityofsacramento.org/~media/Corporate/Files/City-Clerk/Elections/07142014_MeasureText_Charter.pdf (adding SACRAMENTO, CAL. CHARTER, art. IV, § 47(c)(2)).

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.* (adding SACRAMENTO, CAL. CHARTER, art. IV, § 47(c)(2)–(3)).

¹⁴⁰ *Id.* § 7 (amending SACRAMENTO, CAL. CHARTER, art. IV, § 40(b)(8)); SACRAMENTO, CAL. CHARTER, art. V, § 60.

¹⁴¹ SACRAMENTO, CAL. CITY COUNCIL RES. NO. 2013-0362, EXHIBIT A, § 7 (2013), *available at* http://portal.cityofsacramento.org/~media/Corporate/Files/City-Clerk/Elections/07142014_MeasureText_Charter.pdf (amending SACRAMENTO, CAL. CHARTER, art. IV, § 40(b)(8)).

¹⁴² SACRAMENTO, CAL. CHARTER, art. V, § 60.

¹⁴³ SACRAMENTO, CAL. CITY COUNCIL RES. NO. 2013-0362, EXHIBIT A, § 7 (2013), *available at* http://portal.cityofsacramento.org/~media/Corporate/Files/City-Clerk/Elections/07142014_MeasureText_Charter.pdf (amending SACRAMENTO, CAL. CHARTER, art. IV, § 40(b)(2)).

general status of city government, but would also include the mayor's policy recommendations for the coming year.¹⁴⁴ Measure L would also require the mayor to host and participate in at least two "town hall" meetings each year as a means of receiving public input.¹⁴⁵ Measure L does not indicate how the mayor should utilize such public input in formulating ordinances or policy.¹⁴⁶

C. The City Manager: Article V

Measure L seeks to significantly alter the role and authorities prescribed to the city manager.¹⁴⁷ No longer appointed by the city council, the city manager would be appointed by the mayor, with confirmation by the council.¹⁴⁸ Specifically, the city council would have ten business days to either confirm or reject a mayoral city manager appointee.¹⁴⁹ Failure to confirm or reject would constitute approval.¹⁵⁰

Measure L most dramatically seeks to alter the process by which the city manager may be removed from office.¹⁵¹ If approved by the voters, under Measure L the city manager would be subject to dismissal per the mayor, without council notification or approval.¹⁵² This proposed change is in stark contrast to the charter's current procedure for removal of the city manager, which prohibits such action unless at least six members of the city council vote in favor of such removal.¹⁵³ The current charter specifies that no city manager may be removed within the first twelve months of his or her term of office, except for cause.¹⁵⁴ This provision would no longer exist if Measure L is enacted.¹⁵⁵

Functionally, the overall role of the city manager in citywide government would be dramatically altered from the position's current status.¹⁵⁶ No longer would the city manager be the city's chief executive officer, but would become the city's chief administrative officer.¹⁵⁷ Similarly, the charter's overall description of the position's purpose would be amended to read that the city manager is "acting on the mayor's behalf and in furtherance of the mayor's powers" when he or she carries out the position's duties.¹⁵⁸

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *See id.* (noting that there are no parameters for use of town hall feedback).

¹⁴⁷ *Id.* § 22 (amending SACRAMENTO, CAL. CHARTER, art. V, § 60).

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.* § 25 (deleting SACRAMENTO, CAL. CHARTER, art. V, § 63).

¹⁵⁴ SACRAMENTO, CAL. CHARTER, art. V, § 63 (citing "incompetence, malfeasance, misfeasance or neglect of duty" as reasons for removal in the first year).

¹⁵⁵ SACRAMENTO, CAL. CITY COUNCIL RES. NO. 2013-0362, EXHIBIT A, § 25 (2013), available at http://portal.cityofsacramento.org/~media/Corporate/Files/City-Clerk/Elections/07142014_MeasureText_Charter.pdf (deleting SACRAMENTO, CAL. CHARTER, art. V, § 63).

¹⁵⁶ *Id.* § 23 (amending SACRAMENTO, CAL. CHARTER, art. V, § 61).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

D. The Annual Budget: Article IX

In addition to transferring the power to propose the budget from the city manager to the mayor, Measure L would establish the Office of the Independent Budget Analyst.¹⁵⁹ The city council would be responsible for appointing the head of that office, whose duties would be “to assist and advise the city council in conducting budgetary inquiries and in making budgetary decisions.”¹⁶⁰ The independent budget analyst would be subject to removal by the council, at any time with or without cause.¹⁶¹

The city council would be required to hold a minimum of two public hearings on the proposed budget within a specified timeframe.¹⁶² Upon the city council’s request, the independent budget analyst would provide an unbiased analysis of the mayor’s proposed budget.¹⁶³ Once these procedures are complete, the city council would be required to adopt a budget no less than 30 days before the start of each fiscal year.¹⁶⁴

As discussed previously, the mayor would have the ability to approve or veto the budget, or exercise a line-item veto.¹⁶⁵ The only limitation placed on the mayor’s line-item veto power would be the restriction that he or she may not veto any portion of the proposed budget relating to the city council’s own internal expenditures.¹⁶⁶ Once the mayor’s review of the budget was complete, any sections approved would become effective immediately.¹⁶⁷

Measure L would clarify that the city’s annual budget may be amended, revised, or modified at any point during the fiscal year, so long as such an amendment, revision, or modification follows the procedure outlined above.¹⁶⁸

E. Other Major Charter Changes

Measure L would also add several significant sections to the charter related to ethics and government transparency.¹⁶⁹

¹⁵⁹ *Id.* § 17 (amending SACRAMENTO, CAL. CHARTER, art. IV, § 40(b)(4)); *Id.* § 29 (amending SACRAMENTO, CAL. CHARTER, art. IX, § 111).

¹⁶⁰ SACRAMENTO, CAL. CITY COUNCIL RES. NO. 2013-0362, EXHIBIT A, § 29 (2013), *available at* http://portal.cityofsacramento.org/~media/Corporate/Files/City-Clerk/Elections/07142014_MeasureText_Charter.pdf (amending SACRAMENTO, CAL. CHARTER, art. IX, § 111(a)).

¹⁶¹ *Id.*

¹⁶² *Id.* (amending SACRAMENTO, CAL. CHARTER, art. IX, § 111(b)(1)).

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* (amending SACRAMENTO, CAL. CHARTER, art. IX, § 111(b)(2)).

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* (amending SACRAMENTO, CAL. CHARTER, art. IX, § 111(b)(3)).

¹⁶⁹ *See, e.g., id.* § 5 (amending SACRAMENTO, CAL. CHARTER, art. III, § 24(a)) (appointing an independent redistricting commission).

1. Reapportionment and Redistricting

Measure L seeks to establish a nine-member independent redistricting commission to establish the boundaries of city council districts, thereby removing that power from the city council.¹⁷⁰ The city council would have to pass an ordinance that establishes the commission, denotes qualifications required of members, and establishes a process by which members shall be appointed to serve on the commission no later than 180 days after voters approve Measure L.¹⁷¹ The city council and the mayor would be precluded from taking part in any commission member appointments.¹⁷² Upon conclusion of a regular United States census, the commission would examine council district boundaries to ensure compliance with population regulations, and adopt modifications to those boundaries, if necessary.¹⁷³ Under the existing charter, this is a duty the city council holds.¹⁷⁴ Furthermore, any boundary modifications the commission made would be sent to the council, and the council would be required to adopt the commission's findings without making changes to them.¹⁷⁵

2. Ethics and Transparency

Measure L would require the city council to take two direct actions to ensure ethical conduct and transparency.¹⁷⁶ Specifically, the city council would be required to adopt a "Code of Ethics and Conduct" and a "Sunshine Ordinance."¹⁷⁷

a. Code of Ethics and Conduct

If approved, Measure L would require the city council to develop and adopt a "Code of Ethics and Conduct," for all city officials and appointed members of boards, commissions, and committees.¹⁷⁸ The council would be required to adopt this code of conduct within 180 days of Measure L's passage.¹⁷⁹ Aside from the requirement that the code include a procedure for removing any elected official or appointed member from office who "substantially violates" the code, no other substantive details of what the code would or should contain are included in Measure L's text.¹⁸⁰ Similarly, the text of Measure L also does not stipulate any consequences if the council fails to adopt a code of ethics.¹⁸¹

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ SACRAMENTO, CAL. CHARTER, art. III, § 24(a).

¹⁷⁵ SACRAMENTO, CAL. CITY COUNCIL RES. NO. 2013-0362, EXHIBIT A, § 6 (2013), *available at* http://portal.cityofsacramento.org/~media/Corporate/Files/City-Clerk/Elections/07142014_MeasureText_Charter.pdf (amending SACRAMENTO, CAL. CHARTER, art. III, § 25).

¹⁷⁶ *Id.* § 14 (adding SACRAMENTO, CAL. CHARTER, art. III, § 36).

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ Hansen interview, *supra* note 116.

Measure L would also require the city council to adopt an ordinance establishing an ethics committee for the purpose of the ongoing review and monitoring of the “Code of Ethics and Conduct.”¹⁸² In creating this committee, the council would have the discretion to determine the required qualifications and conditions of service of future committee members, including any compensation for service, reimbursement for expenses, terms of office, and methods for appointment and removal from office, so costs are currently unknown.¹⁸³ Measure L clarifies that this newly established ethics committee “is not a board, commission, or advisory agency for purposes of Article XV or § 40.”¹⁸⁴ Article XV of the charter defines what boards, commissions, and advisory agencies are, and delegates powers and responsibilities.¹⁸⁵ Section 40 delegates the power to appoint or remove members of boards, commissions, and advisory agencies to the mayor.¹⁸⁶ Thus, Measure L’s articulation that the ethics committee is not a board, commission, or advisory agency seems to have been included simply to make clear that it will not have substantive powers.¹⁸⁷

b. Sunshine Ordinance

In addition, if Measure L is approved, the city council would be required to adopt a so-called “Sunshine Ordinance” within 180 days of its passage.¹⁸⁸ The stated purpose of this ordinance would be to “liberally provide for the public’s access to city government meetings, documents, and records.”¹⁸⁹ It is not apparent how Measure L’s Sunshine Ordinance would differ from existing open government laws, as Measure L does not specify the precise content of the future ordinance.¹⁹⁰

The preeminent existing law that requires transparency in local government proceedings is the Ralph M. Brown Act (the Brown Act), which the Legislature approved in 1953.¹⁹¹ The Brown Act statutorily guarantees the public’s right of access to local government meetings.¹⁹² The Brown Act also places significant restrictions on how local governments may convene to

¹⁸² SACRAMENTO, CAL. CITY COUNCIL RES. NO. 2013-0362, EXHIBIT A, § 15 (2013), *available at* http://portal.cityofsacramento.org/~media/Corporate/Files/City-Clerk/Elections/07142014_MeasureText_Charter.pdf (adding SACRAMENTO, CAL. CHARTER, art. III, § 37).

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ SACRAMENTO, CAL. CHARTER, art. XV, §§ 230-232.

¹⁸⁶ SACRAMENTO, CAL. CHARTER, art. IV, § 40.

¹⁸⁷ Hansen interview, *supra* note 116.

¹⁸⁸ SACRAMENTO, CAL. CITY COUNCIL RES. NO. 2013-0362, EXHIBIT A, § 14 (2013), *available at* http://portal.cityofsacramento.org/~media/Corporate/Files/City-Clerk/Elections/07142014_MeasureText_Charter.pdf (adding SACRAMENTO, CAL. CHARTER, art. III, § 36).

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ BILL LOCKYER, CALIFORNIA STATE ATTORNEY GENERAL, THE BROWN ACT: OPEN MEETINGS FOR LOCAL LEGISLATIVE BODIES 37 (2003), *available at* http://caag.state.ca.us/publications/2003_Main_BrownAct.pdf.

¹⁹² *Id.* at 1; CAL. GOV’T CODE § 54953.

conduct public business as a means of ensuring the public's right of access to such proceedings.¹⁹³

Because Measure L does not specify the exact provisions of the Sunshine Ordinance, it is unclear at this time if the intention is that the ordinance should exceed the requirements of existing law.¹⁹⁴ It should be noted, however, that local governments do have the ability to impose requirements of open government and transparency that exceed the requirements of the Brown Act.¹⁹⁵

3. Voter Authorization Provisions

Finally, Measure L also includes provisions requiring prior voter authorization for future changes to certain sections of the charter.¹⁹⁶ For example, the proposed amendments related to reapportionment and redistricting, if passed, could only be amended if a majority of the voters held as such in a regular election.¹⁹⁷ The rest of Measure L's proposed changes would "sunset," or expire, on December 31, 2020, and would be automatically repealed and removed from the charter.¹⁹⁸ However, Measure L would require the council to place a measure on the ballot at an election no later than November 3, 2020 to allow voters to consider whether to make Measure L's changes permanent.¹⁹⁹

V. CONSTITUTIONAL AND CITY CHARTER IMPLICATIONS

A. Single-Subject Rule

The California Constitution imposes a single-subject rule on all initiatives put before the electorate.²⁰⁰ This rule applies to all initiatives, whether they are put on the statewide ballot or a local ballot.²⁰¹ The single-subject rule says an initiative is permissible only if "all of its parts are reasonably germane to each other, and to the general purpose or object of the initiative."²⁰² This rule, however, applies only to *initiatives*, and not to other types of ballot measures.²⁰³

The California Constitution provides two ways to amend a city charter with the voters for approval: (1) by an initiative qualified for the ballot through the procedures outlined in the

¹⁹³ CAL. GOV'T CODE § 54954.

¹⁹⁴ Hansen interview, *supra* note 116.

¹⁹⁵ CAL. GOV'T CODE § 54953.7.

¹⁹⁶ SACRAMENTO, CAL. CITY COUNCIL RES. NO. 2013-0362, EXHIBIT A, § 30 (2013), available at http://portal.cityofsacramento.org/~media/Corporate/Files/City-Clerk/Elections/07142014_MeasureText_Charter.pdf.

¹⁹⁷ *Id.* § 30(B).

¹⁹⁸ *Id.* § 30(C).

¹⁹⁹ *Id.*

²⁰⁰ CAL. CONST. art. II, § 8(d).

²⁰¹ *Hernandez v. Los Angeles*, 167 Cal. App. 4th 12 (2008).

²⁰² *Senate v. Jones*, 21 Cal. 4th 1142 (1999).

²⁰³ CAL. CONST. art. XI, § 3(b); *Hernandez*, 167 Cal. App. 4th at 23.

California Election Code *or* (2) by a ballot measure sponsored by the governing body of a municipality.²⁰⁴

By definition, an initiative is “the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them.”²⁰⁵ The California Election Code sets forth the initiative process whereby the electorate may draft and approve laws.²⁰⁶ An initiative may only be put before the electorate for approval after satisfying various requirements, including having the Secretary of State certify its language and obtaining a specified number of signatures when the initiative is circulated for pre-ballot approval.²⁰⁷

Similarly, the California Constitution vests power in a city’s governing body to propose by ballot measure ordinances and changes to a city’s charter.²⁰⁸ The distinctive differences between the power vested in the electorate and the power vested in a governing body are the name attributed to each proposal (‘*initiative*’ for the former, ‘*ballot measure*’ for the latter) and in the process by which such proposals make it to the ballot.²⁰⁹

Thus, given the clear language of the Constitution, a ballot measure proposed by a city’s governing body is *not*, by definition, an initiative.²¹⁰ Because Measure L’s origin lies with the city council and not the electorate, it is by definition a ballot measure, and is therefore not subject to the limitations of the single-subject rule.²¹¹

B. Charter Revision versus Charter Amendment

A city’s charter may be changed via one of two methods: by amendment or by revision.²¹² Whether a change is an amendment or a revision is determined by how substantial the proposed change would be.²¹³ Furthermore, a charter amendment may be proposed by the electorate through the initiative process or by a ballot measure sponsored by the city’s governing body.²¹⁴ Conversely, a charter revision may only be proposed by the city’s governing body through a ballot measure.²¹⁵

“Although the Constitution does not define the terms ‘amendment’ or ‘revision,’ the courts have developed some guidelines” for their interpretation.²¹⁶ An amendment is a less substantial change; one that does not substantially alter the Constitution (or a charter) in any

²⁰⁴ CAL. CONST. art. XI, § 3(b); *Hernandez*, 167 Cal. App. 4th at 21.

²⁰⁵ CAL. CONST. art. II, § 8(a).

²⁰⁶ CAL. ELEC. CODE §§ 9255–9269 (West 2014).

²⁰⁷ *Id.*; CAL. CONST. art. II, § 8(b)–(c).

²⁰⁸ CAL. CONST. art. XI § 3(b); CAL. CONST. art. XVIII, §§ 1–2.

²⁰⁹ CAL. CONST. art. II, § 8(a) (defining the initiative power); CAL. CONST. art. XI, § 3(b) (vesting right to adopt, amend, or revise a charter).

²¹⁰ CAL. CONST. art. II, § 8(a).

²¹¹ CAL. CONST. art. XI, § 3 (b); *Hernandez*, 167 Cal. App. 4th at 21–22.

²¹² CAL. CONST. art. XI, § 3(a).

²¹³ *Raven v. Deukmejian*, 52 Cal. 3d 336 (1990).

²¹⁴ CAL. CONST. art. XI, § 3(b); CAL. CONST. art. II, § 8(a).

²¹⁵ CAL. CONST. art. XI, § 3(b).

²¹⁶ *Raven*, 52 Cal. 3d at 350.

meaningful quantitative or qualitative fashion.²¹⁷ Conversely, a revision is a more substantial, far-reaching change.²¹⁸ The courts have developed a two-part test for determining whether a proposed change is simply an amendment, or if it rises to the level of a revision.²¹⁹ That test measures both the quantitative and qualitative effects that the proposed measure would have on a charter, and if the effect of either category is substantial, the courts will find the proposed measure to be a revision.²²⁰

The same provision of the California Constitution that authorizes a city to *adopt* a charter also authorizes the governing body of a city to *amend* or *revise* the city's charter.²²¹ Conversely, only the power to amend a charter, not revise it, is given to the voters.²²² Thus, a revision to a city's charter may only be accomplished when a city's governing body votes to place the revision on the ballot, and it is subsequently approved by the voters.²²³ This is why the original attempt to place a citizen-proposed strong-mayor initiative on the ballot was deemed unconstitutional, because it constituted a substantial revision, not a simple amendment.²²⁴ Because Measure L also seeks to accomplish a revision to city's charter, it was properly placed on the ballot as a ballot measure sponsored by the city council, not through the initiative process.²²⁵

VI. PUBLIC POLICY CONSIDERATIONS

Measure L's main support comes from the group "Sacramento Tomorrow," which includes developer Angelo Tsakopoulos and Mayor Kevin Johnson.²²⁶ Council member Steve Hansen, who represents central Sacramento, Land Park, and part of Natomas, leads "Stop the Power Grab," the coalition of Measure L opponents.²²⁷ Both sides are passionate about their arguments for and against the measure.²²⁸ Neither side, however, has undertaken a fiscal analysis of the measure. As a result, there are open questions regarding how much different portions of the revision will cost.²²⁹

Proponents admit the "city is well-served by its city manager and current form of government," but believe Measure L would be an improvement.²³⁰ Opponents are not swayed;

²¹⁷ *Id.* (reasoning that substantial changes can amount to a revision, not a mere amendment).

²¹⁸ *Id.*

²¹⁹ *Id.* at 351.

²²⁰ *Id.*

²²¹ CAL. CONST. art. XI, § 3(b).

²²² *Id.* art. XVIII, § 3.

²²³ *Id.* §§ 1–2, 4.

²²⁴ *Camp v. Sacramento*, No. 34-2009-00065404, at 3 (Cal. Super. Ct. Sacramento Jan. 21, 2010) (order granting preliminary injunction).

²²⁵ CAL. CONST. art. XVIII, § 1.

²²⁶ YES ON MEASURE L, <http://yesonmeasurel.org/> (last visited Sept. 12, 2014).

²²⁷ Lillis-Hansen, *supra* note 98.

²²⁸ See IN FAVOR, *supra* note 9; AGAINST, *supra* note 101.

²²⁹ See YES ON MEASURE L, <http://yesonmeasurel.org/> (last visited Sept. 12, 2014); STOP THE POWER GRAB, <http://stopthepowergrab.org/> (last visited Sept. 13, 2014).

²³⁰ *Forum*, *supra* note 11 (statement of Nancy Miller, partner, Miller & Owen).

with recent successes under the current structure, like the development of the new Kings basketball arena, they seek more concrete proof that a strong-mayor system would be better able to accomplish similar tasks.²³¹ This section will examine the arguments on both sides of Measure L.²³²

A. The City Council: Article III

Under the strong-mayor government, the city council would continue to have eight members elected from districts each representing one-eighth of the city, but the mayor would no longer have a council seat or vote.²³³ Some argue the mayor could get the authority to cast a tie-breaker vote, since there will be an even number of council members.²³⁴ Those opposing Measure L insist allowing the mayor to vote in the event of a tie is inappropriate.²³⁵

At this time, however, there is no protocol in event of a tie under Measure L.²³⁶ A vote of four-to-four would mean an ordinance would not pass.²³⁷ Proponents say this probably will not be a problem, or will only be a minor issue, although admit both sides are speculating.²³⁸ They point out that five votes will be required just as in the existing system.²³⁹ But, five votes under the proposed system require the support of 62.5 percent of the council, rather than just over 55 percent, which opponents say is higher than appropriate.²⁴⁰ It is interesting to note that if Sacramento already had a five-vote requirement and a non-voting mayor, Measure L would not be on the ballot since the five-four vote would have been a tie without the mayor's vote.²⁴¹

Although each member's representation and vote would not change, they would lose some of their authority.²⁴² For example, the city council would no longer appoint the city manager, and the mayor would be able to veto city council-approved ordinances and budgets.²⁴³ Because the mayor will have more power at the expense of the city council as a whole, Measure L opponents assert council members will have difficulty serving their constituents in the most

²³¹ *Id.* (quoting council member Steve Hansen as saying “we got the arena going in less than a year”); Hansen interview, *supra* note 116.

²³² *Infra* Parts A–E.

²³³ REBUTTAL TO AGAINST, *supra* note 101.

²³⁴ Cosmo Garvin, *Sacramento Tomorrow's Strong-Mayor Plan is a Mess*, SACRAMENTO NEWS & REVIEW (Oct. 10, 2013), <http://www.newsreview.com/sacramento/sacramento-tomorrow-39-s-strong-mayor-plan-is/content?oid=11693509>.

²³⁵ *Id.*; SACRAMENTO, CAL. CITY COUNCIL RES. NO. 2013-0362, EXHIBIT A (2013), available at http://portal.cityofsacramento.org/~media/Corporate/Files/City-Clerk/Elections/07142014_MeasureText_Charter.pdf.

²³⁶ *Forum*, *supra* note 11 (statement of Nancy Miller, partner, Miller & Owen).

²³⁷ *Id.*

²³⁸ Isenberg interview, *supra* note 65.

²³⁹ *Forum*, *supra* note 11 (statement of Nancy Miller, partner, Miller & Owen).

²⁴⁰ Hansen interview, *supra* note 116.

²⁴¹ *Forum*, *supra* note 11 (statement of council member Steve Hansen).

²⁴² See IMPARTIAL ANALYSIS, *supra* note 8, at 1 (noting the city council loses appointment power and can be overridden with a mayoral veto).

²⁴³ *Id.*

positive way.²⁴⁴ They decry the shift in power away from nine people to one person—the mayor.²⁴⁵

There is an emphasis on interaction between the city council and community through Measure L’s creation of a Neighborhood Advisory Committee.²⁴⁶ The text of the measure, however, leaves the details of this committee completely open.²⁴⁷ Supporters insist this was to make Measure L more comprehensible and ensure it did not get bogged down with minor details as past versions did.²⁴⁸ Opponents are a little more cynical.²⁴⁹ They call the committee and other components of the measure that require future ordinances “sweeteners,” saying each could be implemented by ordinance now, without a vote on Measure L, if they were truly important.²⁵⁰ They believe way the measure is written, however, makes the committee seem as if it will be non-substantive because it is not a “commission,” which would have the power to make changes.²⁵¹ Still, supporters maintain that the committee will be an integral part of the city government because its meetings will be open to the public and the city council may take its suggestions under advisement.²⁵²

Measure L’s opponents do not believe it is necessary to change the power structure because the city council and mayor have worked together to achieve so many positive things, including creating a budget surplus and keeping the Kings in Sacramento.²⁵³ Supporters assert, however, that balancing the budget, creating jobs, and reducing crime would be streamlined with a strong-mayor system.²⁵⁴

B. The Mayor: Article IV

In Sacramento’s current council-manager system, the mayor is a “figurehead,” attending ribbon cuttings and promoting the city for tourism.²⁵⁵ Yet, citizens expect the mayor to solve

²⁴⁴ REBUTTAL TO FAVOR, *supra* note 10.

²⁴⁵ Hansen interview, *supra* note 116.

²⁴⁶ SACRAMENTO, CAL. CITY COUNCIL RES. NO. 2013-0362, EXHIBIT A, § 16 (2013), available at http://portal.cityofsacramento.org/~media/Corporate/Files/City-Clerk/Elections/07142014_MeasureText_Charter.pdf (adding SACRAMENTO, CAL. CHARTER, art. III, § 38).

²⁴⁷ SACRAMENTO, CAL. CITY COUNCIL RES. NO. 2013-0362, EXHIBIT A, § 16 (2013), available at http://portal.cityofsacramento.org/~media/Corporate/Files/City-Clerk/Elections/07142014_MeasureText_Charter.pdf (adding SACRAMENTO, CAL. CHARTER, art. III, § 38).

²⁴⁸ *Forum*, *supra* note 11 (statement of Daniel Conway, chief of staff, Mayor Kevin Johnson).

²⁴⁹ *See id.* (statement of Heather Fargo, former mayor, City of Sacramento).

²⁵⁰ *See id.*

²⁵¹ Hansen interview, *supra* note 116.

²⁵² *Forum*, *supra* note 11 (statement of Nancy Miller, partner, Miller & Owen).

²⁵³ REBUTTAL TO FAVOR, *supra* note 10.

²⁵⁴ REBUTTAL TO AGAINST, *supra* note 101.

²⁵⁵ *See* Ryan Lillis, *Kevin Johnson Stakes Legacy on Boosting Mayor’s Clout*, SACRAMENTO BEE (Sept. 28, 2014, 12:00 AM), <http://www.sacbee.com/2014/09/28/6741253/kevin-johnson-stakes-legacy-on.html> (discussing mayor’s limited power).

citywide problems and take responsibility for government decisions.²⁵⁶ Measure L supporters, including former mayor Phil Isenberg, believe the measure will bring the mayor's duties and abilities better in line with public expectations.²⁵⁷

1. *From Figurehead to CEO*

Measure L proponents decry the fact that the city manager—currently the equivalent of a chief executive officer—is not elected.²⁵⁸ That is why they want the elected mayor to take on CEO-type duties, including managing police and fire services.²⁵⁹ But, the mayor may not have any business or management experience, which is why cities hire professional managers.²⁶⁰ Therefore, Measure L is a hybrid, where the city can benefit from the manager's expertise and the mayor's accountability, according to supporters.²⁶¹

Consolidation of power could also make city departments more effective, according to supporters, because the mayor would have a greater ability to hold them accountable than the city manager can while he or she is beholden to the varied interests of council members.²⁶² Opponents see this as an opportunity for the mayor to do whatever he or she wishes with city services, without any accountability until, possibly, the next election.²⁶³

The term limits imposed on the mayor would, according to supporters, provide a check on the mayor's power.²⁶⁴ The city manager is unelected, but Measure L proponents prefer placing that much power into the hands of someone who can be removed through an election or, if he or she is reelected, at the end of a set number of terms.²⁶⁵ Some opposed to Measure L do not believe a vote every four years is enough to balance the amount of power that would be vested in the mayor.²⁶⁶ Others do not like term limits because placing an artificial limit on the time an official can be in office “inappropriately constrains the options of the electorate.”²⁶⁷

2. *Mayoral Veto Power*

Although the mayor would be able to veto city council decisions, Measure L proponents note that this does not give ultimate power to the mayor because the veto can be overridden.²⁶⁸

²⁵⁶ Isenberg interview, *supra* note 65.

²⁵⁷ *Id.*

²⁵⁸ IN FAVOR, *supra* note 9.

²⁵⁹ *Id.*

²⁶⁰ *Forum*, *supra* note 11 (statement of Heather Fargo, former mayor, City of Sacramento).

²⁶¹ *Id.* (statement of Daniel Conway, chief of staff, Mayor Kevin Johnson).

²⁶² Jeffery Cassity, *Opinion: Sacramento Would be Better with a “Strong Mayor”*, SACRAMENTO PRESS (Nov. 29, 2013, 7:47 PM), <http://sacramentoexpress.com/2013/11/29/opinion-sacramento-would-be-better-with-a-strong-mayor/>.

²⁶³ AGAINST, *supra* note 101.

²⁶⁴ IN FAVOR, *supra* note 9.

²⁶⁵ See Stu Woo, “Weak” Mayor Seeks Assist to Reshape Sacramento, WALL ST. J. (Dec. 5, 2009, 12:01 AM), <http://online.wsj.com/articles/SB125997450276377729> (quoting Mayor Kevin Johnson).

²⁶⁶ REBUTTAL TO FAVOR, *supra* note 10.

²⁶⁷ EDGAR, *supra* note 84.

²⁶⁸ IN FAVOR, *supra* note 9.

But, six members, or 75 percent of the council, would have to vote to override the veto, which would give the mayor more power than any Governor or the President because the supermajority required is larger than that at the State or Federal level.²⁶⁹

How a mayor may use the veto power is unknown, but supporters say it removes any “temporary block to council actions, or conversely, a temporary block to the mayor’s actions.”²⁷⁰ Former mayor Phil Isenberg speculated that it will be reserved for fundamental issues.²⁷¹ Now, there is an incentive for the mayor and city council to not make sweeping, and perhaps controversial, decisions because one would need the support of four others.²⁷² Veto power may thus encourage more change.²⁷³

The community may not want the mayor to have this power; a citizen-run committee engaged to make recommendations regarding a strong-mayor government in Sacramento voted overwhelmingly to condemn mayoral veto power.²⁷⁴ Of course, Measure L opponents also feel it is an inappropriate amount of power to vest in one person.²⁷⁵

3. Appointment Power

Measure L proponents emphasize the positive checks and balances that would occur if the mayor appointed the city manager with council concurrence and a public meeting about the proposed city manager’s qualifications.²⁷⁶ Those against Measure L, however, stress the fact that the mayor can remove the city manager at will can cut against these checks and balances.²⁷⁷

The mayor’s appointment power under Measure L would be more limited than under past strong-mayor proposals in Sacramento.²⁷⁸ This revision, however, still divides city employees into those responsible to the mayor and those who answer to the city council, which could make the city’s hierarchy confusing.²⁷⁹ Community members who prefer the current council-manager government see advantages in a “unified structure...[with] a single consolidated group of professional staff under the direction of the city manager, who is responsible to the full city council,” including the mayor.²⁸⁰

²⁶⁹ AGAINST, *supra* note 101.

²⁷⁰ Isenberg interview, *supra* note 65.

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ EDGAR, *supra* note 84 (showing a vote of 10–1 against granting veto power).

²⁷⁵ Hansen interview, *supra* note 116.

²⁷⁶ YES ON MEASURE L, FACTS ON CHARTER REVISION, <http://yesonmeasurel.org/facts-on-charter-revision/> (last visited Sept. 12, 2014).

²⁷⁷ STOP THE POWER GRAB, <http://stopthepowergrab.org/> (last visited Sept. 13, 2014).

²⁷⁸ See TEICHERT, *supra* note 74 (listing appointment duties that would have been granted under the 2009 initiative).

²⁷⁹ EDGAR, *supra* note 84.

²⁸⁰ *Id.*

4. Community Interaction

Since under Measure L, the mayor would no longer be a voting member of the city council, opponents decry that the mayor can choose not to attend meetings.²⁸¹ They assert a mayor could theoretically never hear the concerns of Sacramento citizens if he or she did not go to city council meetings, and could make decisions based solely on meetings with private individuals or groups.²⁸² There could be “far less public access to the mayor.”²⁸³ This would also be a circumvention of the Brown Act if the mayor does not attend meetings for which public access is required under the act.²⁸⁴ Of course, even if a mayor does attend meetings, he or she is not required to take community comments made at those meetings under consideration when making decisions.²⁸⁵

Supporters of Measure L counter criticism about the omission of Brown Act standards by pointing to the power of the electorate to remove the mayor if he or she is not responsive to the people.²⁸⁶ Also, the mayor and council members alike will continue to engage members of the public outside of meetings, which very few citizens attend.²⁸⁷ That engagement, coupled with additions to mayoral power, may actually be more productive according to proponents, since members of the public often comment at meetings regarding topics over which the mayor and city council have no power.²⁸⁸ “Government provides an endless number of ways to comment,” and proponents point to the new comment forums available under Measure L, including two town hall meetings each year in which the mayor must participate.²⁸⁹

C. The City Manager: Article V

Supporters of Measure L stress that the city manager will still provide his or her expertise to the mayor, so Sacramento will still have professional guidance.²⁹⁰ They say the only issue is whether a voter believes the mayor should or should not direct the city manager.²⁹¹

²⁸¹ AGAINST, *supra* note 101.

²⁸² *Id.*

²⁸³ EDGAR, *supra* note 84.

²⁸⁴ Hansen interview, *supra* note 116.

²⁸⁵ See Julie Murphy, Letter to the Editor, *Strong Mayor: Is the Mayor's Office for Sale*, SACRAMENTO BEE (Sept. 6, 2014, 9:09 AM), <http://www.sacbee.com/2014/09/06/6684080/is-the-mayors-office-for-sale.html> (referring to “Michelle Rhee’s statement that her husband [Mayor Kevin Johnson] really doesn’t base his decision-making on public testimony at city council meetings”).

²⁸⁶ See IN FAVOR, *supra* note 9 (implying the mayor will make “superior...decisions” because of his or her accountability to the electorate).

²⁸⁷ *Forum*, *supra* note 11 (statement of Daniel Conway, chief of staff, Mayor Kevin Johnson).

²⁸⁸ Isenberg interview, *supra* note 65 (stating people want to comment on things the city does not manage and that “government in America is roughly the equivalent of public psychotherapy”).

²⁸⁹ *Id.*; SACRAMENTO, CAL. CITY COUNCIL RES. NO. 2013-0362, EXHIBIT A, § 7 (2013), available at http://portal.cityofsacramento.org/~media/Corporate/Files/City-Clerk/Elections/07142014_MeasureText_Charter.pdf (amending SACRAMENTO, CAL. CHARTER, art. IV, § 40(b)(2)).

²⁹⁰ *Forum*, *supra* note 11 (statement of Daniel Conway, chief of staff, Mayor Kevin Johnson).

²⁹¹ Isenberg interview, *supra* note 65.

If the city manager is mayor-appointed, however, those against Measure L believe the manager will work to support only the mayor's goals, not those of the city council or the electorate.²⁹² Some have even said the city manager may become a de facto chief of staff to the mayor.²⁹³ Since the city manager would no longer have a one-year grace period during which he or she could not be removed, the person in that position could feel pressure to follow the mayor, regardless of the reason or outcome.²⁹⁴

One item that has not been addressed is whether the city manager's compensation will change if the position encompasses fewer duties. Former mayor Heather Fargo speculated that the city manager's pay will not decrease, but the mayor would probably get a raise so that he or she is not making less than the manager, who would be the mayor's subordinate.²⁹⁵

D. The Annual Budget: Article IX

The mayor would create and present the budget if Measure L is approved, which means either the budget would be more voter-influenced because the mayor is elected or the budget would be full of favors to friends and donors, depending on which side of the debate is speaking.²⁹⁶

It could be easier for special interests to influence just one person wielding budgetary power, rather than an entire city council.²⁹⁷ Since deep-pocketed donors have contributed to the campaign supporting Measure L—developer Angelo Tsakopoulos has donated \$100,000, the California Association of Realtors has contributed just under \$50,000, Niello Co. has backed the campaign with \$25,000, and Mark Friedman, a Kings owner, has given more than \$14,000—perhaps the monetary influence that opponents are worried about is already taking effect.²⁹⁸ “Access [to leaders] would be focused and limited to certain individuals” with a lot of money, according to Measure L's opposition.²⁹⁹ Yet supporters insist special interests will still need to work with all eight council members, although they recognize the measure will streamline a currently “sluggish bureaucracy where...to get something done, they often have to convince at least five city council members, which can take a lot of time and money.”³⁰⁰

As with any other council vote, the mayor would have veto power, and overriding that veto with a supermajority could prove difficult.³⁰¹ The creation of an independent budget analyst could provide a balance against the mayor's power.³⁰² If the analyst makes recommendations

²⁹² REBUTTAL TO FAVOR, *supra* note 10.

²⁹³ *Forum*, *supra* note 11 (statement of Steve Hansen, council member, City of Sacramento).

²⁹⁴ SACRAMENTO, CAL. CHARTER, art. V, § 63.

²⁹⁵ *Forum*, *supra* note 11 (statement of Heather Fargo, former mayor, City of Sacramento).

²⁹⁶ IN FAVOR, *supra* note 9; AGAINST, *supra* note 101.

²⁹⁷ AGAINST, *supra* note 101.

²⁹⁸ See Ryan Lillis, *Strong Mayor's About Clout*, SACRAMENTO BEE (Sept. 5, 2014, 7:46 PM), <http://www.sacbee.com/2014/09/05/6683295/sacramentos-power-players-line.html> (quoting Andrew Acosta as saying, “they’d rather have one conversation than eight” regarding the top donors).

²⁹⁹ *Id.* (quoting former Sacramento mayor Heather Fargo).

³⁰⁰ *Id.*

³⁰¹ AGAINST, *supra* note 101.

³⁰² IN FAVOR, *supra* note 9.

that the city council adopts, the mayor may be less likely to use a line-item veto against those recommendations or an overall veto against the budget.³⁰³ Although Measure L creates the analyst position, it fails to make recommendations regarding his or her qualifications and does not consider the cost of hiring a new department head.³⁰⁴ Therefore, it is unclear if an independent budget analyst will actually be appointed or whether the position is financially feasible if Measure L passes.³⁰⁵

E. Other Major Charter Changes

Measure L will require the city council to fill in some of the details left out of its text, but will also allow voters to alter the provisions during future general elections.³⁰⁶

1. Required Ordinances

Several of the main Measure L charter alterations require the council to pass a separate ordinance within six months of the measure's passage.³⁰⁷ These include the creation of committees for redistricting and ethics, as well as a Sunshine Ordinance.³⁰⁸ Proponents of Measure L did not prescribe the parameters of these programs in the measure because voters found prior versions of strong-mayor initiatives overwhelming when they included all of these details.³⁰⁹

This reasoning does not comfort opponents, who say the “trust us and wait” argument shows a lack of substance in the reforms.³¹⁰ Council member Hansen foresees a “delicate dance” to create ordinances substantive enough so that they have a purpose, but not too substantive so that they might be vetoed.³¹¹ Since the ordinances do not require a charter change, council member Hansen would prefer to create substantive ordinances that reform ethics, streamline governance, and change election rules without a measure half-heartedly commanding the city council to do so.³¹²

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³⁰³ See REBUTTAL TO AGAINST, *supra* note 101 (inferring “an unprecedented light of transparency” could mean the mayor would be less likely to not follow analyst recommendations).

³⁰⁴ SACRAMENTO, CAL. CITY COUNCIL RES. NO. 2013-0362, EXHIBIT A, § 29 (2013), available at http://portal.cityofsacramento.org/~media/Corporate/Files/City-Clerk/Elections/07142014_MeasureText_Charter.pdf (amending SACRAMENTO, CAL. CHARTER, art. IX, § 111).

³⁰⁵ *Id.*

³⁰⁶ See, e.g., *id.* § 14 (providing for the creation on an ethics committee and Sunshine Ordinance).

³⁰⁷ *Id.*

³⁰⁸ *Id.* § 5 (amending SACRAMENTO, CAL. CHARTER, art. III, § 24(a)); *Id.* § 14 (adding SACRAMENTO, CAL. CHARTER, art. III, § 36).

³⁰⁹ *Forum*, *supra* note 11 (statement of Daniel Conway, chief of staff, Mayor Kevin Johnson).

³¹⁰ Hansen interview, *supra* note 116.

³¹¹ *Id.*

³¹² *Id.*

2. Amendment by Ballot

Measure L's charter changes can be amended through future initiatives or measures placed on the ballot, which could help to close any gaps that surface.³¹³ For example, if the measure passes and tie votes in the city council become a problem, voters can solve the issue with a general election ballot measure.³¹⁴ This was an issue that San Diego voters fixed when they permanently approved their city's strong-mayor system.³¹⁵

If Measure L passes, voters may also choose not to keep a strong-mayor government when the bill sunsets in 2020.³¹⁶ The provision is similar to how other cities adopted their strong-mayor systems.³¹⁷ Some feel that the sunset date provides false hope for those who dislike the form of governance; after all the arguments on Measure L, they say voters will be less likely to change the charter because they don't want a repeat of "this agony."³¹⁸ Opponents do not want the next six years to be an experiment, and assert that such a major change to the charter should be permanent or not happen at all.³¹⁹ A few cynics believe the sunset might be designed so that the strong-mayor system only benefits Mayor Johnson and not his successors.³²⁰

VII. CONCLUSION

Ultimately, the decision Sacramento voters make may not really alter the way the city government works.³²¹ Researchers have found the council-manager structure and the strong-mayor system are fairly equal in terms of ability to implement citizen-supported policies.³²² Both forms of government generally conform to their constituents' desires because they are equally responsive to their communities.³²³

³¹³ SACRAMENTO, CAL. CITY COUNCIL RES. NO. 2013-0362, EXHIBIT A, § 30 (2013), available at http://portal.cityofsacramento.org/~media/Corporate/Files/City-Clerk/Elections/07142014_MeasureText_Charter.pdf.

³¹⁴ *Id.*

³¹⁵ *A History of San Diego Government*, OFFICE OF THE CITY CLERK, <http://www.sandiego.gov/city-clerk/aboutus/history.shtml> (last visited Oct. 5, 2014).

³¹⁶ SACRAMENTO, CAL. CITY COUNCIL RES. NO. 2013-0362, EXHIBIT A, § 30(C) (2013), available at http://portal.cityofsacramento.org/~media/Corporate/Files/City-Clerk/Elections/07142014_MeasureText_Charter.pdf.

³¹⁷ See, e.g., *A History of San Diego Government*, OFFICE OF THE CITY CLERK, <http://www.sandiego.gov/city-clerk/aboutus/history.shtml> (last visited Oct. 5, 2014) (showing San Diegans had to re-vote on the issue after five years to make the change permanent).

³¹⁸ *Forum*, *supra* note 11 (statement of Steve Hansen, council member, City of Sacramento).

³¹⁹ Hansen interview, *supra* note 116.

³²⁰ *Contra* Isenberg interview, *supra* note 65 (theorizing the sunset was instead included to make the measure more popular).

³²¹ Sam Sturgis, *Strong Mayor, Weak Mayor, No Mayor—In Terms of Policy, It May Not Matter Much*, CITY LAB (July 31, 2014), <http://www.citylab.com/politics/2014/07/strong-mayor-weak-mayor-no-mayor-in-terms-of-policy-it-may-not-matter-much/375347/>.

³²² *Id.*

³²³ *Id.*

Measure L's proponents insist the revision would create a better, more modern form of government that will reduce "bureaucratic roadblocks."³²⁴ Opponents recognize the popularity of Mayor Johnson and understand why voters would give him more governmental control, but fear the measure places too much power in the position, which voters may not like as much when a less-popular mayor is in charge.³²⁵

Regardless of the way they vote, voters should bear in mind that Measure L proposes a substantial revision to Sacramento's existing charter, and the breadth of the proposal warrants careful consideration of the specific changes.³²⁶

³²⁴ REBUTTAL TO AGAINST, *supra* note 101.

³²⁵ REBUTTAL TO FAVOR, *supra* note 10; Michael Murphy, Letter to the Editor, *Measure L: Developer Dollars Support the Power Grab*, SACRAMENTO BEE (Sept. 4, 2014, 9:09 AM), <http://www.sacbee.com/2014/09/04/6678754/developer-dollars-support-the.html>

³²⁶ *See, e.g., supra* Sections IV–VI (discussing implications of the measure's passage).