

STAFF REPORT

City of Lancaster

NB 4
10/13/09
MVB

Date: October 13, 2009

To: Mayor Parris and City Council Members

From: David McEwen, City Attorney

Subject: **Changing the term of the Mayor to a 4-year term**

Recommendation:

Give direction concerning changing the term of the Mayor to a 4-year term.

Fiscal Impact:

The cost of placing the matter on the ballot is estimated to be \$6,000.00.

Discussion:

At previous City Council meetings there have been discussions about whether to make the term of office of the Mayor four years. Government Code Section 34900 provides in part:

“In cities presently having elected mayors, the city council may also submit to the electors the question of whether the mayor shall thereafter serve a two-year or a four-year term.”

If the City Council desires to place this matter on the ballot for the April 13, 2010 General Municipal Election, it will be necessary to include the measure in the resolutions with respect to the Election that will be presented to the City Council at the November 10, 2009 meeting.

If the City Council desires to move forward with the ballot measure, the only question that needs to be addressed is the question of the effective date. The word “thereafter” in the above sentence is susceptible of a reading that the term either starts with the current election or a future election and does not provide clear guidance. Section 34902(a) makes it clear that with respect to the initial approval of an elected Mayor, the authorization does not apply until the “next succeeding General Municipal Election.” However, the section is silent with respect to any changes in the length of the term of the Mayor.

Accepted rules of statutory interpretation require that, absent any other expression of legislative intent, where the legislature has included specific language and excluded other references, the statute should be interpreted to apply only to that which is specifically included. Since the legislature specifically refers to the Election of the Mayor and not the term of office of Mayor, the phrase “at the next succeeding election” should be interpreted as not applying to a change in term of office of the Mayor. However, the use of the word “thereafter” in the last sentence of Section 34900 raises the possibility that the new term length applies to the Mayor elected after the date of the Election changing the term. There have been no reported cases dealing with this issue and the issue is not free from doubt.

There are practical issues as well. However, none are insurmountable. There would need to be notice and disclaimer language on the papers pulled by candidates for Mayor as well as on all nominating papers informing the candidate and those signing the nominating papers that the term could be either two years or four years.