



Board Agenda Item 3

DATE: August 22, 2023
TO: Board of Supervisors
SUBMITTED BY: Supervisor Steve Brandau, District 2
SUBJECT: Adopt Resolution approving Amendment to Fresno County Charter Section 15

RECOMMENDED ACTION(S):

Adopt Resolution approving Amendment to Fresno County Charter Section 15 to provide for election of Sheriff and District Attorney in gubernatorial, non-presidential election years and provide direction to County Clerk/Registrar of Voters to place on the March 5, 2024 Primary Election ballot.

ALTERNATIVE ACTION(S):

The Board may choose not to approve the Resolution, in which case the Charter Amendment revising Section 15 of the Fresno County Charter would not be placed on the ballot for approval by the voters. If the Charter is not amended, the Sheriff and the District Attorney would not stand for election in 2026 as previously determined by law, but would have their terms extended under Assembly Bill 759 passed by the Legislature, to 2028.

FISCAL IMPACT:

Placing the proposed Charter Amendment would result in costs for the County's proportionate share of the costs of the primary election. That amount would depend on the number of other elections or initiative items on the ballot at the same time. If the proposed Charter Amendment is approved by the voters, there may be some long-term savings to the County resulting from maintaining all the county-wide elective offices in a single four year election cycle rather than having to hold a county-wide election every two years with some officers elected at one time (Assessor, Clerk/Registrar of Voters, and Auditor Controller Treasurer Tax Collector) and some at another (Sheriff and District Attorney).

DISCUSSION:

Assembly Bill 759, effective January 1, 2023, moved the election of the Sheriffs and District Attorneys to presidential election years in all counties except charter counties that had preexisting charter provisions that provided for a different election schedule. This would result in the current incumbents remaining in those offices for six years, until the presidential election in 2028.

Under the California Constitution Article XI, § 4, counties that adopt charters have certain home rule powers. Included in these charter powers are the ability of the county to provide for:

“(c) An **electe** **sheriff, an elected district attorney**, an elected assessor, other officers, **their election or appointment, compensation, terms** and removal.” (emphasis added).

Subsection (g) of Article XI, § 4 also provides:

“(g) Whenever any county has framed and adopted a charter, and the same shall have been approved by the Legislature as herein provided, the general laws adopted by the Legislature in pursuance of Section 1(b) of this article, shall, as to such county, be superseded by said charter as to matters for which, under this section it is competent to make provision in such charter, and for which provision is made therein, except as herein otherwise expressly provided.”

Section 3(a) of Article XI further provides in part “[t]he provisions of a charter are the law of the State and have the force and effect of legislative enactments.” While the home rule authority of a charter county is somewhat less than that of a charter city, in those areas that are specifically granted to charter counties under Article XI, §4 of the state Constitution, counties have “authority to opt out of the general law and follow their own law as to the ”municipal affairs” governed by their charters (citations omitted).” (Rutgard v. City of Los Angeles (2020) 52 Cal.App.5th 815, 833). Therefore, general laws of the State such as the provisions of AB 759, that seek to control an area of law such as the election of the Sheriff and DA, which are specifically listed as charter powers for a county under Article XI, § 4, would not apply if the County charter has a conflicting provision.

The Legislature, in new Elections Code §1300 adopted as part of AB 759, acknowledged (at least partially) the authority of the charter counties in this regard by excluding those charter counties that has already adopted a provision setting the election times for the Sheriff and District Attorney. Elections Code § 1300(c) provides:

“(c) Notwithstanding subdivision (b) of Section 1003 or any other law, the requirement that the district attorney and sheriff be elected in presidential election years applies to both general law and charter counties, except those charter counties that, on or before January 1, 2021, expressly specified in their charter when an election for district attorney or sheriff would occur.”

The problem with Elections Code § 1300(c) is that it purports to cut off the ability of charter counties that did not have a specific provision in their charters setting the date for the election of the Sheriff and DA to adopt such a charter provision at a later date. There is no state constitutional justification for making this distinction, particularly when the Legislature exempted those charter counties that had already adopted such a conflicting provision. There are some indications in the legislative history of AB 759 that the issue of whether the Legislature had the authority to exert this type of authority over charter counties was raised but not resolved.

ATTACHMENTS INCLUDED AND/OR ON FILE:

Resolution
Exhibit A - Text of Amendment to Section 15

CAO ANALYST:

Salvador Espino