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OFFICE OF THE CITY CLERK
OAKLAND

19 JUN 13 PM 3:59

AGENDA REPORT

TO: Members of the City Council

FROM: Councilmember Lynette Gibson McElhaney

SUBJECT: Creating A Process for Council-Sponsored Ballot Measures

DATE: 6/13/19

RECOMMENDATION

Councilmember Lynette Gibson McElhaney Recommends That The City Council Adopt An Ordinance Amending Chapter 3.08 'Elections' To Add Article IV, Which Would Create A Formal Process For The City Council To Place City-Sponsored Measures On The Ballot To Improve Transparency, Analysis And Accuracy Of City-Sponsored Ballot Measures.

EXECUTIVE SUMMARY

This ordinance creates a formal process by which City-sponsored ballot measures are proposed, analyzed, publicly presented, debated and considered for adoption. Ballot measures require significant time and effort by the public, elected officials and City staff and have far reaching consequences for the community. Intentional, thoughtful process creates the best opportunity for crafting policy that efficiently achieves its intended purpose. This ordinance creates such a process through a simple schedule to ensure that City-sponsored ballot measures receive the full analysis and debate they deserve.

BACKGROUND / LEGISLATIVE HISTORY

Currently, there is no formal process enshrined by resolution or within the Oakland Municipal Code for proposing, analyzing or considering for adoption city-sponsored ballot measures.

During each election cycle, the City Council considers City-sponsored measures to be placed on the ballot on an ad-hoc basis. The last three elections have seen a large number of City-sponsored ballot measures. The following table illustrates the number of ballot measures that were placed on the ballot by the City Council in each of the last three election cycles:

Table 1: City-Sponsored Ballot Measures 2012-2018

Election Date	Number of City-Sponsored Ballot Measures	List of City-Sponsored Ballot Measures
General 2018	4	Cannabis Business Tax Amendments (V); Vacant Parcel Tax (W); Tiered Real Property Transfer Tax (X); Just Cause Eviction Amendment (Y)
Primary 2018	1	Library Parcel Tax (D)
General 2016	5	Amendments to Oakland's Residential Rent Adjustments

Item: _____
Finance and Management Committee
6/25/19

		(JJ); Establishing a Police Commission to Oversee Policies and Procedures (LL); Infrastructure Bond Ballot Measure (KK); Sugar Sweetened Beverage Tax (HH); Increase Maximum Lease Term to 99 Years (II)
Primary 2016	0	N/A
General 2014	5	Maintain Police Services & Violence Prevention Strategies (Z); To Provide The PEC Greater Independence (CC); Independent Redistricting Commission (DD); Oakland Municipal Employees Retirement System (EE); Establish a Minimum Wage... (FF)
Primary 2014	0	N/A

In addition to those measures eventually adopted, the City Council often deliberates on additional measures. The table below shows the number of hearings for each City-sponsored ballot measure considered for the November 2018 election.

Table 2: City-Sponsored Ballot Measures Considered for November 2018 Election.

Ballot Measure	Result	Number of Committee/Council Hearings
Cannabis Business Tax Amendments (V);	Placed on ballot by City Council	5 (1)
Change Gross Receipts Tax On Residential Rentals	Proposed but not placed on ballot	1
Just Cause Eviction Amendment (Y)	Placed on ballot by City Council	4 (2)
Measure To Tax Transportation Network Companies (TNC's)	Proposed but not placed on ballot	5
Oakland Children's Initiative (AA)	Placed on ballot by citizen initiative	3 (3)
Tiered Real Property Transfer Tax (X)	Placed on ballot by City Council	4
Vacant Parcel Tax (W)	Placed on ballot by City Council	6

- (1) 3 hearings on the ballot measure and 2 earlier hearings on an information analysis of the issue.
- (2) One hearing on an earlier version and three hearings on the version that was eventually submitted.
- (3) There was a fourth hearing regarding the Citizen Initiative that is not counted in this number of three hearings.

ANALYSIS AND POLICY ALTERNATIVES

The proposed legislation seeks to codify a process by which the Oakland City Council considers, analyzes, and debates proposed ballot measures and then ultimately chooses whether to place them on a ballot. Placing items on the ballot is one of the City Council's most consequential tools. Better process leads to better outcomes and this ordinance seeks to take a first step towards creating such a process for City-sponsored

ballot measures. Note that citizen sponsored ballot initiatives are fully outside of this process.

The proposed process will lift up the following values:

- Transparency – constituents know what measures are being debated with enough time to organize, can access high quality information and have multiple opportunities to provide input.
- Timeliness – proposals are noticed, analyzed and debated with enough time for meaningful debate and substantial amendments.
- Accuracy – analyses of ballot measures are truthful to the best of the City’s ability and provide the public with an understanding of projected benefits and costs. Proposals are carefully crafted and wordsmithed.

In general, the process is structured as follows:

1. Councilmembers/Mayor submit summaries of their proposed measures. (180 days before measures due to County)
2. Council deliberates on which measures align with their shared priorities to be advanced for full analysis and deliberation. Additional requirements for public outreach and analysis are assigned. (Following regularly scheduled meeting)
3. At least one public hearing is held at a subject matter committee to present draft language and analysis. (Before 60 days before measures due to County)
4. Debate begins on measures. All amendments must be publicly noticed in accordance with the sunshine ordinance. Substantial changes must be presented with staff analysis. (Before 30 days before measures due to County)

The table below lays out what this proposed process will mean for the next election cycle. Please note that this process is proposed to be first implemented for the general election in November 2020. The schedule for the primary election is presented for illustrative purposes only.

Table 3: Example Schedule of Proposed Process

Step	Deadline	Deadline for Primary Election (For Example, Not Implemented)	Deadline for General Election (First Implementation)
Submit Ballot Summary to City Admin for Compilation	180 Days Before Measure Is Due to County	6/7/2019	2/7/2020 (est.)
Council Meeting to choose 'short list' of measures to	Next Available Council Meeting	6/18/2019	2/18/2020 (est.)

develop			
Informational Hearing at Subject Matter Committee	60 Days Before Measure Is Due to County	10/5/2019 (last Committee date is 10/8/19)	6/6/2020 (est.) (last Committee date is 5/26/2020)
Beginning of Council Deliberation	45 Days Before Measure Is Due To County	10/20/2019 (last Council date is 10/15/19)	6/21/2020 (est.) (last Council date is 6/19/2020)
Clerk Submit Measure to County	≈90 Days Before Election	12/4/2019	8/5/2020
	Election Day	March 3, 2020	November 3, 2020

Note: 2020 Committee and Council dates are estimated as the 2020 Legislative Calendar has not been adopted at this time.

FISCAL IMPACT

This legislation is intended to create more organizational efficiencies that will lead to staff time savings.

COORDINATION

Council President McElhaney’s office developed this ordinance in close partnership with the League of Women Voters and the Oakland Chamber of Commerce. The City Attorney and City Clerk were consulted in the development this ordinance. Several community organizations were presented with an early draft and provided comments. Council President Kaplan, Councilmember Taylor and Councilmember Thao provided valuable feedback and suggestions on earlier drafts.

Councilmember McElhaney

Subject: Creating A Process for Adoption of City-Sponsored Ballot Measures

Date: 6/13/19

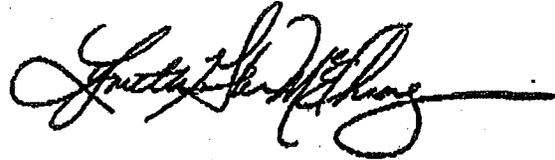
Page 5

ACTION REQUESTED OF THE CITY COUNCIL

Adopt An Ordinance Amending Chapter 3.08 'Elections' To Add Article IV, Which Would Create A Formal Process For The City Council To Place City-Sponsored Measures On The Ballot To Improve Transparency, Analysis And Accuracy Of City-Sponsored Ballot Measures.

For questions regarding this report, please contact Alex Marqusee, Policy and Legislative Director, at amarqusee@oaklandca.gov or 510-238-7031.

Respectfully submitted,



Councilmember Lynette Gibson McElhaney

Prepared by:

Alex Marqusee, Policy and Legislative Director
Office of Councilmember McElhaney

Item: _____

Finance and Management Committee

6/25/19

FILED
OFFICE OF THE CITY CLERK
OAKLAND

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DOC # 2773718V1

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER LYNETTE GIBSON MCELHANEY

DRAFT

CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

**ORDINANCE AMENDING CHAPTER 3.08 'ELECTIONS' TO
ADD ARTICLE IV, WHICH WOULD CREATE A FORMAL
PROCESS FOR THE CITY COUNCIL TO PLACE CITY-
SPONSORED MEASURES ON THE BALLOT TO IMPROVE
TRANSPARENCY, ANALYSIS AND ACCURACY OF CITY-
SPONSORED BALLOT MEASURES**

WHEREAS, the City Council hereby declares that the business of the City is to be conducted in an orderly and efficient manner to facilitate sound City Council and public deliberation and decision making; and

WHEREAS, the City Council hereby declares that the proper operation of democratic government requires that public officials are bound to observe, in their official acts, the highest standards of performance which requires the highest standards of process; and

WHEREAS, the submission of ballot measures for approval to the electorate is one of the most consequential decisions that the City Council makes; and

WHEREAS, the City of Oakland currently lacks a formal process enshrined by resolution or within the Oakland Municipal Code governing how City-sponsored measures shall be considered for adoption; and

WHEREAS, as a consequence of a lack of formal process, the City Council has heretofore considered potential ballot measures on an ad-hoc basis which places additional burdens on the City Administration to produce analyses and on the general public to understand how and when to participate in the public discussion of measures; and

WHEREAS, the City Council seeks to create a formal process by which City-sponsored ballot measures can be proposed, analyzed, publicly debated and

considered for adoption in a manner which is transparent, efficient and improves residents' trust in the public decision making process;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 3.08 of the Oakland Municipal Code is amended to add new Article IV – Process to Place City-Sponsored Measures on Ballot, to create a formal process for the City to consider and place measures on the ballot. Article IV shall read as follows:

Article IV. Process to Place City-Sponsored Measures on Ballot

3.08.300 – Placing City-Sponsored Measures on Ballot

The City Council shall follow the process for placing City of Oakland sponsored measures onto a ballot as described herein.

3.08.310 – Submission of Ballot Measure Summary Statements

Councilmembers and the Mayor shall submit proposals for ballot initiatives to the City Administrator at least 180 days before the anticipated date the City Clerk must submit ballot measures to the County for general and special elections. These statements should briefly summarize the intended outcomes, legislative history, proposed policy and alternatives, and whether the measure is proposed for the primary or general election.

3.08.320 – Council Instruction on Ballot Measures for Further Deliberation

The City Administrator or her designee will present, as an action item, a compilation of all the summary proposals for ballot measures submitted by elected officials at the regular City Council meeting immediately following the submission of Ballot Measure Summary Statements described above. At this meeting, the City Council shall give direction to the City Administrator on which ballot measures should proceed for development and analysis. The City Council shall also give direction to the City Administrator on any community input process, community sentiment surveys, or specific policy analysis that should be completed before consideration of the measure over and above the analysis and hearings as described herein.

3.08.330 – Committee Hearings to Present Analysis

The City Administrator, in collaboration with the sponsoring elected officials, shall bring recommendations to the Rules and Legislation committee to schedule each ballot measure chosen for further deliberation for a hearing at the appropriate

subject matter committee at least 60 days before the anticipated date the City Clerk must submit the ballot measures to the County for general or special elections. This analysis should include, at minimum, (1) a thorough summary of the ballot measure, (2) projected fiscal and administrative impacts to the City (3) an economic analysis that projects the potential impacts to local markets, businesses, property owners and consumers (4) an equity analysis that investigates how the measure projects to impact historically marginalized communities and (5) the full text of the proposed ballot measure as approved for form and legality by the City Attorney.

The City Administrator shall ensure that each draft ballot measure and accompanying legislative record shall be publicly posted, continuously updated and easily accessible to the public.

3.08.340 – Deadline for Scheduling Item to Council for Adoption

The sponsoring elected official shall bring a recommendation to the Rules and Legislation committee to schedule the measure directly to the City Council as an action item for approval to place the measure on the ballot. The Council shall first hear the item at least 45 days prior to the anticipated date the City Clerk must submit the ballot measures to the County for general or special elections.

3.08.350 – Council Amendments to Be Publicly Noticed; Waiver

The adopted ballot measure shall not contain substantive amendments made on the floor by Councilmembers at the final meeting at which the measure is approved for placement on the ballot. All substantive amendments must have been published in accordance with the Sunshine Ordinance. Amendments shall be submitted with the Councilmembers name(s) with additions marked as underlining and deletions marked as strikethroughs, and a cover memo detailing all proposed changes.

If a substantive amendment would significantly alter the conclusion of prior fiscal, economic, and equity analyses, a supplemental analysis must be prepared by the City Administrator. This shall not preclude Council members from combining elements from various proposals, provided each element considered has been published in the City Council agenda packet as a component of one proposal.

This noticing requirements may be waived by the affirmative vote of 6 Councilmembers upon a finding that new information unknown to the Council prior to the agenda deadlines indicates that the measure could have significant, as determined by the Council, fiscal, employee relations, operational or other impacts if the measure is or is not placed on the ballot.

SECTION 2. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or

phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 3. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption. The process shall be first implemented for the general election in 2020.

SECTION 4. This action is exempt from the California Environmental Quality Act ("CEQA") pursuant to, but not limited to, the following CEQA Guidelines: § 15378 (regulatory actions), § 15061(b)(3) (no significant environmental impact), and § 15183 (consistent with the general plan and zoning).

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BAS, GALLO, GIBSON MCELHANEY, KALB, TAYLOR, THAO, REID AND PRESIDENT
KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation:

NOTICE AND DIGEST

ORDINANCE AMENDING CHAPTER 3.08 'ELECTIONS' TO ADD ARTICLE IV, WHICH WOULD CREATE A FORMAL PROCESS FOR THE CITY COUNCIL TO PLACE COUNCIL MEASURES ON THE BALLOT TO IMPROVE TRANSPARENCY, ANALYSIS AND ACCURACY OF CITY-SPONSORED BALLOT MEASURES

This Ordinance amends Chapter 3.08 'Elections' to create a formal process for the City Council to place a City-sponsored item onto the ballot for voter approval. This process creates a schedule for: elected officials to present ballot measure proposals; the City Council to direct the City Administrator to develop, review and analyze a subset of those proposals; the City Council to hear those analyses at public hearings; and the City Council to deliberate adoption of final versions of the measures.