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CITY OF OAKLAND
CITY COUNCIL

LEGISLATIVE ANALYST MEMORANDUM

To: Rules and Legislation Committee
From: Sabrina Landreth, Legislative Analyst
Date: July 16, 2009
Re: **Discussion And Action On A Report Regarding (1) A Potential Amendment To Oakland City Charter Section 910 That Would Eliminate Binding Arbitration as the Means to Resolve Disputes Between the City And Sworn Members of the Oakland Police Department Regarding Wages, Hours and Other Terms and Conditions of Employment That Are Not Resolved Through Negotiations; and (2) A Resolution Submitting On The Council's Own Motion, A Proposed Charter Amendment, Entitled, "Measure Eliminating The Current Requirement That An Arbitrator Resolve Disputes Between the City and Sworn Members of the Oakland Police Department Regarding Wages, Hours and Other Terms and Conditions of Employment That Are Not Resolved Through Negotiations", To Be Submitted To The Electors At The Next Municipal Election**

A resolution has been prepared authorizing the submission to the voters at the next municipal election a proposed Charter amendment that would eliminate binding arbitration as a means to resolve disputes between the City and sworn members of the Oakland Police Department regarding wages, hours and other terms and conditions of employment that are not resolved through negotiations.

Additional background information and research from other cities will be included in a supplemental report.

Attachment A includes a copy of Charter Section 910: *Arbitration for Uniformed Members of the Police and Fire Departments*.

Item _____
Rules & Legislation Committee
July 16, 2009

City Charter Section 910. Arbitration for Uniformed Members of the Police and Fire Departments.

(a) It is hereby declared to be the policy of the voters of the City to endeavor to establish and maintain, without labor strife and dissension, wages, hours, and other terms and conditions of employment for the uniformed members of the Police and Fire Departments which are fair and comparable to similar private and public employment. To such purpose, the voters of the City hereby recognize the efficiency of and adopt the principle of binding arbitration as an equitable alternative means to arrive at a fair resolution of terms of wages, hours, and other terms and conditions of employment for such employees when the parties have been unable to resolve these questions through negotiations.

(b) Pursuant to the public policy hereinabove declared, the City or the recognized employee organization for the uniformed members of the Police and Fire Departments may, as the result of an impasse after meeting and conferring in good faith on matters within the scope of representation as required by applicable State law, refer any such matters which are unresolved to binding arbitration under the provisions of this Section; except that the Charter provisions concerning the Police and Fire Retirement System and such other provisions of this Charter which specifically govern wages, hours and other terms and conditions of employment of uniformed members of the Police and Fire Departments shall not be subject to change by arbitration. In any such arbitration, the arbitrator is directed to take into consideration the City's purpose and policy to create and maintain wages, hours and other terms and conditions of employment which are fair and comparable to similar private and public employment and which are responsive to changing conditions and changing costs and standards of living. The arbitrator shall also consider: the interest and welfare of the public; the availability and sources of funds to defray the cost of any changes in wages; hours and conditions of employment; and all existing benefits and provisions relating to wages, hours and terms and conditions of employment of the uniformed members of the Police and Fire Departments, whether contained in this Charter or elsewhere.

(c) Any unresolved dispute or controversy arising under the provisions of this Section, or any unresolved dispute or controversy pertaining to the interpretation or application of any negotiated agreement covering uniformed members of the Police and Fire Departments shall be submitted to an impartial arbitrator. Representatives designated by the City and representatives of the recognized employee organization affected by the dispute or controversy shall select the arbitrator. In the event that said parties cannot agree upon the selection of the arbitrator within five days from the date of any impasse, then the California State Conciliation Service shall be requested to nominate five (5) persons, all of whom shall be qualified and experienced as labor arbitrators. If the representatives of the recognized employee organization and the City cannot agree on one of the five to act as arbitrator, they shall strike names from the list of said nominees alternately until the name of one nominee remains who shall thereupon become the arbitrator. The first party to strike a name from the list shall be chosen by lot. Every effort

shall be made to secure an award from the impartial arbitrator within thirty (30) calendar days after submission of all issues to him.

(d) The arbitration proceedings herein provided shall be governed by Sections 1280, et seq., of the California Code of Civil Procedure. The arbitrator's award shall be submitted in writing and shall be final and binding on all parties. The City and the affected employee organization shall take whatever action is necessary to carry out and effectuate the award. The expenses of arbitration, including the fee for the arbitrator's services, shall be borne equally by parties. All other expenses which the parties may incur individually are to be borne by the party incurring such expenses.

(e) Nothing herein shall be construed to prevent the parties from submitting controversies or disputes to mediation, fact-finding or other reasonable method to finally resolve the dispute should the City and the recognized employee organization in the controversy or dispute so agree. An impasse may be declared by either the City or the recognized employee organization in the event the parties fail to reach an agreement on matters within the scope of representation after meeting and conferring in good faith as required by applicable State law, or after other mutually agreed-upon settlement methods fail to result in agreement between the parties. (Added by: Stats. 1973. Amended by: Stats. November 1988.)

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OAKLAND CITY COUNCIL

Office of the City Attorney

RESOLUTION NO. _____ C.M.S.

A Resolution Submitting On The Council's Own Motion, A Proposed Charter Amendment, Entitled, "Measure Eliminating The Current Requirement That An Arbitrator Resolve Disputes Between the City and Sworn Members of the Oakland Police Department Regarding Wages, Hours and Other Terms and Conditions of Employment That Are Not Resolved Through Negotiations," To Be Submitted To The Electors At The Next Municipal Election

WHEREAS, City Charter section 910 provides that disputes between the City and the authorized representatives of uniformed members of the Police and Fire Departments ("sworn members of the OPD and OFD"), regarding wages, hours and other terms and conditions of employment that are not resolved through negotiations, shall be submitted to binding arbitration; and

WHEREAS, the City Charter mandates binding arbitration only to resolve such disputes for sworn members of the OPD and OFD; and

WHEREAS, Oakland City Charter section 910 empowers an arbitrator to determine the wages, hours and other terms and conditions of employment for sworn members of the OPD and OFD in the event that the City and representatives of sworn members of the OPD and OFD are unable to reach agreement after good faith negotiations; and

WHEREAS, in such binding arbitrations, the City Charter requires that the arbitrator consider the City's purpose and policy to create and maintain wages, hours and other terms and conditions of employment that are fair and comparable to similar private and public employment and that are responsive to changing conditions and changing costs and standards of living; and

WHEREAS, the arbitrator also is mandated by the City Charter to consider the interest and welfare of the public, the availability and sources of funds to defray the cost of any changes in wages, hours and conditions of employment and all existing benefits and provisions relating to wages, hours and terms and conditions of employment of the uniformed members of the Police and Fire Departments, whether contained in the City Charter or elsewhere; and

WHEREAS, applicable state law, the Meyers-Milias-Brown Act, Government Code section 3500 et al., already requires that the City negotiate in good faith with the authorized representatives of sworn members of the OPD and OFD and the authorized representatives of all other City employees; and

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WHEREAS, historically the City and the authorized representatives of all City employees other than sworn members of the OFD and OPD have resolved disputes regarding wages, hours and other terms and conditions of employment through good faith negotiations and for many years good faith negotiations have proved to be an effective vehicle to successfully resolve such disputes; and

WHEREAS, the City desires to amend the City Charter to delete the provision that vests in an arbitrator the power to decide the wages, hours and other terms and conditions of employment for sworn members of the Police Department when the City and the police officers' authorized representatives are not able to resolve such disputes through negotiations; and

WHEREAS, if the electors of Oakland pass the proposed City Charter amendment, the police, like other non-sworn City employees, would retain their rights under state law to negotiate with the City regarding the terms and conditions of their employment, including wages, hours and other terms, and the City would continue to negotiate in good faith with the police officers' representative in accordance with the requirements of applicable state law; now, therefore be it

RESOLVED: That the City Council hereby authorizes and directs the City Clerk, at least 88 days prior to the next municipal election to file with the Alameda County Board of Supervisors and the County Clerk certified copies of this resolution; and be it

FURTHER RESOLVED: That the proposed Charter Amendment text shall be as follows:

Article IX of the Charter of the City of Oakland is amended at section 910 to read:

Section 910. Arbitration for Uniformed Members of the ~~Police and Fire~~ Departments.

(a) It is hereby declared to be the policy of the voters of the City to endeavor to establish and maintain, without labor strife and dissension, wages, hours, and other terms and conditions of employment for the uniformed members of the ~~Police and Fire~~ Departments which are fair and comparable to similar private and public employment. To such purpose, the voters of the City hereby recognize the efficiency of and adopt the principle of binding arbitration as an equitable alternative means to arrive at a fair resolution of terms of wages, hours, and other terms and conditions of employment for such employees when the parties have been unable to resolve these questions through negotiations.

(b) Pursuant to the public policy hereinabove declared, the City or the recognized employee organization for the uniformed members of the ~~Police and Fire~~ Departments may, as the result of an impasse after meeting and conferring in good faith on matters within the scope of representation as required by applicable State law, refer any such matters which are unresolved to binding arbitration under the provisions of this Section; except that the Charter provisions concerning the Police and Fire Retirement System and such other provisions of this Charter which specifically govern wages, hours and other terms and conditions of employment of uniformed members of the ~~Police and Fire~~ Departments shall not be subject to change by arbitration. In any such arbitration, the arbitrator is directed to take into consideration the City's purpose and policy to

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create and maintain wages, hours and other terms and conditions of employment which are fair and comparable to similar private and public employment and which are responsive to changing conditions and changing costs and standards of living. The arbitrator shall also consider: the interest and welfare of the public; the availability and sources of funds to defray the cost of any changes in wages; hours and conditions of employment; and all existing benefits and provisions relating to wages, hours and terms and conditions of employment of the uniformed members of the ~~Police and Fire~~ Departments, whether contained in this Charter or elsewhere.

(c) Any unresolved dispute or controversy arising under the provisions of this Section, or any unresolved dispute or controversy pertaining to the interpretation or application of any negotiated agreement covering uniformed members of the ~~Police and Fire~~ Departments shall be submitted to an impartial arbitrator. Representatives designated by the City and representatives of the recognized employee organization affected by the dispute or controversy shall select the arbitrator. In the event that said parties cannot agree upon the selection of the arbitrator within five days from the date of any impasse, then the California State Conciliation Service shall be requested to nominate five (5) persons, all of whom shall be qualified and experienced as labor arbitrators. If the representatives of the recognized employee organization and the City cannot agree on one of the five to act as arbitrator, they shall strike names from the list of said nominees alternately until the name of one nominee remains who shall thereupon become the arbitrator. The first party to strike a name from the list shall be chosen by lot. Every effort shall be made to secure an award from the impartial arbitrator within thirty (30) calendar days after submission of all issues to him.

(d) The arbitration proceedings herein provided shall be governed by Sections 1280, et seq., of the California Code of Civil Procedure. The arbitrator's award shall be submitted in writing and shall be final and binding on all parties. The City and the affected employee organization shall take whatever action is necessary to carry out and effectuate the award. The expenses of arbitration, including the fee for the arbitrator's services, shall be borne equally by parties. All other expenses which the parties may incur individually are to be borne by the party incurring such expenses.

(e) Nothing herein shall be construed to prevent the parties from submitting controversies or disputes to mediation, fact-finding or other reasonable method to finally resolve the dispute should the City and the recognized employee organization in the controversy or dispute so agree. An impasse may be declared by either the City or the recognized employee organization in the event the parties fail to reach an agreement on matters within the scope of representation after meeting and conferring in good faith as required by applicable State law, or after other mutually agreed-upon settlement methods fail to result in agreement between the parties.

(Added by: Stats. 1973. Amended by: Stats. November 1988.)

and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 11 of the Oakland Municipal Code, the City Clerk shall fix and determine a date for submission of arguments for or against said proposed Charter amendment, and said date shall be posted in the Office of the City Clerk; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 11 of the Oakland Municipal Code, the City Clerk shall provide for notice and publication as to said proposed Charter amendment in the manner provided for by law; and be it

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FURTHER RESOLVED: That each ballot used at said municipal election shall have printed therein, in addition to any other matter required by law the following:

PROPOSED CHARTER AMENDMENT

MEASURE _____

MEASURE TO _____

Measure _____. Shall section 910 of the Charter of the City of Oakland be amended to eliminate binding arbitration as the means to resolve disputes between the City and sworn members of the Police Department that are not resolved through negotiations?	Yes	
	No	

FURTHER RESOLVED: That the City Clerk and City Administrator hereby are authorized and directed to take any and all actions necessary under law to prepare for and conduct the next municipal election and appropriate all monies necessary for the City Administrator and City Clerk to prepare for and conduct the next municipal election, consistent with law.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2009

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California