



AGENDA REPORT

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DATE: July 5, 2022
TO: Members of the City Council and Members of the Public
FROM: Councilmember Dan Kalb
SUBJECT: Charter Reform Ballot Measure

RECOMMENDATION

That the City Council adopt a

RESOLUTION ON THE CITY COUNCIL'S OWN MOTION SUBMITTING TO THE VOTERS FOR THE NOVEMBER 8, 2022, GENERAL MUNICIPAL ELECTION A MEASURE THAT WOULD AMEND THE CITY CHARTER TO ADD GOVERNMENT REFORM CHARTER AMENDMENTS TO PROMOTE DEMOCRACY, ACCOUNTABILITY, TRANSPARENCY, AND EQUITY INCLUDING BUT NOT LIMITED TO:

(1) TERM LIMITS FOR COUNCILMEMBERS;

(2) REQUIRING A MINIMUM OF TWO COUNCIL HEARINGS BEFORE CERTAIN COUNCIL PROPOSED BALLOT MEASURES ARE APPROVED FOR PLACEMENT ON THE BALLOT;

(3) COUNTING COUNCILMEMBER ABSTENTIONS AND ABSENCES AS A 'NO' VOTE ON COUNCIL MOTIONS,

RESOLUTIONS AND ORDINANCES FOR PURPOSES OF DETERMINING WHETHER MAYOR HAS AUTHORITY TO CAST TIE-BREAKING VOTE;

(4) CHANGING THE FORMULA FOR THE PUBLIC ETHICS COMMISSION TO SET COUNCILMEMBER SALARIES AND AUTHORIZING THE PUBLIC ETHICS COMMISSION TO SET THE SALARIES OF THE CITY AUDITOR AND CITY ATTORNEY; AND

(5) GRANTING COUNCIL SUPER-MAJORITY AUTHORITY TO TERMINATE CITY ADMINISTRATOR FOR CAUSE; AND

(6) ADDING AND CLARIFYING DUTIES OF AND PROVIDING MINIMUM STAFFING FOR CITY AUDITOR; AND

DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS AND PROVIDE FOR NOTICE AND PUBLICATION, AND TAKE ANY AND ALL ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE NOVEMBER 8, 2022, GENERAL MUNICIPAL ELECTION

Introduction

Dear Colleagues and Members of the Public:

As the City of Oakland grows in size and complexity, we must update and modernize elements of our structures of government. This Charter update will allow our government structure to meet the needs of our city in a more democratic, accountable, transparent, and equitable manner. The measure contains several parts, as follows.

I. Term Limits for Councilmembers

Many cities have term limits for city councilmembers. According to the National League of cities, 80% of American cities have term limits for their mayor and councilmembers.¹ Oakland has term limits (two terms) for the office of Mayor, but does not have any term limits for City Councilmembers, potentially suppressing the opportunity for new

¹ National League of Cities, "Cities 101 – Term Lengths and Limits," <https://www.nlc.org/resource/cities-101-term-lengths-and-limits/>

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leadership. Based in part on a recommendation in the SPUR report, this Measure would institute a limit of three consecutive four-year terms. This provision is *not* retroactive.

II. Requiring a Minimum of Two Council Hearings Before Certain Council Proposed Ballot Measures are Approved for Placement on the Ballot

Currently, hearing a proposed ballot measure at only one city council meeting is required to place the proposed ballot measure on the ballot. By increasing the minimum to two full council meetings, we allow the public and the Council more time and more opportunities to vet, discuss and weigh in on the content of key ballot measures before they are approved onto the ballot. This would apply to ballot measures that are General Obligation Bonds, new or increases in parcel taxes, and any Charter Amendment.

III. Closing the Mayoral Tie-breaker Loophole by Counting Councilmember Abstentions and Absences as a ‘no’ Vote for the Purposes Only of Determining Whether the Mayor has Authority to Cast a Tie-breaking Vote

The City of Oakland is a charter city, meaning we have greater flexibility in determining our system of governance than a general law city (General Law cities must be governed by five city council members under a council-manager system). Oakland’s system of governance is a hybrid of strong mayor and “council-manager” forms, which in some cases results in a lack of transparency and accountability for decision-making.

In Oakland, according to our charter, the mayor has been able to cast a tie-breaking vote on Council legislation and motions that have a 4-4 split vote. The Charter requires an affirmative vote of five members to pass any resolution or city ordinance. Thus, in practice, councilmember abstentions and absences have denied the ability of the mayor to cast this tie-breaking vote. By counting councilmember abstentions and absences as ‘no’ votes in these situations, we close this loophole and ensure fairness in the decision-making process and true implementation of the tie-breaker rule already in the Charter.

IV. Public Ethics Commission (PEC) Setting Councilmember Salaries and Authorizing the PEC to Set Salaries of the City Auditor and City Attorney

Salaries and compensation for Oakland City Council members and staff are somewhat lower than in other cities, which may limit interest in these public service roles, potentially suppressing new talent. This measure retains and clarifies the PEC’s role in setting salaries for councilmembers.

Under City Code section 403, the City Auditor’s salary currently is set by the City Council, and may not be less than 70% nor more than 90% of the average salaries of City Auditors in California cities within the three immediate higher and three immediate lower cities in population. This formula guarantees that Oakland’s City Auditor always makes less than

the average salary of similarly populated California cities, limiting interest in this role and suppressing new talent. By delegating to the PEC the responsibility of setting the salary competitively and in alignment with similarly situated California cities as determined by the PEC, we ensure greater fairness and equity in the pay for this elected public service role.

Under City Code section 401(1), the City Attorney's salary is set by the City Council, and may not be less than 70% nor more than 90% of the average salaries of City Attorneys in California cities within the three immediate higher and three immediate lower cities in population. This formula guarantees that Oakland's elected City Attorney always makes less than the average salary of similarly populated California cities, limiting interest in this role and suppressing new talent. Further, this has created a situation where senior deputies earn more than the elected City Attorney in charge. By allowing the PEC to set the salary competitively and in alignment with similarly situated California cities as determined by the PEC, we ensure greater fairness and equity in the pay for this elected public service role.

V. Granting Council Super-majority Authority to Terminate City Administrator for Cause

In a Mayor-Council form of government, the City Administrator is hired by the mayor and confirmed by the City Council and only the mayor can dismiss the City Administrator. The City Administrator must attend all City Council meetings, and is able to recommend ordinances that they deem necessary. The City Council as a body can also direct the City Administrator, but lacks the authority to make sure its direction is carried out in a timely fashion. While one would assume that the City Administrator is accountable to both the mayor and the City Council, the Council lacks the ability to have a say in the termination of the City Administrator. By giving the City Council the authority to terminate the City Administrator for cause by a super-majority vote, we ensure greater balance in authority and accountability. The mayor retains the hiring responsibility of the City Administrator, who will continue to serve at the pleasure of the Mayor.

VI. Adding and Clarifying Duties of and Providing Minimum Staffing for City Auditor

The City Auditor plays a critical role in overseeing and evaluating the city's financial controls to ensure city assets and resources are used in a effective and efficient manner and are safe from fraud, waste, and mismanagement; and in preparing impartial analyses of ballot measures, proposed major expenditures, performance audits for city departments. The City Auditor may also oversee the financial oversight of the City Administrator, City Council, and mayor's office, who all determine the City's budget, including the City Auditor's. By clarifying the City Auditor's duties, and providing a minimum staffing, we help ensure adequate funding resources, as well as the effectiveness and impartiality of the City Auditor. This measure also sets a job eligibility requirement of a minimum four years'

experience in public sector auditing, evaluation, investigative oversight, public sector accountancy, or equivalent private sector experience.

VII. Additional Provisions

- Eliminates in the Charter the position of Vice-mayor, which is an antiquated holdover from the old Council-Manager days of Oakland government, and replaces it with identifying the Council President as the leader chosen by the Council to take over the office of Mayor should the mayor be temporarily unavailable or leave office prior to finishing the term.
- Prohibits the City Attorney and City Attorney from endorsing or contributing to any campaign for local elective office other than the office they respectfully hold.
- Provides clarity on mayoral appointing and council nominating authority for city boards and commission.

Fiscal Impact

This set of Charter Amendments should cost under \$1 million annually—mostly due to increased staff resources for the City Auditor’s office.

Coordination and Community Outreach

Several community organizations and community leaders were consulted on specific provisions in this measure, including the League of Women Voters of Oakland, Make Oakland Better Now, SPUR, East Bay Alliance for Sustainable Economy (EBASE), local labor representatives and more. Additional outreach continues.

For questions regarding this report, please contact Councilmember Dan Kalb at dkalb@oaklandca.gov.

Respectfully submitted,



Councilmember Dan Kalb

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