



City of Alameda

Staff Report

File Number:2020-7929

City Council

Agenda Date: 5/6/2020

File Type: Regular Agenda Item

Agenda Number: 3-A

Recommendation to Provide Direction on Potential Measures Amending the City Charter Relating to Charter Section 7-3 - Counter Interference. (City Council Charter Subcommittee)

To: Honorable Mayor and Members of the City Council

EXECUTIVE SUMMARY

The Charter Review Subcommittee is presenting its initial findings on potential measures amending the City Charter and requesting consideration from the City Council for potential measures to be placed on the November ballot.

BACKGROUND

Summary of the timeline and key events in the Charter Review Subcommittee activities

- December 2018, after the election, Mayor Marilyn Ezzy Ashcraft appointed a subcommittee to look at the City Charter and recommend potential items for the City Council to consider putting on the Ballot.
- In April 2019, the subcommittee returned to the City Council with [a list of proposed issues](https://alameda.legistar.com/LegislationDetail.aspx?ID=3880482&GUID=30CDB30B-83B9-4272-A6B1-) <https://alameda.legistar.com/LegislationDetail.aspx?ID=3880482&GUID=30CDB30B-83B9-4272-A6B1-> to return in time for consideration to place items on the November 2020 ballot. At this meeting, additional items were added.
- During discussions with staff regarding charter changes related to issues of charter interference, the subcommittee determined that the full city council should be engaged in this discussion and that public and council input should be gathered at the same time.
- Issues related to governance, elections, etc. are being addressed at the May 5, 2020 regular meeting. Recommendations Charter Interference are being brought forward tonight and Measure A will be addressed tomorrow night.

DISCUSSION

After discussions with the City Attorney and City Manager, the subcommittee agreed to bring forward a joint recommendation for updating the language in the City Charter to better clarify and focus of the Charter section 7-3. The current language is:

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Sec. 7-3. Neither the Council nor any of the members thereof shall interfere with the execution by the City Manager of his or her powers and duties. Except for purposes of inquiry, the Council and its members shall deal with that portion of the administrative service for which the City Manager is responsible solely through him or her. An attempt by a Councilmember to influence the City Manager in the making of any appointment or the purchase of any materials or supplies shall subject such Councilmember to removal from office for malfeasance.

The current language's use of "influence" is problematically broad and could be construed to include any comments, including questions about process or important general points for consideration. This is a point raised in the May 2018 Jenkins report, which said:

Alameda Charter Section 7-3 may be read so broadly that it precludes ordinary and reasonable behavior by councilmembers and creates a counter-productive segregation between the City Manager and the Council. The point of the City Charter is to eliminate corrupt influences such as political patronage or conflicts of interest and to preserve the professional administration central to a manager/council form of government. It is unlikely that the City Charter was intended to prohibit a councilmember's sincere and constructive criticism about the manner in which a city manager is making an appointment. Prohibited "attempt[s] by a Councilmember to influence the City Manager in the making of any appointment" should be defined in the context of this kind of malfeasance, especially given that the penalty for violation is to subject a councilmember to removal from office. I recommend that the Council consider either proposing to the electors an adoption of a City Charter amendment or enacting an ordinance that delineates with specificity the types of conduct that constitute a violation of this section.

After conversations with the City Attorney and City Manager, the subcommittee is recommending Council discuss various approaches to modifying article 7-3.

Councilmember Knox White, with input from the City Attorney, is recommending language that is used in both Santa Monica and Oakland to provide this clarity. We believe that this proposal does not diminish the prohibition from interfering in hiring or procurement decisions, but does provide future councils and residents with a clearer understanding of the expectations, which combined with a code of conduct adopted by the council are responsive to the Grand Jury's findings:

Proposed:

Except for the purpose of inquiry, the City Council and its members shall deal with the administrative service under the City Manager and other appointed or elected officers solely through the City Manager or such other officer. Neither the City Council nor any member shall give orders to any subordinates under the jurisdiction of the City Manager or such other officers, either publicly or privately; nor shall they attempt to coerce or interfere, directly or indirectly, with the City Manager or such other officers, in respect to any contract, purchase of

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any materials or any other administrative action; nor shall they in any manner, directly or indirectly, direct, request or take part in the appointment, discipline or removal of any person by the City Manager or such other officers, or their subordinates. The City Council may further implement this section by ordinance, resolution or rules of conduct. Violation of any provision of this section by a member of the Council shall be a misdemeanor, conviction of which shall immediately forfeit the office of the convicted member.

Additionally, Councilmember Daysog, after conversations with the City Attorney, is suggesting a second approach for Council's consideration provides for an electoral response to the Grand Jury making a finding of a charter violation. The proposed language follows and Councilmember Daysog will present the proposal at the meeting.

Proposal of Councilmember Tony Daysog

7-3 (A) The Council shall adopt an ordinance indicating fact finding-procedures for removing a Councilmember from office for malfeasance related only to an attempt to influence the City Manager in the making of any appointment or the purchase of any materials or supplies:

7-3 (A)-1 The ordinance shall include fact finding-procedures for referring for purposes of substantiation allegations of malfeasance to the Office of the Alameda County District Attorney, or any successor agency thereto; and,

7-3 (A)-2 The ordinance shall include fact finding-procedures for referring for purposes of substantiation allegations of malfeasance to the Alameda County Grand Jury, or any successor thereto.

7-3 (B) The ordinance adopted pursuant to this Article of the City Charter shall include removal-procedures for removing a Councilmember from office for having attempted to influence the City Manager in the making of any appointment or the purchase of any materials or supplies:

7-3 (B)-1 Only Councilmembers found by both the Alameda County District Attorney's Office and the Alameda County Grand Jury to have attempted to influence the City Manager in the making of any appointment or the purchase of any materials or supplies can be subject to removal-procedures resulting from these sections.

7-3 (B)-2 The ordinance shall limit the removal-procedure to a special municipal election, including a recall election, called for on a 4-1 vote of the Alameda City Council or, in the absence of at least one Councilmember, at least 3 votes in support. If Council deliberation pursuant to the 7-(B)-2 special municipal election occurs in a General Election year, Council may, on a majority vote, elect to hold off on calling the special election.

7-3 (C) Failure to adopt an ordinance pursuant to 7-3 (A) and 7-3 (B) by December 31, 2024 will result in a loss of pay by all members of the City Council starting January 1, 2025 until the point in time when such an ordinance is adopted.

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The subcommittee thanks the Mayor and City Council for their trust and support in moving these issues forward. We look forward to our discussion on May 6th.

FINANCIAL IMPACT

If the City Council recommends moving forward with the subcommittee's recommendation, there is no financial impact.

CLIMATE IMPACT

None of the proposed issues would directly impact the City's climate work.

RECOMMENDATION

Provide direction on potential measures amending the City Charter.

Respectfully submitted by,
Charter Review Subcommittee

cc: Eric Levitt, City Manager