



Staff Report

File Number:2024-4067

City Council

Agenda Date: 7/16/2024

File Type: Regular Agenda Item

Agenda Number: 7-B

Recommendation to Consider Amending Charter Section 3-10 to Eliminate the Supermajority Vote Requirement for Leases Longer than One Year and Sales of City Real Property; and Adoption of Resolution Calling for the Holding of a Consolidated Municipal Election in the City of Alameda on Tuesday, November 5, 2024 Submitting a Proposed Charter Amendment Revising Section 3-10 Pertaining to Leases [and Sales] of City Real Property, Establishing the Policies and Procedures for Such an Election, Requesting that the County of Alameda Conduct Such an Election and Authorizing City Councilmembers to File Written Arguments For or Against the Measure. (City Clerk 10022022) [Not heard on July 2, 2024]

To: Honorable Mayor and Members of the City Council

From: Lara Weisiger, City Clerk

EXECUTIVE SUMMARY

The City Council may consider placing a Charter amendment measure on the upcoming November ballot that would eliminate the supermajority vote requirement for leases and sales of City of Alameda (City) property. If City Council is in support of either or both amendments to the City Charter (Charter), City Council should adopt a resolution placing the proposed amendment measure on the November 5, ballot. If the measure is placed on the ballot, the resolution also authorizes the City Council, or members thereof, to submit arguments for or against the measure.

BACKGROUND

City Charter Section 3-10 requires a supermajority vote, i.e., four votes, to lease City property for more than one year and for sales of City real property. On April 16, 2024, City Council considered a referral submitted by Councilmember Jensen (Exhibit 1) that directed staff to return to City Council with a proposal to place a measure on the November 5, 2024 ballot amending Charter Section 3-10 to require a simple majority vote, rather than a supermajority vote, for leases greater than one year. City Council directed the matter return with historical information, procedures used in other cities, options, and ballot measure language. A second referral submitted by Councilmember Jensen (Exhibit 2) on the June 4, 2024 City Council agenda proposes to eliminate the supermajority vote requirement for sales of real property as well. The referral was not heard on June 4, 2024 and was withdrawn on June 16, 2024 after staff indicated the sale of real property was already addressed in this report.

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DISCUSSION

The City Council may place a Charter amendment measure on the ballot for voter consideration. To follow up on Council Referrals regarding Charter Section 3-10, information and options are being presented for City Council to decide whether to place measure(s) on the November 5, 2024 ballot.

Historical Information:

The City Charter was adopted in 1937. The addition of Section 3-10 was Proposal 1 approved by the voters on March 9, 1943. Historical records were searched to try to find information on why the supermajority vote requirement was included in the language. On January 25, 1942, the City Council adopted Resolution 2829 (Exhibit 3) placing measures on the ballot. The resolution does not include any express reason for adding the four-vote requirement. The minutes (Exhibit 4) and sample ballot (Exhibit 5) also do not address the four-vote requirement. Minutes and City Council records were extensively searched and nothing was found regarding the Charter proposal or language. The Library Reference Desk also researched newspaper articles and found a March 4, 1943 article (Exhibit 6) addressing the ballot measure, which does not address the supermajority vote requirement.

Section 3-10 was amended once in November 1982 to delete obsolete and unclear language. On November 2, 1982, voters approved changing the language about sale of property from “the sum of \$1,000” to “the sum provided by general law for cities requiring competitive bidding for the purchase of supplies and materials”. The sample ballot (Exhibit 7) shows the language change and includes an argument in favor. Additional research regarding the 1982 measure was not conducted since the measure does not address the supermajority vote requirement.

Procedures in Other Cities:

Earlier this month, Base Reuse and Economic Development Department staff undertook a survey of other local jurisdictions in the Bay Area to compare procedures for the lease or sale of government-owned property in the City. Staff contacted 23 cities and five counties, including all of the local jurisdictions in Alameda and Contra Costa Counties.

The attached table (Exhibit 8) summarizes the findings from this research. Of the jurisdictions that responded with information:

- All but one jurisdiction (Oakland) requires a simple majority vote of the governing body for sales or leases. There was no difference in the actions for a sale versus lease.
- Three-quarters of jurisdictions (21 of 28) require a resolution, rather than an ordinance, for sale or lease of property. The jurisdictions requiring an ordinance are Berkeley, Oakland,

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Piedmont and Richmond. Approval of leases or sales in other jurisdictions are made in different ways or are not specific. California Government Code §37380 requires an ordinance for leases longer than 55 years.

Proposed Ballot Measure(s):

Election Code Section 1415 establishes when Charter proposals may be submitted to the voters. The last regular meeting when City Council could adopt a resolution placing the measure on the ballot is July 16, 2024. If additional time is needed to address the measure, options include calling a special meeting or adding another regular meeting.

Options are being presented to allow City Council to decide if such a measure should be presented to the voters and, if so, what measure or measures should be presented.

Option 1 - One measure to eliminate the four affirmative vote requirement for leases exceeding 1 year:

Eliminating four affirmative votes to approve leases exceeding one year strictly implements the April 16, 2024 referral and would only change the supermajority vote requirement for leases greater than one year.

If City Council decides to place this amendment on the ballot, the ballot question, limited to 75 words, is:

City of Alameda Charter Amendment. Shall the measure amending Section 3-10 of the City Charter to reduce the City Council approval threshold from supermajority (four affirmative votes) to simple majority (three affirmative votes) for leases of City real property exceeding one year be adopted?

If the measure receives a majority vote of those voting on the measure, Charter Section 3-10 will be amended as follows:

Sec. 3-10. All acts of the Council imposing penalties, prescribing public regulations, granting franchises, or providing for the acquisition, transfer or lease for a period longer than one year, of real property, shall be by ordinance; provided, however, that the acquisition of real property, or any interest therein, may be authorized by resolution when the purchase price to be paid, together with any obligation imposed on the City in connection with any such acquisition, does not exceed the sum provided by the general law for cities requiring competitive bidding for the purchase of supplies and materials, or when such acquisition is to be accomplished by condemnation in eminent domain proceedings, or in connection with public improvements proceedings taken under some law.

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No real property of the City shall be leased for a period in excess of one year or sold, except upon the affirmative vote of four members of the Council.

The provisions of this section shall not apply to the acquisition or transfer of real property when, pursuant to procedure established by ordinance or by any code or general law of the State of California, such property has been acquired, or is transferred or acquired in satisfaction, foreclosure or enforcement of a lien for taxes or special assessments of any character.

Option 2 - One measure to eliminate the four affirmative vote requirement for leases exceeding 1 year and have all property transactions approved by resolution:

Staff is setting forth this option, similar to Option 1, to eliminate the supermajority vote for leases and also change the Charter to have leases and sales approved by resolution rather than by ordinance. This would streamline the lease process since resolutions only require approval at one meeting, rather than the two meetings required for ordinances. Also, a resolution goes into effect immediately, rather than 30 days after the second reading of an ordinance. Since all property transactions would be approved by resolution, staff is proposing a cleanup of obsolete language.

City of Alameda Charter Amendment. Shall the measure amending Section 3-10 of the City Charter to reduce the City Council approval threshold from supermajority (four affirmative votes) to simple majority (three affirmative votes) for leases of City real property exceeding one year and to require leases exceeding one year of City real property be approved by resolution rather than by ordinance be adopted?

If the measure receives a majority vote of those voting on the measure, Charter Section 3-10 will be amended as follows:

Sec. 3-10. All acts of the Council imposing penalties, prescribing public regulations, or granting franchises ~~shall be by ordinance.~~; ~~or Acts of the Council~~ providing for the acquisition, transfer or lease for a period longer than one year, of real property, shall be ~~by ordinance~~; provided, however, that the acquisition of real property, or any interest therein, may be authorized by resolution, when the purchase price to be paid, together with any obligation imposed on the City in connection with any such acquisition, does not exceed the sum provided by the general law for cities requiring competitive bidding for the purchase of supplies and materials, or when such acquisition is to be accomplished by condemnation in eminent domain proceedings, or in connection with public improvements proceedings taken under ~~some law.~~

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Option 3 - One measure to eliminate the four affirmative vote requirement for leases exceeding 1 year and for the sale of real property:

This option is being presented since Councilmember Jensen submitted a second referral addressing the sale of property.

The proposed ballot question and ballot measure language for the measure is being presented to City Council for approval to be submitted to the voters. The ballot question, limited to 75 words, is:

City of Alameda Charter Amendment. Shall the measure amending Section 3-10 of the City Charter to reduce the City Council approval threshold from supermajority (four affirmative votes) to simple majority (three affirmative votes) for leases exceeding one year and for sale of City real property be adopted?

If the measure receives a majority vote of those voting on the measure, Charter Section 3-10 will be amended as follows:

Sec. 3-10. All acts of the Council imposing penalties, prescribing public regulations, granting franchises, or providing for the acquisition, transfer or lease for a period longer than one year, of real property, shall be by ordinance; provided, however, that the acquisition of real property, or any interest therein, may be authorized by resolution when the purchase price to be paid, together with any obligation imposed on the City in connection with any such acquisition, does not exceed the sum provided by the general law for cities requiring competitive bidding for the purchase of supplies and materials, or when such acquisition is to be accomplished by condemnation in eminent domain proceedings, or in connection with public improvements proceedings taken under some law.

~~No real property of the City shall be leased for a period in excess of one year or sold, except upon the affirmative vote of four members of the Council.~~

The provisions of this section shall not apply to the acquisition or transfer of real property when, pursuant to procedure established by ordinance or by any code or general law of the State of California, such property has been acquired, or is transferred or acquired in satisfaction, foreclosure or enforcement of a lien for taxes or special assessments of any character.

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Option 4 - One measure to eliminate the four affirmative vote requirement for leases exceeding 1 year and for the sale of real property and have all property transactions approved by resolution:

Staff is setting forth this option, similar to Option 3, that would eliminate the supermajority vote for leases exceeding one year and for sales of City real property but also amends the Charter to have leases approved by resolution instead of ordinance. This would streamline the process for lease and sales since resolutions only require approval at one meeting, rather than at two for ordinances. Also, a resolution takes effect immediately, rather than 30 days after the second reading of an ordinance.

City of Alameda Charter Amendment. Shall the measure amending Section 3-10 of the City Charter to reduce the City Council approval threshold from supermajority (four affirmative votes) to simple majority (three affirmative votes) for leases exceeding one year and for the sale of City real property and to permit such leases and sales of City real property be approved by resolution rather than by ordinance be adopted?

If the measure receives a majority vote of those voting on the measure, Charter Section 3-10 will be amended as follows:

Sec. 3-10. All acts of the Council imposing penalties, prescribing public regulations, or granting franchises ~~shall be by ordinance.~~; or Acts of the Council providing for the acquisition, transfer or lease for a period longer than one year, of real property, shall be ~~by ordinance~~; provided, however, that the acquisition of real property, or any interest therein, may be authorized by resolution, when the purchase price to be paid, together with any obligation imposed on the City in connection with any such acquisition, does not exceed the sum provided by the general law for cities requiring competitive bidding for the purchase of supplies and materials, or when such acquisition is to be accomplished by condemnation in eminent domain proceedings, or in connection with public improvements proceedings taken under some law.

~~No real property of the City shall be leased for a period in excess of one year or sold, except upon the affirmative vote of four members of the Council.~~

The provisions of this section shall not apply to the acquisition or transfer of real property when, pursuant to procedure established by ordinance or by any code or general law of the State of California, such property has been acquired, or is transferred or acquired in satisfaction, foreclosure or enforcement of a lien for taxes or special assessments of any character.

Option 5: Divide the issues such that one measure would address leases and the other measure would address the sales of City property. Either or both could also have the amendment that only a resolution, rather than an ordinance, would be required for approval.

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Two measures could be placed on the ballot if City Council would like to allow voters to consider leases and sales of property separately. Either or both measures could also include the amendment to the Charter that would allow leases or sales to be approved by resolution rather than by an ordinance.

Conclusion

Any City Council action to advance measure(s) to the November ballot does not equate to Council support or opposition to the measure(s), which would be addressed through the ballot arguments discussed below. Placing the measure(s) on the ballot provides Alameda voters the opportunity to consider and decide whether to amend Section 3-10. If Option 5 is selected, a resolution can be amended to include two measures instead of one.

Ballot Arguments and Impartial Analysis:

Since this was not heard on July 2, 2024, the ballot argument dates have been revised. If City Council adopts a resolution to place a measure on the November 2024 ballot, it authorizes the City Council, or individual members thereof, to submit arguments and rebuttals concerning the measure. Arguments and rebuttals are submitted in accordance with Elections Code Sections 9280-9287. The City Clerk, as the City Elections Official, has set the deadline for submitting as: arguments for or against are due by 5:00 p.m. on Tuesday, July 30, 2024 and rebuttals are due by 5 p.m. on Thursday, August 8, 2024.

Should the City Council elect to prepare ballot arguments, whether for or against, the options are: 1) draft an argument as a whole body in open session and decide signers at that time; 2) authorize no more than two Councilmembers to meet as subcommittee of the City Council to draft an argument and have the entire City Council sign; 3) authorize no more than two Councilmembers to draft an argument and decide the combination of Councilmembers and/or other signers; or 4) authorize no more than two Councilmembers to draft and sign an argument and have up to three/four other signers. City Council could also elect not to draft an argument. This would allow others, as provided in the Elections Code, to submit arguments for or against.

The resolution also directs the preparation of the City Attorney's impartial analysis of the effects of the measure. The impartial analysis is due by 5 p.m. on Thursday, August 8, 2024.

ALTERNATIVES

- Adopt a resolution placing one measure amending the Charter sections on the November 5, 2024 ballot.
- Adopt a resolution placing more than one measure amending the Charter sections on the

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November 5, 2024 ballot.

- Amend and adopt the resolution placing the measure(s) on the November 5, 2024 ballot.
- Direct staff to return to City Council with revised City Charter amendment measure(s).
- Do not adopt a resolution placing City Charter amendment(s) on the November 5, 2024 ballot.
- City Council also has alternatives related to drafting arguments, which are outlined above.

FINANCIAL IMPACT

Since the City will have an election in November 2024, there would be an additional cost of approximately \$35,000 to place one measure on the ballot. If two measures are placed on the ballot, it would cost approximately \$15,000 more for the second measure.

MUNICIPAL CODE/POLICY DOCUMENT CROSS REFERENCE

The City Charter is the policy document governing the City. Any amendments must be approved by the voters.

ENVIRONMENTAL REVIEW

Adoption of the attached resolution placing a measure on the ballot is not subject to environmental review under the California Environmental Quality Act (CEQA). Amending the Charter pertaining to leases, the sales of City real property, and approving leases and sales of real property by resolution rather than by ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15378 as it does not constitute a project within the meaning of CEQA because it does not have a potential for resulting in a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

CLIMATE IMPACTS

There are no identifiable climate impacts or climate action opportunities associated with the subject of this report.

RECOMMENDATION

Consider adopting a resolution calling for the holding of a consolidated municipal election in the City of Alameda on Tuesday, November 5, 2024, for the submission of a proposed charter amendment(s) to amend Section 3-10, and authorizing City Councilmembers to file written arguments for or against the measure(s).

Respectfully submitted,

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Lara Weisiger, City Clerk

Financial Impact section reviewed,
Margaret O'Brien, Finance Director

Exhibits:

1. April 16, 2024 Council Referral
2. June 4, 2024 Council Referral
3. Resolution 2829
4. January 25, 1943 Minutes
5. March 9, 1943 Sample Ballot - Proposal 1
6. March 4, 1943 Alameda Times Star Article
7. November 2, 1982 Sample Ballot - Measure F
8. Procedures in Other Cities