



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Charter Amendment on Salary
Setting and Competing Ballot
Measures

DATE: August 9, 2018

REASON FOR SUPPLEMENTAL

This supplemental memorandum proposes changes to the posted language in the proposed amendment to the San José City Charter on competing ordinances.

RECOMMENDATION

If the Council submits a Charter Amendment to the voters that, if passed, would align the Charter with State law and allow the Council to place competing ordinances on the same ballot in Municipal Elections, this Office recommends that the Council submit the following language¹ for the proposed amendment:

In the event that a petition is submitted in accordance with the provisions of either subparagraphs (1) or (2) of subsection (a), and the Council submits said proposed ordinance to a vote of the voters of the City, the Council may not at the same time election submit an any alternative ordinance. If the provisions of two or more ordinances adopted at the same election conflict, the ordinance receiving the highest number of affirmative votes shall control.

BACKGROUND

The prohibition on alternative ordinances under Section 1603 of the City Charter states:

In the event that a petition is submitted in accordance with the provisions of either subparagraphs (1) or (2) of subsection (a), and the Council submits said proposed ordinance to a vote of the voters of the City, the Council may not at the same time submit an alternative ordinance.

¹ Additions to the text are underlined and deletions are shown in ~~striketrough~~.

The proposed amendment to this section currently posted with the Council Agenda states:

In the event that a petition is submitted in accordance with the provisions of either subparagraphs (1) or (2) of subsection (a), and the Council submits said proposed ordinance to a vote of the voters of the City, the Council may not at the same time submit an any alternative ordinance. If the provisions of two or more ordinances adopted at the same election conflict, the ordinance receiving the highest number of affirmative votes shall control.

However, this Office recommends the following change to specify that "at the same time" means at the same election:

In the event that a petition is submitted in accordance with the provisions of either subparagraphs (1) or (2) of subsection (a), and the Council submits said proposed ordinance to a vote of the voters of the City, the Council may not at the same time election submit an any alternative ordinance. If the provisions of two or more ordinances adopted at the same election conflict, the ordinance receiving the highest number of affirmative votes shall control.

ANALYSIS

As stated in the Staff memorandum from July 27, 2018, California law allows a city council of a general law city (a city without a charter and regulated by State law) to submit any ordinance to the voters that conflicts with a voter-sponsored initiative on the same ballot. (See Elec. Code §§ 9218, 9221, 9222.)

This rule does not apply to the San José City Council, and Staff recommends submitting an amendment to the voters to align the Charter with State law. The language currently posted with the Council Agenda preserves the phrase "at the same time" in the Charter, but it is a clearer reflection of State law and more direct to state "at the same election."

Therefore, if the Council submits to the voters an amendment to Charter section 1603, as recommended by Staff, this Office recommends that the Council submit a proposed amendment with the following language:

In the event that a petition is submitted in accordance with the provisions of either subparagraphs (1) or (2) of subsection (a), and the Council submits said proposed ordinance to a vote of the voters of the City, the Council may not at the same time election submit an any alternative ordinance. If the provisions of two or more ordinances adopted at the same election conflict, the ordinance receiving the highest number of affirmative votes shall control.

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PUBLIC OUTREACH

This supplemental memorandum will be posted on the City's Council Agenda website for the August 10, 2018 Adjourned Regular Meeting and Special Meeting.

CEQA

Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment.

RICHARD DOYLE
City Attorney

By Mark Vanni
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For questions please contact Mark Vanni, Deputy City Attorney, at 408-535-1997.