



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: David Sykes

SUBJECT: SEE BELOW

DATE: July 27, 2018

SUBJECT: POTENTIAL CITY CHARTER AMENDMENTS – MAYOR AND CITY COUNCIL SALARY SETTING AND THE PLACEMENT OF COMPETING ORDINANCES ON THE SAME BALLOT IN MUNICIPAL ELECTIONS

RECOMMENDATION

- (a) Council discussion of community survey results regarding a potential ballot measure amending the process in which Mayor and Council salaries are set under the City Charter and authorizing the Council to place competing ordinances on a citywide ballot at the same time the Council places a voter-sponsored initiative on the ballot;
- (b) Adopt a resolution of the City Council calling and giving notice, on its own motion, for a Special Municipal Election to be held on November 6, 2018, to submit to the electors of the City of San José a measure to amend the City Charter with the following statement of the measure to be printed in the ballot:

2018 Charter Amendments

Shall the City of San José Charter be amended to: <ul style="list-style-type: none"> • Remove the Mayor and Council's ability to approve their salaries; • Require the Salary Setting Commission to adjust the base salaries for the Mayor and City Council once every ten years; • Limit base salary increases after each 10-year adjustment to annual adjustments for inflation; and • Align the City Charter with State law to allow the City Council to place competing ordinances on the same ballot in Municipal Elections? 	YES	
	NO	

- (c) Council discussion and consideration of whether the full text of the proposed City Charter amendment should be printed in the November 6, 2018 Voter's Sample Ballot,

pursuant to Elections Code 12111, to be incorporated into the resolution calling for the election;

- (d) Council discussion and consideration of whether to print rebuttal arguments in the November 6, 2018 Voter's Sample Ballot, pursuant to Elections Code 9285, to be incorporated into the resolution calling for the election;
- (e) Council discussion and consideration of whether to authorize the City Council or any member or members of the City Council to submit an argument in favor of the City measure on the November 6, 2018 Voter's Sample Ballot, pursuant to Elections Code Section 9282, to be incorporated in the resolution calling the election;
- (f) Council discussion and consideration of whether to direct the City Clerk to transmit a copy of the measure to the City Attorney to prepare an Impartial Analysis, pursuant to Elections Code Section 9280; and
- (g) Direct the City Clerk to take all actions necessary to place this measure on the ballot for a November 6, 2018 Special Municipal Election.

OUTCOME

Adoption of this resolution would result in voter consideration of the recommended City Charter amendment measure on the ballot at the November 6, 2018 Statewide General Election.

Staff has prepared the necessary materials, including the Charter Amendment, resolution, and ballot language for Council to place the above measure on the November 6, 2018 ballot. The Council meeting on August 7, 2018 is the last regularly scheduled Council meeting before the Santa Clara County Registrar of Voters deadline of Friday, August 10, 2018 for a measure to be placed on the ballot for the November 2018 election. The election on November 6, 2018 is the next opportunity to bring a Charter amendment to the voters.

If the measure passes, the Mayor and City Council would no longer vote to set their own salaries based on the recommendations of the Salary Setting Commission. Additionally, if an ordinance is placed on the ballot through the initiative process, the City Council would have the opportunity to place a competing measure on the ballot, as is allowed by state law.

If the measure does not pass, the existing Charter provisions would remain in place, and the City Council would continue to vote on their own salaries every two years by either adopting the recommendations of the Salary Setting Commission or approving some lower amount. Also, the Council would not be allowed to place competing measures on the ballot, which is the current restriction under the City Charter.

BACKGROUND

On June 26, 2018, the City Council accepted a staff report¹ regarding potential amendments to the City Charter and provided direction to the Administration to conduct further polling and bring forward recommendations regarding two potential measures to amend the Charter.

This memorandum presents the measure to amend Charter provisions related to Council salary setting and the placement of competing ordinances on a citywide ballot. The full legislative history of these issues can be found in the memorandum presented on June 26, 2018.

ANALYSIS

Removing the Mayor and City Council from the Salary Setting Process

Sections 407 and 1001.1 of the San José City Charter (Charter) require that every two years the Salary Setting Commission, which is appointed by the Civil Service Commission, review and recommend appropriate compensation levels for the Mayor and City Council. The Commission forwards its recommendations to the Mayor and City Council, who make the final decision on whether to adopt the Salary Setting Commission's recommendation for the Mayor's and Councilmembers' monthly salaries and benefits, or adopt some lesser amount.

On October 17, 2017, the City Council directed the City Attorney and City Manager to draft a Charter amendment that would remove the Mayor and Council from the decision-making process on approving their own salaries. The Council considered different policy alternatives that the Salary Setting Commission had put forward and ultimately recommended Alternative # 2 from the City Clerk's October 4, 2017 Supplemental Memo as follows:

ALTERNATIVE TWO: Current base salary plus cost of living increases.

In addition to reimbursement for necessary traveling and other expenses actually incurred when on official duty in or out of the City on order of the City Council, commencing July 1, 2019, each member of the City Council shall receive as salary \$8133.57 per month, and the Mayor shall receive as salary \$11051.04 per month.

In order to provide a cost of living adjustment, commencing on July 1, 2020 and annually on July 1 thereafter, the compensation of the Council and Mayor shall increase by a percentage equal to the percentage increase in the preceding April's 12-month rolling average of the Consumer Price Index-Urban(CPI-U), or successor index, for San Francisco-Oakland-San Jose, as determined by the United States Department of Labor, Bureau of Consumers. In no event shall the CPI-U compensation adjustment exceed 5% per year, or result in a compensation decrease. The CPI-U base index year shall be calendar year 2019.

¹ June 26, 2018 staff report: <https://sanjose.legistar.com/View.ashx?M=F&ID=6311375&GUID=2DF61362-0584-44F3-8EB7-37DC93BF3AB1>

On June 26, 2018, the City Council discussed additional options for setting Council salaries and directed the Administration to bring forward a measure that included the cost of living adjustment elements of Alternative #2 from the City Clerk's October 4, 2017 Supplemental Memo, but also included a review and setting of base salaries for the Mayor and Councilmembers every five or ten years by the Salary Setting Commission, in order to make the salaries commensurate with those of other like cities. Additionally, the City Council directed staff to bring back additional information regarding other major cities and their methods for setting Mayor and Councilmember salaries.

Table 1 provides an overview of Mayor and Councilmember salary setting methods from comparable jurisdictions, incorporating prior research that the Salary Setting Commission provided to the City Council in 2017². It should be noted that the San Diego City Council is considering a ballot measure that would amend the San Diego City Charter to tie Mayor and Council salaries to those of Superior Court judges.

Table 1: Mayor/Council Compensation Determination in Comparable Jurisdictions

Jurisdiction	Who Sets Salary?	How Often?	Amounts
San Francisco	Civil Service Commission	Once every five years	Supervisors: \$121,606 Mayor: \$326,527
San Diego	City Council votes on Salary Setting Commission recommendation. Under consideration: tie to judicial salaries.	Every two years	Council: \$75,386 Mayor: \$100,464
Los Angeles	Controller ascertains amounts and adjusts in accordance with the Charter.	Council: Equal to judges of Municipal Court of the Los Angeles Judicial District. Mayor: 30% more than a member of Council.	Council: \$189,464 (2016) Mayor: \$246,303 (2016)
Sacramento	Compensation Commission	Annually	Council: \$63,272 Mayor: \$127,732.80 (2017)

² The Salary Setting Commission's data from 2017 is available online:
<http://www.sanjoseca.gov/DocumentCenter/View/70267>

Jurisdiction	Who Sets Salary?	How Often?	Amounts
Oakland	Council Pay: Set by the Public Ethics Commission	Council: Annually, based on CPI up to 5%. Over 5%, voters must approve.	Council: \$91,018.25 (as of 2018)
	Mayor Pay: Set by the City Council	Mayor: Every two years. Must fall within 70%-90% of the average salaries of the City Managers/Chief Executive Officers of California cities within the three immediate larger and three immediate smaller cities in population to Oakland.	Mayor: \$202,999.92 (as of 2017)
Fresno	City Council	Cannot increase or diminish during elective officer's term	Council: \$65,000 Mayor: \$130,000 (2016)

If voters were to approve the recommended Charter amendments, the Salary Setting Commission would meet in 2019 to set the 2019-2020 base salary for the Mayor and City Council, without the requirement of the City Council's approval. Beginning in 2020-2021, and for the following eight years thereafter, adjustments to the Mayor and City Council salaries would be limited to a percentage equal to the percentage increase of the preceding calendar year's annual average of the Consumer Price Index-Urban (CPI-U), or successor index, for San Francisco-Oakland-Hayward³, as determined by the United States Department of Labor, Bureau of Labor Statistics. The CPI adjustment is capped at 5 percent annually.

The next time the Salary Setting Commission would meet to set base salaries for the Mayor and City Council would be for the 2029-2030 fiscal year. During the intervening period, the Salary Setting Commission would continue to meet biennially to review and recommend the monthly stipend for the public members of the retirement boards for the City Council's consideration. The City Council would also remain free to consider changes to benefits at any time.

³ In January 2018, the United States Department of Labor's Bureau of Labor Statistics introduced a new geographic area sample for the Consumer Price Index (CPI). As part of the new sample, the index for the San Francisco-Oakland-San Jose was renamed to San Francisco-Oakland-Hayward.

Allowing Competing Ordinances to be Placed on the Ballot

On October 17, 2017, as part of the Mayor and City Council Salary-Setting direct, the Council directed the City Manager to solicit any other “clean-up” or “clarification” items requiring Charter amendments to conserve City General Fund dollars’ expenditures on the ballot measures. One such “clean up” item would be to amend the Charter to align with California state law related to competing ballot measures in a municipal election.

Under California law, the city council of a general law city, (a city without a charter and regulated by State law), may submit any ordinance to the voters including an alternative ordinance that conflicts with a voter-sponsored initiative on the same ballot⁴. If both measures pass, the measure that received the highest number of affirmative votes controls⁵.

However, this rule does not apply to the San José City Council. Under Section 1603 of the City Charter, when a voter-sponsored initiative proposing an ordinance qualifies for the ballot and the Council submits it to the voters, the Council may not submit an alternative ordinance at the same time. Amending this Charter limitation would align the City Charter with State law and allow the City Council to propose an alternative ordinance to compete with a voter-sponsored initiative on the same ballot. In the event both measures passed, the measure that received the highest number of affirmative votes would go into effect.

Survey Results

Fairbank, Maslin, Maullin, Metz & Associates (FM3), the City’s contracted survey research consultants, conducted a second public opinion survey from July 11, 2018 to July 19, 2018 to assess voter willingness to support a Charter Amendment Ballot Measure.

The ballot language tested read:

“Shall the City of San Jose’s Charter be amended to:

- *Remove the Mayor and City Council’s ability to approve their salaries;*
- *Require the Salary Setting Commission to adjust the base salaries for the Mayor and City Council once every 10 years;*
- *Limit base salary increases after each 10-year adjustment to annual adjustments for inflation; and*
- *Align the City Charter with State law to allow the City Council to place competing ordinances on the same ballot in Municipal Elections?*

A Charter amendment must be approved by a majority of the voters voting on the item (50 percent + 1 vote). Sixty-six percent of the respondents said they would support this measure, while 25 percent responded “no,” leaving 9 percent undecided. Based on the results, the

⁴ California Election Code §§ 9221, 9222.

⁵ California Constitution, art. II, § 10(b), Elec. Code § 9221.

Administration recommends utilizing the same ballot language if the Council places this measure on the November 6, 2018 citywide ballot.

EVALUATION AND FOLLOW-UP

If Council adopts the recommended resolution, it will be transmitted to the Santa Clara County Registrar of Voters to include on the November 6, 2018 citywide ballot.

PUBLIC OUTREACH

On behalf of the City, FM3 Research conducted three public opinion surveys of registered voters living in San José. Polling was conducted in English, Spanish, and Vietnamese. In addition, this memorandum will be placed on the City's agenda website for the August 7, 2018 Council meeting.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and City Clerk's Office.

COMMISSION RECOMMENDATION/INPUT

On October 4, 2017, the Council Salary Setting Commission recommended two policy options for removing the Mayor and Council from their salary decisions and both would require City Charter amendments. Based on the direction outlined in this memorandum, the Administration has further developed the Commission and Council direction for Council consideration on August 7, 2018.

COST SUMMARY/IMPLICATIONS

For the November 2018 ballot, there are run-off elections for two City Council Districts (estimated cost of \$74,000) as well as potential ballot measures under City Council consideration, including this measure. The first ballot measure is the most expensive as it covers the fixed costs of mailing ballot books to all voters as well as absentee/mail ballots to voters who request them. Assuming the general obligation bond measure is the first ballot measure at an estimated cost of \$1.15 - \$1.28 million, the incremental cost of placing this proposed Charter Amendment on the ballot ranges from \$455,000 to \$582,000, depending on the information included on the ballot. The ballot will include text describing the measure, the City Attorney's Impartial Analysis, and arguments for and against the measure. The City Council can decide between a summary of the text (1 page) or the full text (estimated at 5 pages) of the measure and whether to include rebuttal arguments.

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Following is a breakdown of these required costs as well as the optional costs:

Item	Measure Cost
Base Cost	\$374,000
Impartial Analysis (one page)	\$20,000
Arguments (one page per argument)	\$39,000
Summary text (one page)	\$22,000
Total Cost with Required Elements	\$455,000
Rebuttals (one page per argument)—optional	\$38,000
Full text (additional 4 pages)—optional	\$89,000
Total Cost with Optional Items	\$582,000

The total estimated cost for the election will depend on the number of measures the City Council places on the ballot, the information included on the ballot, and the two run-off elections.

Potential Costs	Range
Run-off election only	\$74,000
Run-off election + 1 ballot measure	\$1,227,000 to \$1,354,000
Run-off election + 2 ballot measures	\$1,682,000 to \$1,936,000
Run-off election + 3 ballot measures	\$2,137,000 to \$2,584,000
Run-off election + 4 ballot measures	\$2,592,000 to \$3,166,000

The 2018-2019 Elections and Ballot Measures appropriation totals \$1,856,000. In addition, there is a remaining balance of \$350,000 in this appropriation from 2017-2018 that will be recommended to be rebudgeted as part of the 2017-2018 Annual Report, which will bring the appropriation to \$2,206,000. If necessary, recommended budget actions would be brought forward as part of the 2017-2018 Annual Report to address any funding gap. It is important to note that the election costs are estimates only and will be revised based on the final fee schedule from the County Registrar of Voters and actual registration levels.

CEQA

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



David Sykes
City Manager

For questions, please contact Lee Wilcox, Chief of Staff, at (408) 535-4873.