



## Agenda Report

18-187

Agenda Date: 3/6/2018

### REPORT TO COUNCIL

#### **SUBJECT**

Consider Alternative Options Related to the City Clerk Vacancy and Potential One-time Budget Amendment

#### **BACKGROUND**

On February 6, 2018 City Clerk Rod Diridon, Jr. resigned from his elective office. That same night, the City Council accepted his resignation, in effect, declaring the office vacant. At the meeting of February 13, Council heard a presentation outlining options to consider in response to the sudden vacancy of the elective City Clerk position. A copy of that agenda report, as well as the presentation, is attached for reference.

Following a staff presentation, discussion and public input, Council directed staff to: 1) return with a potential draft Charter amendment related to the position of the City Clerk to include on the June 5, 2018 ballot, including alternative language for consideration; and 2) clarify any potential conflict with the By-District Council Elections & Voting Method Ballot Measure already approved for the June 5, 2018 election.

The Council also requested that staff conduct outreach utilizing social media and other tools to encourage public participation/feedback on the potential draft ballot measure(s); provide information on the cost of adding the ballot measure on the June 5, 2018 election; and, provide background information on previous Charter amendment ballot measures relative to the position of elected City Clerk and information from the recent Charter Review Committee.

In response to Council's direction, the City Attorney's Office has prepared Resolutions for consideration outlining potential ballot measures related to the City Clerk and staff conducted outreach and gathered background information for Council's review. In addition to this agenda report, the City Manager has prepared an accompanying Informational Memo, which includes additional options for ballot question language suggestions from ballot measure experts and as written in the California Government Code.

#### **DISCUSSION**

##### **Resolutions for consideration relative to the City Clerk**

The City Attorney's Office has prepared the attached draft resolutions to put a Charter amendment on the June 5, 2018 ballot to eliminate the elective office of City Clerk. Alternative 2A would convert the position to one appointed by the City Manager and Alternative 2B would convert the position to one appointed by the City Council.

In the event Council chooses to adopt either Resolution Alternative 2A or 2B, the Council would need to also adopt a Resolution which would amend the previously approved By-District Council Elections

& Voting Method Ballot Measure because it contains Charter language referencing the election of the City Clerk by ranked choice voting. In that case, there would be two measures on the same ballot that contain language regarding the elective office of the City Clerk: one to require an election by ranked choice voting, and the other to eliminate it as an elective office. For this reason, the revised Measure 1 includes Charter language that carves out the City Clerk as an elective office unless the other ballot measure passes by a majority vote, regardless of the number of votes received in favor of either ballot measure.

In addition, the Council would be required to adopt additional resolutions requesting that the Santa Clara Board of Supervisors consolidate the election with the Gubernatorial Primary Election on June 5, 2018 and call the special election for the two ballot measures. All such resolutions must be adopted at the March 6 meeting in order to meet the Registrar of Voters (ROV) March 9, 2018 deadline.

The City Charter and the California Elections Code authorize, but do not require, the City Council to write an argument in support of a ballot measure. Should the Council elect to authorize certain members of the Council to write the argument, that action must take place at the March 6 meeting in order to allow time to draft the argument and submit to the Registrar of Voters by March 13, 2018 at 12:00 pm (noon). As reference, rebuttal arguments will be accepted by the City Clerk's Office until March 20, 2018 at 12:00 pm (noon) and the City Attorney's Impartial Analysis is due March 20, 2018 at 12:00 pm (noon).

### **Appointment of an Individual to the Position of Elective City Clerk or Leaving the Elective City Clerk Vacant**

If Council chooses to appoint an individual to the position of elective City Clerk pursuant to Charter section 703, such action must also be taken at the March 6 meeting in order to meet the 30 day timeframe outlined in the Charter.

If Council takes this action, or opts to leave the elective position vacant, staff will return to Council with a resolution calling for an election for purposes of filling the vacancy for the elective office of City Clerk during the November 2018 election prior to the August 10, 2018 deadline. Under this alternative Ms. Yamaguma would continue to perform the duties of City Clerk in an acting capacity but not as an appointed City Clerk.

### **Open City Hall Topic**

In response to Council's direction to conduct outreach, an Open City Hall topic was posted on February 16 to the City's website and promoted through the use of e-Notify, the City's Facebook, Twitter and NextDoor accounts, and on Channel 15. The survey encouraged feedback from the public on three possible draft ballot measures: 1) eliminate the reference to the City Clerk as part of a revised version of the By-District Council Elections & Voting Method ballot question for the June 5, 2018 Special Election; 2) eliminate the City Clerk as an elective office with the City Manager appointing the City Clerk; and 3) eliminate the City Clerk as an elective office with the City Council appointing the City Clerk.

As of the time this report was finalized, there were 61 responses. Due to the nature of the topic being comprised of only open-ended questions and with the applied methodology, the results are qualitative and not representative of statistically valid community opinion research. The results of the Open City Hall topic are attached.

**Charter Review Committee - Meeting of October 23, 2017**

At the meeting of October 23, 2017, the Charter Review Committee discussed the role of the City Clerk as an elected position. The Minutes from the meeting are attached for review and indicate that the City Attorney advised that it would appear to be a conflict of interest if the City Clerk provided comments as a current elected official but would be welcome to provide comments as a member of the public. There was not a written staff report; however, the video of the meeting can be found by visiting the Charter Review Committee webpage at [www.santaclaraca.gov/charterreview](http://www.santaclaraca.gov/charterreview) <<http://www.santaclaraca.gov/charterreview>>. Ultimately, the City Clerk recused himself and left the Council Chambers. A motion was made to receive information at the next meeting about the role and duties of the City Clerk by someone independent of the City Clerk's Office but the motion failed without a second. After further discussion, motion was made and unanimously carried to maintain the role of City Clerk as an elected position. All other discussions regarding the position of City Clerk were relative to changing the voting method to ranked choice voting by means of single transferable vote beginning in 2020.

**Additional Information related to the City Clerk**

In addition to the above information, staff has compiled and attached information related to the position of City Clerk. The City Clerk became an elected position in the City of Santa Clara with the passage of a ballot measure in the November 1952 general election. Since that time, there has not been a ballot measure for vote of the electors as to whether the position should remain elective or become an appointive position.

As reference, there are 117 Charter cities in the State of California and 102 (87%) appoint their City Clerk and 15 (13%) elect their City Clerk. In addition to the above information, staff has compiled and attached a table of information that compares cities within Santa Clara County based on population, whether they are a Charter or General Law, whether they have an elected or appointed City Clerk, and base pay and total pay & benefits for the City Clerk position. For reference, impartial analyses and arguments for an appointed City Clerk from other California cities within recent years is also attached.

**FISCAL IMPACT**

In the event the Council places an additional ballot measure on the June 5, 2018 election, the estimated cost is \$75,315, per the Registrar of Voters. A one-time budget amendment to transfer funds from the Working Capital Reserve to the City Clerk's Office Contractual Services would be necessary to cover the costs associated with the additional ballot measure. If the ballot measure passes in June, there would be a cost savings associated with no longer including the City Clerk in the November 2018 election or for subsequent years. This action requires five affirmative City Council votes.

	2017-18 Current	Increase/ (Decrease)	2017-18 Revised
<u>Fund 001 - General Fund</u>			
<u>Expenditures</u>			
2313-City Clerk-Elections	\$55,800	\$75,315	\$131,115
<u>Reserves</u>			
Working Capital Reserve	\$55,361,210	(\$75,315)	\$55,285,895

### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

### **PUBLIC CONTACT**

Public contact was also made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office beginning the Thursday evening before the Tuesday meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library. In addition, as mentioned above, drafts of the alternative ballot questions were posted on the City's Open City Hall webpage and all comments received are attached.

### **ALTERNATIVES**

1. Immediately appoint a City Clerk by a six-vote majority under Charter Section 703 to fill the elective office of City Clerk until the November 2018 election.
- 2A. Adopt a Resolution ordering the submission of a Ballot Measure to the Electors to amend the City Charter to make the City Clerk a City Manager appointed position; adopt the requisite Resolutions calling the Special Election and requesting consolidation with the Gubernatorial Primary Election on June 5, 2018; and adopt a Resolution superseding the By-District Council Elections & Voting Method Ballot Measure Resolution to remove reference to the City Clerk
- 2B. Adopt a Resolution ordering the submission of a Ballot Measure to the Electors to amend the City Charter to make the City Clerk a City Council appointed position instead of an elective officer; adopt the requisite Resolutions calling the Special Election and requesting consolidation with the Gubernatorial Primary Election on June 5, 2018; and adopt a Resolution superseding the By-District Council Elections & Voting Method Ballot Measure Resolution to remove reference to the City Clerk
3. Take no action and allow the elective office of City Clerk to remain vacant and call an election in November 2018 to fill the office.

**RECOMMENDATION**

There is no staff recommendation relative to the alternatives for the City Clerk vacancy.

Prepared by: Brian Doyle, City Attorney

Prepared by: Nadine Nader, Assistant City Manager

Prepared by: Jennifer Yamaguma, Acting City Clerk

Reviewed by: Walter Rossmann, Chief Operating Officer

Approved by: Deanna Santana, City Manager

**ATTACHMENTS**

1. Agenda Report and Presentation from February 13 Council Meeting
2. Open City Hall Survey Results
3. Charter Review Committee Minutes from October 23, 2017 meeting
4. Table: Comparison of population, Charter/General Law, Elected/Appointed, and base pay and total pay & benefits of City Clerk for Cities in Santa Clara County
5. Impartial Analysis and Arguments from California Cities relative to Ballot Measures to Change from Elected to Appointed City Clerk
6. Alternative 2A Resolutions
7. Alternative 2B Resolutions