## CITY OF OAKLAND

## PROPOSED MEASURES

## TO BE VOTED ON AT THE MUNICIPAL NOMINATING ELECTION CONSOLIDATED WITH THE <br> STATEWIDE PRIMARY ELECTION TO BE HELD <br> IN THE CITY OF OAKLAND ON TUESDAY, MARCH 5, 2002


#### Abstract

THE TEXT OF THE PROPOSED MEASURES TOGETHER WITH LEGAL ANALYSES OF EACH MEASURE PREPARED BY THE CITY ATTORNEY AND FINANCIAL ANALYSES OF EACH MEASURE PREPARED BY THE CITY AUDITOR AND ARGUMENTS IN SUPPORT OF ADOPTION AND ARGUMENTS IN OPPOSITION OF ADOPTION AND REBUTTALS TO ARGUMENTS IN SUPPORT OF ADOPTION AND REBUTTALS TO ARGUMENTS IN OPPOSITION OF ADOPTION ARE THE OPINIONS OF THE AUTHORS.


The Council of the City of Oakland does hereby submit on its own motion the following proposed Charter Amendment to be voted upon by the qualified electors of the City of Oakland at the Statewide Primary Election to be held in the City of Oakland on Tuesday, March 5, 2002:

PROPOSED CHARTER AMENDMENT
MEASURE ENTITLING THE VICE MAYOR OF THE COUNCIL TO RETURN TO HIS/HER COUNCIL SEAT WHEN THE VICE-MAYOR FILLS A VACANCY IN THE OFFICE OF MAYOR IN ACCORDANCE WITH THE REQUIREMENTS OF CITY CHARTER SECTION 303, WHICH PROVIDES THE PROCEDURE FOR FILLING OF MAYORAL VACANCIES

## CITY OF OAKLAND MEASURE

DMEASURE D: Shall Oakland City Charter section 205, which requires elections to fill Council vacancies, be amended to provide that the Vice Mayor of the Council shall not be required to run for his/her Council seat and shall be entitled to return to his/her Council seat when a vacancy occurs in his/her office by virtue of his/her assumption of the office of

## CITY ATTORNEY'S BALLOT TITLE AND SUMMARY OF MEASURE D

 BALLOT TITLE:"MEASURE ENTITLING THE VICE-MAYOR OF THE COUNCIL TO RETURN TO HIS/HER COUNCIL SEAT WHEN THE VICE-MAYOR FILLS A VACANCY IN THE OFFICE OF MAYOR IN ACCORDANCE WITH THE REQUIREMENTS OF CITY CHARTER SECTION 303, WHICH PROVIDES THE PROCEDURE FOR FILLING OF MAYORAL VACANCIES"

## BALLOT SUMMARY:

City Charter Requires Election to Fill all Council Vacancies
Section 205 of the City Charter currently requires that all City Council vacancies shall be filled by election. Section 205 was amended in November 2000 to require elections. Prior to the amendment, City Council vacancies were filled by City Council appointment.

A long-standing provision of the City Charter provides that the Vice-Mayor of the City Council shall assume the office of Mayor when a vacancy occurs in that office. The Vice-Mayor serves until a new mayor is sworn in. The ViceMayor of the City Council is elected by the Council to serve a one-year term.

The Charter prohibits members of the Council from simultaneously holding two municipal offices. Accordingly, when the Vice-Mayor assumes the office of Mayor due to a vacancy, she/he can not continue to hold the Council seat to which she/he was elected and the Council seat becomes vacant. Section 205 of the Charter, which mandates elections to fill all Council vacancies, would trigger a special election to fill the vacancy in the Vice-Mayor's council seat, requiring that the Vice-Mayor run to complete the term to which she/he already had been elected.

This Proposed Measure Entitles the Vice-Mayor of Council to Return to His/her Seat when the Vice-Mayor Assumes the Office of Mayor Due to a Vacancy
The proposed amendment to section 205 would make an exception to the election requirement by entitling the Vice-Mayor to return to his/her seat when she/he automatically assumes the office of Mayor due to a vacancy. The Council would have the option of appointing an individual to temporarily fill a Council vacancy if the unexpired term at the time the vacancy occurs is at least 120 days. Appointment would be by a majority vote of the remaining Council members and the appointment would be for no longer than 128 days or until the Vice-Mayor returns to her seat, whichever period is shorter. If the unexpired term in the ViceMayor's Council term is less than 120 days when she/he assumes the office of Mayor, the Council seat would be vacant until a new Mayor is sworn in.

The amendment would eliminate the need for an election to fill the ViceMayor's Council seat and allow the Vice-Mayor to return to the Council and complete his/her term once a new Mayor is sworn in.
s/JOHN A. RUSSO
City Attorney

## CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE D

Chartered cities such as the City of Oakland have legal authority to provide in their charters for the conduct of city elections. Article XI, Section 5(b) of the California Constitution grants chartered cities the power to provide the manner in which, the method by which, the times at which and the terms for which municipal officers are elected or appointed, removed and for their compensation. In November 2000, the voters amended the City Charter to require special elections to fill City Council vacancies. Prior to the amendment, the City Council appointed persons to fill City Council vacancies.

The proposed charter amendment would provide an exception to the special election requirement when the Vice-Mayor of the City Council automatically assumes the office of Mayor due to a vacancy in that office. The Vice-Mayor would be entitled to return to his/her City Council seat when a new mayor is sworn in. City Charter Section 303 provides that the Vice-Mayor of the City Council automatically assumes the office of Mayor when a vacancy occurs in that office. The automatic assumption provision has been in the City Charter for many years and provides continuity in the office of Mayor in the event of a vacancy.

Currently, Section 205 of the City Charter requires elections to fill all City Council vacancies. Because the Charter prohibits individuals from simultaneously holding two municipal offices, a vacancy occurs in the Vice-Mayor's seat when the Vice-Mayor assumes the office of Mayor due to a mayoral vacancy. The existing Charter Section 205 would trigger a special election and require that the Vice-Mayor run in the special election to complete the term for which she/he already had been elected.

The proposed Charter amendment works as follows:
If the unexpired term in the Vice-Mayor's City Council seat equals or exceeds 120 days when the Vice-Mayor assumes the office of Mayor, the City Council has the option of appointing an individual to serve in the City Council seat for up to 128 days or until the Vice-Mayor returns to his/her seat, whichever period is shorter.

If the unexpired term is less than 120 days, the Vice-Mayor's City Council seat would remain vacant until the new mayor is sworn in.
$\mathrm{s} / \mathrm{JOHN}$ A. RUSSO
City Attorney

## CITY AUDITOR'S IMPARTIAL FINANCIAL ANALYSIS OF MEASURE D

Passage of this measure will avoid the expense of a special election and the requirement that the Vice Mayor who has served as an interim Mayor to compete for the Council term for which he/she has already been elected.
The measure will still provide continuity in the Office of the Mayor in case of a vacancy, and will not require that the residents of Oakland incur the expense of a special election by permitting the Vice Mayor to complete the term of office for which he/she has previously been elected.
Passage of this measure will not increase the cost of City government but will avoid the cost of a special election for one district, which is estimated at $\$ 121,000$.
s/ROLAND E. SMITH, CPA City Auditor

## NO ARGUMENTS FOR OR AGAINST MEASURE D WERE SUBMITTED.

## FULL TEXT OF MEASURE D

WHEREAS, Oakland City Charter section 303 provides that the ViceMayor of the Council shall assume the office of Mayor when the City Council declares a vacancy in that office; and

WHEREAS, because Oakland City Charter section 1202 expressly precludes the Mayor and Councilmembers from simultaneously holding any other municipal office, a vacancy occurs in the Vice Mayor's Council seat when she/he fills a vacancy in the office of Mayor pursuant to Charter section 303; and

WHEREAS, because City Charter section 205 requires that all vacancies in the office of Council member be filled by special election, when the Vice Mayor fills a mayoral vacancy, she/he would not be able to return to his/her Council seat when a new Mayor is sworn in, but would be required to be a candidate for the balance of the term to which s/he already had been elected; and

WHEREAS, the purpose of the provision in Charter section 303, which provides for the Vice Mayor to fill a mayoral vacancy, is to provide continuity in the office of Mayor and the Vice Mayor would serve as Mayor until a new Mayor is sworn in; and

WHEREAS, Oakland City Charter section 205's election requirement for the filling of Council vacancies, should not trigger the expense of a special election and require that the Vice Mayor run as a candidate to complete the Council term for which she/he had already been elected, in the event that a vacancy occurs in his/her Council seat by virtue of his/her service as Mayor due to a mayoral vacancy; and

WHEREAS, an amendment to section 205 that allows the Vice Mayor to return to his/her Council seat when, pursuant to Oakland City Charter section 303 , she/he serves as Mayor during a vacancy in the office of Mayor, would provide continuity in the office of mayor, would not require that the residents of

Oakland incur the expense of a special election, and would permit the Vice Mayor to complete the term of office for which she/he had already been elected; and

WHEREAS, section 10400 et seq. of the Elections Code allows for the Nominating Municipal election of March 5, 2002 to be consolidated with the statewide primary election to be held on the same date; now, therefore, be it

RESOLVED: That the City Council of the City of Oakland does hereby request that the Board of Supervisors of Alameda County order the consolidation of the Nominating Municipal election of March 5, 2002, with the statewide primary election of March 5, 2002, consistent with the provisions of state law; and, be it

FURTHER RESOLVED: That the text of the proposed charter amendment shall be as follows:

The Oakland City Charter is amended to read:
Section 205. Vacancy, Filling of. All vacancies occurring in the office of Councilmember shall be filled by special election within 120 days of a vacancy. An extension of up to 60 days may be allowed for the express purpose of consolidating the special election with the next Municipal Election. The candidate who receives the highest number of votes at the special election shall be declared the winner and thereafter sworn into office as soon as legally possible. Whenever the period of vacancy in a Councilmember's term of office equals or exceeds 120 days the vacancy may be temporarily filled by appointment through the majority vote of the remaining Councilmembers, provided the appointee is not a candidate for the office which created the vacancy and provided the appointment does not exceed 128 days or go beyond the date the new incumbent is sworn in, whichever is shortest. Alternative legal voting procedures shall be used to the greatest extent feasible to increase voter participation in special elections including but not limited to mail ballot voting, electronic voting, preference voting and extended voting period. Notwithstanding any other provision of this section 205 or this Charter, an election shall not be required to fill a vacancy in the office of Councilmember that occurs when the Vice Mayor fills a mayoral vacancy pursuant to sections 303 and 304 of this Charter, and the Vice Mayor shall be entitled to return to his/her seat.

The Council of the City of Oakland does hereby submit on its own motion the following proposed Charter Amendment to be voted upon by the qualified electors of the City of Oakland at the Statewide Primary Election to be held in the City of Oakland on Tuesday, March 5, 2002:

## PROPOSED CHARTER AMENDMENT

## MEASURE AMENDING THE CITY CHARTER TO SPECIFY THE QUALIFICATIONS, TERMS, AND POWERS OF THE OFFICE OF THE ELECTED CITY ATTORNEY, TO PROVIDE FOR THE FILLING OF VACANCY OF THE OFFICE OF THE ELECTED CITY ATTORNEY AND, TO PROVIDE THAT, IF THE VOTERS DECIDE NOT TO RETAIN THE CHANGES RELATED TO MEASURE X, THE CITY ATTORNEY ELECTED IN 2004 WILL SERVE A FULL FOUR-YEAR TERM

## CITY OF OAKLAND MEASURE

| CITY OF OAKLAND MEASURE |  |
| :--- | :--- |
| MEASURE E: Shall the City Charter be amended to <br> specify the qualifications, terms, and powers of the <br> office of the elected City Attorney, to provide for the fill- | YES |
| ing of vacancy of the office of the elected City Attorney and, to <br> provide that, if the voters decide not to retain the changes relat- <br> ed to Measure X, the City Attorney elected in 2004 will serve <br> a full four-year term? | NO |

## CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE E

## Current Charter

In 1998 Measure X amended Oakland's charter to provide for an elected city attorney. The provision on the city attorney's powers does not refer to the attorney-client privilege or authorize the city attorney to initiate legal proceedings for the City without city council direction. If the voters at the November 2004 election do not vote to retain charter changes that related specifically to the adoption of Measure X, the city attorney will cease to be elected and again will be appointed and subject to removal by the Council.

## What This Measure Would Do

Qualifications
If adopted, this measure would amend Oakland City Charter provisions concerning the city attorney. First, it would specify qualifications required to be city attorney. A person would be required to be licensed to practice law in California courts while in office and for at least ten years preceding election, a United States citizen, and resident in and qualified to vote in Oakland for at least thirty days before assuming office.

Vacancy
This measure would provide for the city council to declare a vacancy in the office of city attorney if a person fails to qualify within ten days after the term is to begin, dies, resigns, ceases to be an Oakland resident, or is ineligible to

Oakland incur the expense of a special election, and would permit the Vice Mayor to complete the term of office for which she/he had already been elected; and

WHEREAS, section 10400 et seq. of the Elections Code allows for the Nominating Municipal election of March 5, 2002 to be consolidated with the statewide primary election to be held on the same date; now, therefore, be it

RESOLVED: That the City Council of the City of Oakland does hereby request that the Board of Supervisors of Alameda County order the consolidation of the Nominating Municipal election of March 5, 2002, with the statewide primary election of March 5, 2002, consistent with the provisions of state law; and, be it

FURTHER RESOLVED: That the text of the proposed charter amendment shall be as follows:

The Oakland City Charter is amended to read:
Section 205. Vacancy, Filling of. All vacancies occurring in the office of Councilmember shall be filled by special election within 120 days of a vacancy. An extension of up to 60 days may be allowed for the express purpose of consolidating the special election with the next Municipal Election. The candidate who receives the highest number of votes at the special election shall be declared the winner and thereafter sworn into office as soon as legally possible. Whenever the period of vacancy in a Councilmember's term of office equals or exceeds 120 days the vacancy may be temporarily filled by appointment through the majority vote of the remaining Councilmembers, provided the appointee is not a candidate for the office which created the vacancy and provided the appointment does not exceed 128 days or go beyond the date the new incumbent is sworn in, whichever is shortest. Alternative legal voting procedures shall be used to the greatest extent feasible to increase voter participation in special elections including but not limited to mail ballot voting, electronic voting, preference voting and extended voting period. Notwithstanding any other provision of this section 205 or this Charter, an election shall not be required to fill a vacancy in the office of Councilmember that occurs when the Vice Mayor fills a mayoral vacancy pursuant to sections 303 and 304 of this Charter, and the Vice Mayor shall be entitled to return to his/her seat.

The Council of the City of Oakland does hereby submit on its own motion the following proposed Charter Amendment to be voted upon by the qualified electors of the City of Oakland at the Statewide Primary Election to be held in the City of Oakland on Tuesday, March 5, 2002:

## PROPOSED CHARTER AMENDMENT

## MEASURE AMENDING THE CITY CHARTER TO SPECIFY THE QUALIFICATIONS, TERMS, AND POWERS OF THE OFFICE OF THE ELECTED CITY ATTORNEY, TO PROVIDE FOR THE FILLING OF VACANCY OF THE OFFICE OF THE ELECTED CITY ATTORNEY AND, TO PROVIDE THAT, IF THE VOTERS DECIDE NOT TO RETAIN THE CHANGES RELATED TO MEASURE X, THE CITY ATTORNEY ELECTED IN 2004 WILL SERVE A FULL FOUR-YEAR TERM

## CITY OF OAKLAND MEASURE

EMEASURE E: Shall the City Charter be amended to specify the qualifications, terms, and powers of the office of the elected City Attorney, to provide for the filling of vacancy of the office of the elected City Attorney and, to provide that, if the voters decide not to retain the changes related to Measure X, the City Attorney elected in 2004 will serve a full four-year term?

## CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE E

 Current ĆharterIn 1998 Measure X amended Oakland's charter to provide for an elected city attorney. The provision on the city attorney's powers does not refer to the attorney-client privilege or authorize the city attorney to initiate legal proceedings for the City without city council direction. If the voters at the November 2004 election do not vote to retain charter changes that related specifically to the adoption of Measure X, the city attorney will cease to be elected and again will be appointed and subject to removal by the Council.

## What This Measure Would Do

Qualifications
If adopted, this measure would amend Oakland City Charter provisions concerning the city attorney. First, it would specify qualifications required to be city attorney. A person would be required to be licensed to practice law in California courts while in office and for at least ten years preceding election, a United States citizen, and resident in and qualified to vote in Oakland for at least thirty days before assuming office.

Vacancy
This measure would provide for the city council to declare a vacancy in the office of city attorney if a person fails to qualify within ten days after the term is to begin, dies, resigns, ceases to be an Oakland resident, or is ineligible to
hold office for any of the other reasons set forth in the current charter's vacancy provisions for the mayor and councilmembers.

Filling a Vacancy
This measure would provide for the city council to fill a vacancy in the office by majority vote within 60 days; if the council failed to do so, the current charter's special election procedure, used for councilmember vacancies, would take effect. A special election would be required within 120 days of the vacancy, unless a 60 day extension was allowed expressly to consolidate the special election with the next Municipal Election. The candidate receiving the highest number of votes would be sworn into office as soon as legally possible.

## Powers of Office

This measure would amend the charter provisions on the powers of the office. It would require the city attorney, as counsel, to maintain the attorneyclient privilege pursuant to state law. It would authorize the city attorney to commence legal proceedings for the City, subject to city council ratification.

## Timing of Return to Appointed City Attorney if Voters Do Not Retain Measure

 $X$ in 2004Finally, this measure would provide that if at the November 2004 election the voters do not retain the changes made to the charter that relate specifically to Measure X, this measure's provisions would remain in effect until January 2009. Then, at the end of the four-year term of the city attorney elected in 2004, the provisions of this measure would cease to have any effect. The provision for a city attorney appointed and removable by the city council, as it existed in the charter prior to amendment by Measure X, would be restored.

s/LOWELL FINLEY<br>Special Outside City Counsel

## CITY AUDITOR'S IMPARTIAL FINANCIAL ANALYSIS OF MEASURE E

Passage of this measure will specify the qualifications, terms, and powers of an elected City Attorney. It will also preserve the People's right to vote for and elect the City Attorney, as established by Measure X which the People passed in 1998. This measure is necessary to preserve the right to elect the City Attorney because Measure X will lapse in November 2004.
Additionally, the measure will define what constitutes a vacancy in the Office of the City Attorney, and how it should be filled. It also provides that should the voters not retain the changes related to Measure X, the City Attorney elected in 2004 will serve a full four-year term.
Passage of this measure will not increase the cost of City government.
s/ROLAND E. SMITH, CPA
City Auditor

## ARGUMENT IN FAVOR OF MEASURE E

Measure E is a charter amendment that will correct inconsistencies in the election and term of office for the Oakland City Attorney. It is critical that the office of City Attorney should be an elective office and its qualifications clearly defined. When Oakland voters adopted Measure X in 1998, choosing a strong mayor government and making the City Attorney an elective four-year office, it included a requirement that the measure be placed before the voters again in November 2004.
In March 2004, voters will be asked to elect a City Attorney and, in November, asked to renew Measure X. It doesn't make sense to elect an official in March and possibly nullify that vote in November. But, if Measure X is not renewed, the position of elected City Attorney will revert to an appointment by the City Council, which could remove the newly elected City Attorney and appoint someone else. A YES vote now on Measure E will provide that the City Attorney elected by voters in March 2004 would serve the full four-year term, even if Measure X is not reaffirmed.

Measure E also defines the qualifications required of an elected City Attorney. The candidate must be a citizen, a registered voter, an Oakland resident, and be licensed to practice law in all courts in California and to have practiced law for at least ten years prior to being elected.
A vote in favor of Measure E strengthens the City Charter by defining the qualifications of the elected City Attorney and corrects some inconsistencies within Measure X. Most importantly, it ensures that the choice of City Attorney remains in the hands of citizens by securing the four-year term of the candidate elected by the voters.
Please vote YES on Measure E.
s/JIM FERGUSON, Common Cause
s/DANNY WAN, Oakland City Councilmember, District 2
s/HAROLD R. MAYBERRY, Senior Pastor, First AME Church s/JERRY BROWN

NO ARGUMENT AGAINST MEASURE E WAS SUBMITTED.

## FULL TEXT OF MEASURE E

WHEREAS, in 1998, the People passed Measure X, which amended Oakland City Charter Section 401 and established, among other things, the People's right to vote for and elect the City Attorney;

WHEREAS, Section 1213 provides that the provisions of Measure X will lapse in November 2004 unless retention of the provisions is passed by the voters;

WHEREAS, an amendment to Oakland City Charter Sections 401 and 1213 is necessary to preserve the People's right to vote for and elect the City Attorney; and

RESOLVED: That the City Council submits for the March 5, 2002, election the text of a proposed charter amendment that shall be as follows:

The Oakland City Charter is amended to read:
Section 401(1). City Attorney.
The City Attorney shall be appeinted by the Mayor, subject to enfirmation by the Comeil. The Mayor may at his plensure remere the City Attorney from effiee. Beginning with the 2000 Mm mieipel Eleetion, the City Attrmey shall be neminated andelected in the same manner, and for the same term, whe the sume leetion, as the Comeilmember at large, and shall not be removable by the Mayr. The City Attorney shall be nominated and elected in the same manner, and at the same election, as the Councilmember-at-large. The salary of the elected City Attorney shall be set by the Council and may not be reduced during the City Attorney's term of office, except as part of a general reduction of salaries of all officers and employees in the same amount or proportion.

Section 401(2). Qualifications, the City Attorney.
No person shall be eligible for or continue to hold the Office of City Attorney, either by election or appointment, unless he or she is a citizen of the United States, a qualified elector and resident for at least 30 days of the City or a territory lawfully annexed or consolidated, licensed to practice law in all courts of the State of California and so licensed for at least ten years preceeding his or her election.

## Section 401(3). Term of Office, the City Attorney.

The City Attorney shall be elected to a term of four years beginning at 11:00 a.m. on the Monday following January 1 following his or her election.

Section 401(4). Vacancy, Filling Of.
Upon the declaration of vacancy in the Office of the City Attorney, the Office of the City Attorney shall be filled by appointment by the majority vote of the members of the Council; provided, that if the Council shall fail to fill a vacancy by appointment within sixty days after such office shall become vacant, the City Council shall cause an election to be held to fill such vacancy pursuant to the manner and method as provided for in Article II, Section 205 of the Charter. An appointee or the person elected to the Office of City Attorney for the balance of an unexpired term shall hold
office until the next general election for the Office of the City Attorney.
Section 401(5). Vacancy, What Constitutes.
The Office of City Attorney shall be declared vacant by the Council when the person elected or appointed thereto fails to qualify within ten days after his or her term is to begin, dies, resigns, ceases to be a resident of the City or absents himself or herself continuously from the City for a period of more than thirty days without permission from the Council, absents himself or herself from any ten consecutive regular meetings except on account of own illness or when absent from the City by permission of the Council, is convicted of a felony, is judicially determined to be an incompetent, is permanently so disabled as to be unable to perform the duties of his or her office, forfeits his or her office under any provision of this Charter, or is removed from office by judicial procedure. A finding of disability shall require the affirmative vote of at least six members of the Council after considering competent medical evidence bearing on the physical or mental capability of the City Attorney.

Section 401(6). Powers of the City Attorney.
The City Attorney shall serve as counsel to the Mayor, City Council, and each and every department of the City, except departments specifically enumerated by this Charter as an independent department of the City, in their official capacities pursuant to state law and the Charter, and as counsel, shall assert and maintain the attorney-client privilege pursuant to state law. He or she shall advise all officers, boards, commissions, and other agencies of the City on legal matters referred to him or her and shall render written legal opinions when the same are requested in writing by the Mayor or a member of the Council or the City Manager or any other officer, board or commission of the City. He or she shall draft such ordinances, resolutions, contracts and other legal documents as directed by the Council or requested by the Mayor or City Manager or any official board or commission of the City. He or she shall act as counsel in behalf of the City or any of its officers, boards, commissions, or other agencies in litigation involving any of them in their official capacity. He or she may, whenever a cause of action exists in favor of the City, commence legal proceedings, subject to ratification by the City Council, when such action is within the knowledge of the City Attorney, or, he or she shall commence legal proceedings when directed by the City Council. He or she shall pass on the form and legality of all contracts of the City before the same are executed. He or she shall not settle or dismiss any litigation brought for the City nor settle any litigation brought against the City which may be under his control unless upon his written recommendation he or she is authorized to do so by the Council. He or she shall administer the office of City Attorney, and shall have the power to appoint, discipline and remove all officers and employees of his or her office subject to the provisions of Article IX of the Charter. The Council may empower the City Attorney, at his or her request and without regard to the provisions of Article IX, to employ special legal counsel, and he or she shall have the power to appoint appraisers, engineers and other technical
and expert services necessary for the handling of any pending or proposed litigation, proceeding or other legal matter. Upon the City Attorney's recommendation and the approval of the Council, when he or she has a conflict of interest in litigation involving another office of the City in his official capacity, such other officer may retain special legal counsel at City expense.

## Section 1213. Sunset Provision.

At the general election to be held in November, 2004, the City Council shall cause to be placed on the ballot a proposed Charter amendment the sole effect of which, if passed, shall be to retain the changes made to the Charter that relate specifically to the 1998 adoption of Measure X. If that proposed Charter amendment is put before the voters and not passed, then all of said changes to the Charter shall lapse and have no further effect, except that Sections 401(1) through 401(6), as adopted by the voters in 2002, relating to the City Attorney shall remain in effect until the end of the City Attorney's fouryear term at 11:00 a.m. on the Monday following January 1 of 2009, at which time Sections 401(1) through 401(6) shall lapse and have no further effect and shall be replaced by Section 401 as it existed prior to amendment by the 1998 adoption of Measure $\mathbf{X}$.

The Council of the City of Oakland does hereby submit on its own motion the following proposed Ordinance to be voted upon by the qualifred electors of the City of Oakland at the Statewide Primary Election to be held in the City of Oakland on Tuesday, March 5, 2002:

## PROPOSED MEASURE

MEASURE REGARDING A $\mathbf{1 0 \%}$ CITY COUNCIL SALARY INCREASE PURSUANT TO CITY CHARTER SECTION 202

| CITY OF OAKLAND MEASURE |  |  |
| :--- | :---: | :---: |
| $\boldsymbol{F}$ MEASURE F: Shall the salaries of Oakland City | YES |  |

CITY ATTORNEY'S BALLOT TITLE AND SUMMARY OF MEASURE F
On October 1, 2001, the Oakland Public Ethics Commission set a $10 \%$ increase in the base salary for Oakland City Councilmembers. Section 202 of the City Charter requires that the Commission review and adjust, as appropriate, Councilmembers' salaries every odd numbered year in an amount not to exceed ten percent $(10 \%)$. As required by City Charter section 202, this measure asks the voters to approve the increase. Increases in Councilmembers' compensation take effect only if the voters approve them.
s/JOHN A. RUSSO
City Attorney

## CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE F

Oakland City Charter Section 202 requires that the Oakland Public Ethics Commission ("Commission"), in every odd-numbered year, review and adjust, as appropriate, City Councilmember salaries in an amount not to exceed 10 percent ( $10 \%$ ) of the Councilmembers' base salary. Currently, the base salary is $\$ 60,000$ per year. City Charter Section 202 also provides that no increase in City Councilmember compensation shall take effect unless it has been approved by the voters. On October 1, 2001, the Commission set a $10 \%$ increase in the base salary for Oakland City Councilmembers. This measure asks the voters to approve or disapprove the ten percent ( $10 \%$ ) salary increase.
s/JOHN A. RUSSO
City Attorney

## FULL TEXT OF MEASURE F

WHEREAS, Oakland City Charter Section 202 required the Oakland Public Ethics Commission ("Commission") to establish a base salary for City Councilmembers in 1997; and, thereafter in every odd-numbered year, to review and adjust City Councilmember salaries in an amount not to exceed 10 percent of the base salary; and

WHEREAS, after substantial study and review, the Commission took action at its regular meeting of October 20, 1997, to establish the base salary for City Councilmembers in the amount of $\$ 60,000$ per year; and

WHEREAS, total City Councilmember compensation currently includes a benefit package commensurate with other fulltime City employees; and

WHEREAS, in November, 1998, Oakland City Charter Section 202 was amended to provide that no increase in City Councilmember compensation shall take effect unless it has been approved by a vote of the people; and

WHEREAS, no review of City Councilmember salaries took place in 1999; and

WHEREAS, between November, 1997, and July, 2001, the City of Oakland provided contractual wage increases to city employees totaling thirteen (13) percent, and

WHEREAS, the Consumer Price Index (CPI) for the San Francisco Bay Area increased by slightly more than fifteen (15) percent during approximately the same period; and

WHEREAS, the Commission intended to maintain the existing base salary for Oakland City Councilmembers against increases in the cost of living to the maximum extent provided by Oakland City Charter Section 202;

WHEREAS, on October 1, 2001, the Commission set a $10 \%$ increase in the base salary for Oakland City Councilmembers, and requested that the City Council place the issue on the ballot for approval by a vote of the people; NOW THEREFORE BE IT

RESOLVED, the Oakland City Council places on the ballot for public approval the question of whether the 10 percent salary adjustment adopted by the Commission shall take effect.

The Council of the City of Oakland does hereby submit on its own motion the following proposed Ordinance to be voted upon by the qualified electors of the City of Oakland at the Statewide Primary Election to be held in the City of Oakland on Tuesday, March 5, 2002:

## PROPOSED BOND MEASURE

## A MEASURE AUTHORIZING THE ISSUANCE OF $\$ 59,000,000$ IN GENERAL OBLIGATION BONDS FOR OAKLAND'S ZOO, MUSEUM AND CHABOT SPACE \& SCIENCE CENTER IMPROVEMENTS

| CITY OF OAKLAND BOND MEASURE |  |
| :--- | :---: | :---: |
| MEASURE G: In order to expand learning opportuni- <br> ties at the Oakland Zoo, Oakland Museum and Oak- <br> land's Chabot Space \& Science Center, shall the City | BONDS <br> YES |
| of Oakland issue $\$ 59,000,000$ in general obligation bonds at <br> interest rates within the legal limit, to acquire, renovate, |  |
| improve, construct, and finance existing and additional facili- |  |
| ties and to qualify for private matching funds, with all funds |  |
| raised by this measure staying in Oakland to expand programs |  |
| and facilities at these institutions? |  |$\quad$| BONDS |
| :---: |
| NO |

## CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE G

Measure G submits to the voters of the City of Oakland the question whether general obligation bonds in the amount of 59 million dollars should be issued. The bonds would be repaid by a supplemental property tax. This tax would be based upon the assessed value of real property and improvements within the City and is known as an "ad valorem" tax. This measure would impose a supplemental ad valorem property tax specifically levied in each year to pay interest on the bonds and a portion of the principal of the bonds.

Proceeds of the bonds would finance the acquisition, renovation, improvement, and construction of additional educational facilities at the Oakland Museum of California, the Oakland Zoo, and the Chabot Space \& Science Center, and would finance and/or reimburse certain prior expenditures relating to existing, prior and/or future capital improvements at these facilities. Any portion of the bond proceeds used to reimburse prior expenditures would not be used to construct new facilities.

A "Yes" vote is a vote in favor of authorizing the issuance of general obligation bonds and the levying of the supplemental ad valorem property tax.

A "No" vote is a vote against the issuance of the bonds and supplemental ad valorem property tax levy.

Although the law does not prohibit issuance of bonds to reimburse prior expenditures, no cases were found that address this issue.

The interest on bonds issued by the City is generally exempt from federal income taxes. The federal tax law contains rules limiting the use of bond proceeds to reimburse prior capital expenditures. Because a portion of the bond OM-16
proceeds for the Chabot Space \& Science Center would reimburse prior expenditures, the City and the Chabot Center must comply with these rules in order for the interest on the portion of the bonds being used for reimbursement to be taxexempt. These rules require that the City or the Chabot Center demonstrate that prior to making the expenditures it took action evidencing its intention to issue bonds in the future for that facility. Otherwise, the portion of the bonds used for reimbursement of prior expenditures would not be tax-exempt and the interest rate on those bonds would be higher and could result in a higher annual supplemental ad valorem property tax levy.

Measure G is submitted to the voters of the City in accordance with the Constitution of the State of California and requires a "Yes" vote by two-thirds $(2 / 3)$ of the voters voting on the measure for passage.
s/JOHN A. RUSSO
City Attorney

## TAX RATE STATEMENT FOR MEASURE G

An election will be held in the City of Oakland (the "City") on March 5, 2002, to authorize the sale of up to $\$ 59,000,000$ in bonds of the City to finance facility improvements at the Oakland Museum of California, Chabot Space \& Science Center, and the Oakland Zoo as described in the proposition. If the bonds are approved, the City expects to sell the bonds in three (3) series. Principal and interest on the bonds will be payable from the proceeds of tax levies made upon the taxable property in the City. The following information is provided in compliance with Sections 9400-9404 of the Elections Code of the State of California.

1. The best estimate of the tax which would be required to be levied to fund this bond issue during the first fiscal year after the sale of the first series of bonds, based on estimated assessed valuations available at the time of filing of this statement, is 0.46 cents per $\$ 100$ ( $\$ 4.60$ per $\$ 100,000$ ) of assessed valuation in fiscal year 2003-04.
2. The best estimate of the tax rate which would be required to be levied to fund this bond issue during the first fiscal year after the sale of the last series of bonds, based on estimated assessed valuations available at the time of filing of this statement, is 1.33 cents per $\$ 100$ ( $\$ 13.30$ per $\$ 100,000$ ) of assessed valuation in fiscal year 2009-10.
3. The best estimate of the highest tax rate which would be required to be levied to fund this bond issue, based on estimated assessed valuations available at the time of filing of this statement, is 1.37 cents per $\$ 100$ ( $\$ 13.70$ per $\$ 100,000$ ) of assessed valuation in fiscal year 2010-11.
4. The best estimate of the average tax rate which would be required to be levied to fund this bond issue, based on estimated assessed valuations available at the time of filing of this statement, is 0.79 cents per $\$ 100$ ( $\$ 7.90$ per $\$ 100,000$ ) of assessed valuation in fiscal year 2010-11.

Voters should note that estimated tax rate is based on the ASSESSED VALUE of taxable property on the official tax rolls, not on the property's market value. Property owners should consult their own property tax bills to determine their property's assessed value and any applicable tax exemptions.
Attention of all voters is directed to the fact that the foregoing information is based upon the City's projections and estimates only, which are not binding upon the City. The actual tax rates and the years in which they will apply may vary from those presently estimated, due to variations from these estimates in the timing of bond sales, the amount of bonds sold and market interest rates at the time of each sale, and actual assessed valuations over the term of repayment of the bonds. The dates of sale and the amount of bonds sold at any given time will be determined by the City based on need for construction funds and other factors. The actual interest rates at which the bonds will be sold will depend on the bond market at the time of each sale. Actual future assessed valuation will depend upon the amount and value of taxable property within the City as determined in the annual assessment and the equalization process.

> s/ROBERT C. BOBB City Manager

## CITY AUDITOR'S IMPARTIAL FINANCIAL ANALYSIS OF MEASURE

## G

Passage of this measure will grant voters' approval for the proposed issuance by the City of $\$ 59,000,000$ in general obligation bonds for Oakland's Zoo, Museum, and Chabot Space \& Science Center improvements.
Passage of this measure will increase the cost of City government by an estimated average of $\$ 4,153,000$ per year over the 30 -year term of the bond as a result of bond issue expenses and debt service payments. The total debt service payments and bond issue expenses on this bond issue of $\$ 59,000,000$ is projected at $\$ 124,600,000$.
s/ROLAND E. SMITH, CPA
City Auditor

## ARGUMENT IN FAVOR OF MEASURE G

Over 35,000 Oakland residents signed petitions to place Measure $G$ on the ballot to improve the Oakland Museum, Zoo and Chabot Space and Science Center. These three Oakland institutions are used by Oakland residents of all ages.
Due to budget cuts in schools, many Oakland teachers supplement science, math and fine arts curriculum with hands on learning opportunities at the Museum, Zoo and Science Center. Children can study California history or learn about preserving the environment and protecting animal habitats. Students of all ages are able to study astronomy and mathematics and learn how science affects each of them.
Measure G will:

- increase educational programs at the Museum by adding exhibits, an art studio, a natural sciences classroom, an aquatic biology lab, and a learning center;
- construct four new science classrooms at the Science center to support increasing demand from Oakland schools lacking these critical facilities
- renovate the children's zoo and develop a 40-acre natural environment of native plants and animals emphasizing preservation of California's ecological heritage
- provide structural improvements for safety and accessibility

For many Oakland residents these three facilities provide a superior cultural experience at a nominal cost. Many programs are free for children or those on limited incomes. Seniors and others volunteer their services and time to keep these valuable institutions open.
Measure G has earned the support of all segments of the Oakland community and has no opposition. The cost (less than $\$ 8$ per $\$ 100,000$ of assessed valuation of property) is reasonable and tax deductible. Private matching funds will be raised to reduce the burden on local taxpayers.
All funds raised by Measure $G$ will stay in Oakland to benefit all Oakland children and residents.
Please vote YES on Measure G.
s/SHEILA JORDAN, Superintendent of Alameda County Schools
s/DENNIS K. CHACONAS
s/DICK SPEES, Oakland Councilmember s/JERRY BROWN

## REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE G

Measure G isn't about just $\$ 59,000,000$ in new debt for Oakland. It's about $\$ 124,600,000$ including interest over 30 years - an added burden to taxpayers of $\$ 4,153,000$ per year. Oakland already has the highest average tax rate in the county, one of the highest in the state! According to the most recent State of California CAFR report, every man, woman and child in Oakland owes $\$ 4.167$, the highest per capita debt in the state! The City and redevelopment agency have, as of July, $\$ 1,700,908,829$ debt. That's BILLION, and it doesn't include overlapping debt of other agencies that appears on your tax bill.
Measure G is not a "mom and apple pie" issue, despite cynical efforts to use the catchword "education." It's a scheme to provide special extras for elite agencies which should be funded, over time, from already lavish taxpayer support - if they can stand up to scrutiny.
City funding should be decided on basic needs and service to the general public, not political posturing. More bonded debt means higher taxes and subsequent higher costs of goods, services and rents!
Oakland voters deserve a choice! These three agencies that covet taxpayer money should offer their wish-lists separately, to stand or fall on merit. We shouldn't have to take three if we only like one!
Don't pay for bells and whistles when basic needs aren't being met! Aren't your taxes high enough? VOTE NO ON MEASURE G!

## s/ARTHUR B. GEEN

Executive Vice President, Alameda County Taxpayers Association

## ARGUMENT AGAINST MEASURE G

## THIS IS NOT THE RIGHT TIME!

There's an officially-declared recession, unemployment is at frightening levels, businesses are going under, and there are enormous money-demands to preserve safety and carry on the fight against terrorism.
This is not the time to burden Oakland taxpayers with a $\$ 59,000,000$ bond issue with its resultant higher property taxes and rents. Oaklanders are among the highest taxed, and we're already deeply in debt for other bonds.
We simply cannot afford another punishing load of bond debt, or another increase in taxes. We need to tighten our belts, not continue the spending spiral! THIS IS NOT THE RIGHT WAY!
This proposed bond issue, Measure $G$, is a cynical political scheme - combining the non-essential wish-lists of three entities into one. Oaklanders who might be sympathetic to one institution would be forced to support with dollars the bells and whistles coveted by the other two. Each of these entities should prepare a defensible bond request and submit it separately to the voters.

## Oakland voters deserve that right of choice!

These institutions already receive taxpayer funding, and these self-indulgent wish-lists should, over time, be funded in the normal process, if they bear scrutiny.
Alameda County Taxpayers Association, and others concerned with Oakland's financial stability, urge you to VOTE NO ON MEASURE G! s/ARTHUR B. GEEN,
Executive Vice President, Alameda County Taxpayers Association

## REBUTTAL TO ARGUMENT AGAINST MEASURE G

The opponent of Measure $G$ is using scare tactics to sidestep the real needs of our community. Here are the facts.

1. Due to severe budget cuts, Oakland's children need the Museum, Zoo and Chabot Space and Science Center to supplement their education.
2. With further budget cuts on the horizon, Oakland's teachers will rely on these three institutions to provide hands on learning opportunities in the sciences, math and fine arts.
3. Over 35,000 Oakland residents disagree with our opponent and have already voiced their support for Measure G by signing a petition allowing it to be placed on the ballot.
4. All funds raised by Measure G will stay in Oakland to benefit all Oakland children and residents.
Measure G has earned the support of all segments of the Oakland community and is a reasonable, frugal proposal that will provide for the most critical of needs. There are no frills and no expensive "wish lists". The yearly cost of Measure G is modest, less than $\$ 8$ per $\$ 100,000$ of assessed valuation of property. Private matching funds will be raised to reduce the burden on local taxpayers.
The economic future and quality of life in our community are dependent on residents investing in good schools and superior cultural institutions. Please vote YES on Measure G.
s/DENNIS K. CHACONAS
Superintendent of Oakland Unified School District
s/JERRY BROWN, Mayor of Oakland

## FULL TEXT OF MEASURE G

WHEREAS, the City Clerk of the City of Oakland has certified to the Oakland City Council that petitions for a proposed initiative charter amendment entitled "A MEASURE AUTHORIZING THE ISSUANCE OF \$59,000,000 IN GENERAL OBLIGATION BONDS FOR OAKLAND'S ZOO, MUSEUM AND CHABOT SPACE \& SCIENCE CENTER IMPROVEMENTS" has been accompanied by verified signatures of ten ( $10 \%$ ) percent of the registered electors of the City; and

WHEREAS, consistent with the Elections Code and the Oakland City Charter, the City Council may submit the certified petitions without alteration to the City's voters at the next regular municipal election occurring not less than eighty-eight (88) days after the City Clerk certifies the results of the examination of the signatures; and

WHEREAS, the next regular municipal election at which this proposed initiative bond measure can be voted upon will occur on Tuesday, March 5, 2002; and

WHEREAS, the City Council does hereby submit to the qualified electors of the City of Oakland a proposed initiative bond measure entitled "A MEASURE AUTHORIZING THE ISSUANCE OF \$59,000,000 IN GENERAL OBLIGATION BONDS FOR OAKLAND'S ZOO, MUSEUM AND CHABOT SPACE \& SCIENCE CENTER IMPROVEMENTS" to be voted upon at the Nominating Municipal Election consolidated with the Statewide Primary Election to be held on Tuesday, March 5, 2002, Now Therefore be it

RESOLVED: That the proposed bond measure text shall read as follows:

## A MEASURE AUTHORIZING THE ISSUANCE OF $\mathbf{\$ 5 9 , 0 0 0 , 0 0 0 ~ F O R}$ OAKLAND'S ZOO, MUSEUM AND CHABOT SPACE \& SCIENCE CENTER IMPROVEMENTS GENERAL OBLIGATION BONDS

Be it ordained by the People of the City of Oakland:
Section 1. The People of the City of Oakland find and declare as follows:
a. The City of Oakland (the "City") is a culturally rich and diverse area; and
b. Three outstanding public facilities in the City which are uniquely qualified to nurture, develop, enrich, and significantly contribute to meeting the ever expanding educational needs of a dynamically growing and diverse population are the Oakland Museum of California, The Oakland Zoo, and the Chabot Space \& Science Center; and
c. High quality educational experiences provided by the Oakland Museum of California, The Oakland Zoo and Chabot Space \& Science Center, are highly effective in helping teachers and motivating students in the City of Oakland to achieve the high standards of educational performance needed to meet the expanding needs of a diverse and technologically sophisticated society; and
d. Over the years, the City has been unable to sufficiently fund the Oakland Museum of California, The Oakland Zoo, and the Chabot Space \& Science Center to enable each of these facilities to reach its full potential in serving the many education needs of the City's population; and
e. The People have determined at the March 5, 2002 General Municipal Election to authorize the issuance of general obligation bonded indebtedness in the amount of $\$ 59,000,000$ to acquire, renovate, improve, and construct additional educational facilities at the Oakland Museum of California, The Oakland Zoo, and the Chabot Space \& Science Center, and to finance and/or reimburse prior expenditures relating to existing and/or future improvements at these facilities, and all other costs necessary or convenient for the foregoing purposes, which improvements may include but not be limited to the following:
The Oakland Museum of California: The Oakland Museum of California will undergo the first major renovation since it was built over 30 years ago, in order to expand educational programming and opportunities for a larger and more diverse population of students and visitors (the "Museum Project").

1. A major expansion, reinstallation, and renovation of the History Gallery, the Art Gallery, and the Natural Sciences Gallery to reflect the changing faces and environment of California and include new information, interactive technologies and multicultural, multilingual presentations;
2. Additional classrooms and studios that will triple dedicated education space and include an art studio, science classroom, aquatic biology lab, and a learning center that serves teachers and family programs;
3. Improvements in visitor services facilities including main entrance, centralized admissions and visitor orientation, way finding, school group entrance, student lunch area, and restaurant and gift shop;
4. Acquisition and renovation of collection management facilities; and
5. Other related capital improvements.

The Oakland Zoo: The Oakland Zoo will (i) redevelop the Children's Zoo area in the existing Zoo grounds, and (ii) develop a new 40-acre exhibit of California native plants and animals, including the grizzly bear, grey wolf, and bob cat, called "Wild California" in order to educate Californians about their natural heritage and how to preserve and conserve it. The redevelopment of the Children's Zoo and the development of Wild California are collectively referred to as the "Zoo Project."

1. The "Wild California" exhibit, focusing on conservation of California native plants and animals, will include construction of roadways, trails, animal exhibits and nighthouses, landscaping, tram facilities, infrastructure (sewer, gas, water, \& electricity), additional parking, and visitor amenities;
2. Development of a new California Interpretive Center within the new Wild California exhibit area will educate visitors about California's nat-
ural heritage and the challenges to conservation;
3. The redeveloped Children's Zoo area would provide improved disabled access to and totally renovate the Children's Zoo, replacing aged and obsolete facilities with new, modern and creative improvements which will stimulate the imaginations and enhance the quality of experience for children and other visitors of the Children's Zoo as they interact with, observe, and learn about the resident animals; and
4. Other related infrastructure improvements.

Chabot Space \& Science Center: Chabot Space \& Science Center will add a new building and reconfigure and finance existing spaces (the "Science Center Project") to allow more students to participate in the science education programs and to create the capacity to teach in-depth, long-term courses for students and teachers.

1. Four new classrooms and laboratories for astronomy, science, media and computer instruction;
2. Student program, assembly, eating spaces; teacher preparation areas; and related office, shop and storage space;
3. Expansion of outdoor telescope viewing areas and exhibit spaces; and
4. Financing for other related existing or prior capital improvements.

Section 2. This proposition is hereby submitted to the electors of the City for the purpose of enabling the City to incur bonded indebtedness in the aggregate principal amount of $\$ 59,000,000$ for all of the projects described in Section 1 above to be allocated to each of the projects (after deducting therefrom the cost of issuance of such bonded indebtedness) as follows:
.a. $\$ 23,600,000$ for the Museum Project;
b. $\$ 23,600,000$ for the Zoo Project; and
c. $\$ 11,800,000$ for the Science Center Project.

Section 3. The estimated cost of each of the projects are as follows:
a. $\$ 49,000,000$ for the Museum Project;
b. $\$ 39,500,000$ for the Zoo Project; and
c. $\$ 12,500,000$ for the Science Center Project.

The Museum Project, the Zoo Project and the Science Center Project each expect to raise the remaining costs of construction through private donations and other sources.
Section 4. The General Municipal Election on March 5, 2002, shall be held and conducted and the votes thereafter received and canvassed, and the returns thereof made and the results thereof ascertained, determined and declared as herein provided and in all particulars not herein recited such election shall be held according to the laws of the State of California, the Charter of the City (the "Charter"), and such laws of the City duly enacted by the City Council of the City providing for and governing elections in the City, and the polls for such election shall be and remain open during the time required by such laws.

Section 5. On the ballots to be used at the General Municipal Election, in addition to any other matter required by law to be printed thereon, shall appear the following as a separate proposition:
"OAKLAND'S ZOO, MUSEUM, AND CHABOT SPACE \& SCIENCE CENTER IMPROVEMENT GENERAL OBLIGATION BOND, 2002. In order to expand learning opportunities at the Oakland Zoo, Oakland Museum and Oakland's Chabot Space and Science Center, shall the City of Oakland issue $\$ 59,000,000$ in general obligation bonds at interest rates within the legal limit, to acquire, renovate, improve, construct, and finance existing and additional facilities and to qualify for private matching funds, with all funds raised by this measure staying in Oakland to expand programs and facilities at these institutions?
Each voter to vote in favor of the issuance of the foregoing bond proposition shall punch the ballot card in the hole after the word "YES" to the right of the proposition, and to vote against the proposition shall punch the ballot card in the hole after the word "NO" to the right of the proposition. If and to the extent that a numerical or other system is used at such General Municipal Election, each voter to vote in favor of the proposition shall mark the ballot card or equivalent device after the number or in the location corresponding to a "YES" vote for the proposition and to vote against the proposition shall mark the ballot card or equivalent device after the number or in the location corresponding to a "NO" vote for the proposition.
Section 6. If at the General Municipal Election of City of March 5, 2002, it shall appear that two-thirds of all the voters voting on the proposition voted in favor of and authorized the incurring of bonded indebtedness for the purposes set forth in this proposition, then this proposition shall have been accepted by the electors, and bonds authorized thereby shall be issued upon the order of the City Council. Such bonds shall bear interest at a rate not to exceed twelve percent ( $12 \%$ ) per annum.
The votes cast for and against the proposition shall be counted separately and when two-thirds of the qualified electors, voting on the proposition, vote in favor thereof, the proposition shall be deemed adopted.
Section 7. For the purpose of paying the principal and interest on the bonds, the City Council of City shall, at the time of fixing the general tax levy and in the manner for such general tax levy provided, levy and collect annually each year until such bonds are paid, or until there is a sum in the Treasury of the City set apart for that purpose to meet all sums coming due for the principal and interest on the bonds, a tax sufficient to pay the annual interest on such bonds as the same becomes due and also such part of the principal thereof as shall become due before the proceeds of a tax levied at the time for making the next general tax levy can be made available for the payment of such principal.
Section 8. No City administrative, staff, or any other charge (except for the actual cost of issuance of the bonds) will be deducted from the bonds authorized hereunder for the Museum Project, the Zoo Project, or the Science Center Project.

Section 9. Each of the projects for which the bonds are hereby authorized shall be administered and managed as follows:
a. The Museum Project shall be administered and managed by the Oakland Museum of California Foundation;
b. The Zoo Project shall be administered and managed by the East Bay Zoological Society; and
c. The Science Center Project shall be administered and managed by the Chabot Space \& Science Center Foundation.
Section 10. The City shall deposit all bond proceeds authorized hereunder in segregated accounts for each of the Museum Project, the Zoo Project, and the Science Center Project, and interest on the bond proceeds in each account shall accrue to the benefit of the project for which the account is established from the date of bond issuance to the date funds are drawn down for each such project by the entity administering and managing each such project.
Section 11. It is the intent of the People of the City of Oakland that the passage of this proposition and the issuance of the bonded indebtedness authorized hereunder shall not be the basis for any reduction in current City funding levels, City commitments, or other City support to each of the Oakland Museum of California, The Oakland Zoo, or the Chabot Space \& Science Center.
Section 12. The Oakland Museum of California Foundation (for the Oakland Museum of California), the East Bay Zoological Society (for The Oakland Zoo), and the Chabot Space \& Science Center Foundation (for the Chabot Space \& Science Center) shall each utilize its own staff to administer and manage the design and construction of each of the projects specified in Section 1 above. The City shall enter into agreements with each entity that (i) limits the amount of expenditures from bond proceeds for project design and administration costs to no more than $15 \%$ of total bond proceeds expended for each project and (ii) requires that all construction contracts require the payment of prevailing wages.

The Council of the City of Oakland does hereby submit on its own motion the following proposed Charter Amendment to be voted upon by the qualified electors of the City of Oakland at the Statewide Primary Election to be held in the City of Oakland on Tuesday, March 5, 2002:

## PROPOSED CHARTER AMENDMENT

MEASURE PROVIDING FOR ELECTIONS TO FILL VACANCIES OF ONE YEAR OR MORE IN THE OFFICE OF MAYOR, PROVIDING FOR THE VICE-MAYOR OF THE COUNCIL TO FILL A VACANCY OF LESS THAN ONE YEAR, AND AUTHORIZING THE COUNCIL TO APPOINT A PERSON TO FILL A VACANCY OF LESS THAN ONE YEAR, WHO SHALL BE INELIGIBLE TO BE A CANDIDATE FOR THE NEXT FULL TERM, IF THE VICE-MAYOR DECLINES TO SERVE FOR SUCH UNEXPIRED TERM

## CITY OF OAKLAND MEASURE

HMEASURE H: Shall the City Charter be amended to provide: (1) elections to fill any vacancy of one year or more in the Office of Mayor, (2) that the Vice-Mayor of the Council shall fill any vacancy of less than one year; and (3) that the Council shall appoint an individual to fill a vacancy of less than one year if the Vice-Mayor declines to serve for such YES unexpired term?

## CITY ATTORNEY'S BALLOT TITLE AND SUMMARY OF MEASURE H BALLOT TITLE:

PROPOSED CHARTER AMENDMENT ENTITLED "MEASURE PROVIDING FOR ELECTIONS TO FILL VACANCIES OF ONE YEAR OR MORE IN THE OFFICE OF MAYOR, PROVIDING FOR THE VICE-MAYOR OF THE COUNCIL TO FILL a Vacancy of less than one year, and authorizING THE COUNCIL TO APPOINT A PERSON TO FILL A VACANCY OF LESS THAN ONE YEAR, WHO SHALL BE INELIGIBLE TO BE A CANDIDATE FOR THE NEXT FULL TERM, IF THE VICE-MAYOR DECLINES TO SERVE FOR SUCH UNEXPIRED TERM"

## BALLOT SUMMARY:

Currently Vacancies in the Office of Mayor are Filled by Appointment
Under the current City Charter, vacancies in the office of Mayor are filled by appointment, not election. Section 303 of the City Charter provides that the Vice-Mayor of the City Council automatically assumes the office of Mayor when the Council declares a vacancy. That section further provides that the Vice-Mayor shall serve as Mayor until the remaining City Council members, by majority vote, appoint an individual to serve for the balance of the former Mayor's term. The Vice-Mayor is elected by the City Council for a one year

Section 9 . Each of the projects for which the bonds are hereby authorized shall be administered and managed as follows:
a. The Museum Project shall be administered and managed by the Oakland Museum of California Foundation;
b. The Zoo Project shall be administered and managed by the East Bay Zoological Society; and
c. The Science Center Project shall be administered and managed by the Chabot Space \& Science Center Foundation.
Section 10. The City shall deposit all bond proceeds authorized hereunder in segregated accounts for each of the Museum Project, the Zoo Project, and the Science Center Project, and interest on the bond proceeds in each account shall accrue to the benefit of the project for which the account is established from the date of bond issuance to the date funds are drawn down for each such project by the entity administering and managing each such project.
Section 11. It is the intent of the People of the City of Oakland that the passage of this proposition and the issuance of the bonded indebtedness authorized hereunder shall not be the basis for any reduction in current City funding levels, City commitments, or other City support to each of the Oakland Museum of California, The Oakland Zoo, or the Chabot Space \& Science Center.
Section 12. The Oakland Museum of California Foundation (for the Oakland Museum of California), the East Bay Zoological Society (for The Oakland Zoo), and the Chabot Space \& Science Center Foundation (for the Chabot Space \& Science Center) shall each utilize its own staff to administer and manage the design and construction of each of the projects specified in Section 1 above. The City shall enter into agreements with each entity that (i) limits the amount of expenditures from bond proceeds for project design and administration costs to no more than $15 \%$ of total bond proceeds expended for each project and (ii) requires that all construction contracts require the payment of prevailing wages.

The Council of the City of Oakland does hereby submit on its own motion the following proposed Charter Amendment to be voted upon by the qualified electors of the City of Oakland at the Statewide Primary Election to be held in the City of Oakland on Tuesday, March 5, 2002:

## PROPOSED CHARTER AMENDMENT

MEASURE PROVIDING FOR ELECTIONS TO FILL VACANCIES OF ONE YEAR OR MORE IN THE OFFICE OF MAYOR,
PROVIDING FOR THE VICE-MAYOR OF THE COUNCIL TO FILL
A VACANCY OF LESS THAN ONE YEAR, AND AUTHORIZING THE COUNCIL TO APPOINT A PERSON TO FILL A VACANCY OF LESS THAN ONE YEAR, WHO SHALL BE INELIGIBLE TO BE A CANDIDATE FOR THE NEXT FULL TERM, IF THE VICE-MAYOR DECLINES TO SERVE FOR SUCH UNEXPIRED TERM

## CITY OF OAKLAND MEASURE

HMEASURE H: Shall the City Charter be amended to provide: (1) elections to fill any vacancy of one year or more in the Office of Mayor, (2) that the Vice-Mayor of the Council shall fill any vacancy of less than one year; and (3) that the Council shall appoint an individual to fill a vacancy of less than one year if the Vice-Mayor declines to serve for such unexpired term?

CITY ATTORNEY'S BALLOT TITLE AND SUMMARY OF MEASURE H BALLOT TITLE:
PROPOSED CHARTER AMENDMENT ENTITLED "MEASURE PROVIDING FOR ELECTIONS TO FILL VACANCIES OF ONE YEAR OR MORE IN THE OFFICE OF MAYOR, PROVIDING FOR THE VICE-MAYOR OF THE COUNCIL TO FILL A VACANCY OF LESS THAN ONE YEAR, AND AUTHORIZING THE COUNCIL TO APPOINT A PERSON TO FILL A VACANCY OF LESS THAN ONE YEAR, WHO SHALL BE INELIGIBLE TO BE A CANDIDATE FOR THE NEXT FULL TERM, IF THE VICE-MAYOR DECLINES TO SERVE FOR SUCH UNEXPIRED TERM"

## BALLOT SUMMARY:

Currently Vacancies in the Office of Mayor are Filled by Appointment
Under the current City Charter, vacancies in the office of Mayor are filled by appointment, not election. Section 303 of the City Charter provides that the Vice-Mayor of the City Council automatically assumes the office of Mayor when the Council declares a vacancy. That section further provides that the Vice-Mayor shall serve as Mayor until the remaining City Council members, by majority vote, appoint an individual to serve for the balance of the former Mayor's term. The Vice-Mayor is elected by the City Council for a one year
term. (City Charter section 208.) The City Council is required to declare a vacancy in the office of Mayor under circumstances described in City Charter section 304, which include but are not limited to resignation and death.

Special Election Required to Fill Vacancies of One Year or More
This measure would require a special election to fill vacancies in the office of Mayor of one year or more. The Vice-Mayor of the Council would serve until the special election is conducted.

No Election if Vacancy is Less than One Year
Vacancies of less than one year would be filled by the Vice-Mayor of the Council unless the Vice-Mayor declines to serve for the unexpired term. If the Vice-Mayor declines to serve for an unexpired term of less than one year, the remaining Councilmembers by majority vote would appoint a person to fill the vacancy. The appointed Mayor would be ineligible to be a candidate for the next full term.

## Election Procedure to Fill Vacancies of One Year or More

The measure requires a special election within 120 days after a vacancy of one year or more occurs. Up to a 60 -day extension is permitted to consolidate a special election with the next Municipal Election. If no candidate receives a majority of the votes cast, a run-off election must be held within 60 days of the special election.

As an alternative to the run-off election process, the City Council would be authorized to specify preferential voting by ordinance.

This measure also provides for alternative legal voting procedures to increase voter participation in special elections, to the greatest extent feasible, including but not limited to mail ballot voting, electronic voting, and extended voting period.

s/JOHN A. RUSSO City Attorney

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE H
Chartered cities such as the City of Oakland have legal authority to provide in their charters for the conduct of city elections. Article XI, section 5(b) of the California Constitution grants chartered cities the power to provide the manner in which, the method by which, the times at which and the terms for which municipal officers are elected or appointed, removed and for their compensation. (California Constitution, Article XI, section 5(b)).

Measure H would change the way vacancies in the office of Mayor are filled. Currently, the City Council appoints a person to fill vacancies in the office of Mayor. This measure mandates a special election to fill vacancies of one year or more. This measure does not amend the provision that provides that the ViceMayor of the Council automatically assumes the office of Mayor when a vacancy occurs. The Vice-Mayor would serve until the special election is conducted.

Vacancies of one year or more would be filled by a special election within 120 days after the vacancy occurs, or by a municipal election that occurs within 180 days after the vacancy occurs. The measure gives the City Council the
option to determine whether:
(1) a run-off election would be held within 60 days after the special election, if no candidate receives a majority of the votes cast, or
(2) as an alternative to a run-off, the election would be conducted in accordance with preferential voting procedures outlined in a City Council ordinance.
If the City Council decides to specify preferential voting procedures, a runoff election would not occur. Instead the City Council would adopt an ordinance that specifies preferential voting procedures that would authorize voters to rank the candidates in order of preference (e.g., their first, second, choices, etc.) If no candidate receives a majority of the votes cast, the second preference of voters whose first preference candidate came in last would be added to the vote totals of the remaining candidates and so on, until a majority winner is determined.

Under the proposed measure, there would not be an election if the vacancy is less than one year. The Vice-Mayor would automatically assume the office of Mayor when the vacancy occurs and complete the unexpired term, unless she/he declined to serve for such unexpired term. If the Vice-Mayor declined to serve, the Council would appoint a person to fill the balance of the unexpired term. The appointee would not be eligible to run for the next full term.

Under the proposed measure the Vice-Mayor of the Council could fill a vacancy of not more than 364 days and run for the next full four year term as the incumbent. If the Vice-Mayor declines to serve for an unexpired term of less than one year, thereby requiring that the Council appoint a person to fill the vacancy, there would not be an incumbent candidate in the next full term election because the appointee would be ineligible to run.
s/JOHN A. RUSSO
City Attorney

## CITY AUDITOR'S IMPARTIAL FINANCIAL ANALYSIS OF MEASURE H

Passage of this measure will amend the provision of Section 303 of the Oakland City Charter which provides for vacancies in the Office of Mayor to be filled by appointment, and change it to a process where the public elects the Mayor.
The proposed amendment will retain the provision of Section 303 which provides for the Vice Mayor to automatically assume the Office of the Mayor upon a vacancy declaration.
The measure will avoid the expense of a special election when the remaining term of the vacancy is less than one year because it provides for the Vice Mayor to serve for the unexpired term. However, if the latter declines to take over as Mayor, the City Council can appoint an individual to serve for the unexpired term. This individual shall be ineligible to be a candidate for the next full term. Passage of this measure will increase the cost of City government by an amount equal to the cost of a special election when the vacancy for the Office of Mayor is for a year or longer. A City-wide special election can cost the City approximately $\$ 845,000$.
s/ROLAND E. SMITH, CPA
City Auditor

## ARGUMENT IN FAVOR OF MEASURE H

Vote YES on this ballot measure to exercise your right to choose the chief executive of your city. Vacancies in the office of the Mayor should be filled by election, not by appointment. Your right to choose your mayor is a fundamental principle of democracy which you should insist on having.
Currently, when a mid-term vacancy occurs in the office of the Mayor, a majority of the City Council (as few as five of the eight members) fill the vacancy by appointment. Under our strong mayor form of government, the mayor of Oakland has executive powers separate from the legislative and policy powers of the City Council. Appointment of the mayor by the City Council would negate the checks and balances of our present strong mayor form of government.
This ballot measure, supported by the League of Women Voters of Oakland and Common Cause, safeguards your right to elect your mayor. It mandates elections to fill mayoral vacancies that occur during the term of office and allows for aligning special elections with scheduled municipal elections. It also calls for use of alternative election methods to increase voter participation in the election.
Further, in order to avoid the expense of a special election when the remaining term at the time a vacancy occurs is less than one year, this ballot measure provides for the Vice Mayor to serve for the unexpired term, or, if the Vice Mayor does not wish to serve, calls for the Council to appoint a person to fill the vacancy who would be ineligible to be a candidate for the next full term.
Vote YES on Measure H to insure that the Mayor of Oakland is your choice, not that of as few as 5 people!
s/JUDITH A. COX, Vice President, League of Women Voters
s/NANCY J. NADEL, City Councilmember
s/DICK SPEES, City Councilmember
s/JIM FERGUSON, Common Cause
s/DANNY WAN, City Councilmember
NO ARGUMENT AGAINST MEASURE H WAS SUBMITTED.

## FULL TEXT OF MEASURE H

WHEREAS, Oakland City Charter section 303 provides for vacancies in the office of Mayor to be filled by appointment; and

WHEREAS, a more democratic method for filling mayoral vacancies would be by election; and

WHEREAS, an amendment to Oakland City Charter section 303 to provide for elections to fill vacancies in the office of the Mayor would allow the people to select their Mayor in accordance with the principles of a democratic government; and

WHEREAS, in order to provide for continuity in the office of the Mayor, the amendment would retain the provision of section 303 which provides for the Vice Mayor to automatically assume the office of Mayor upon a vacancy declaration; and

WHEREAS, pursuant to section 208 of the Charter, the Council elects a Councilmember to serve as Vice Mayor; and

WHEREAS, in order to avoid the expense of a special election when the remaining term at the time a vacancy occurs is less than one year, the proposed amendment.would provide for the Vice Mayor to serve for the unexpired term; and

WHEREAS, whenever the period of vacancy in the Mayor's office is less than one year and the Vice-Mayor advises the Council that she/he does not wish to serve for the unexpired term, the proposed amendment would permit the Council to appoint an individual to serve for the unexpired term who shall be ineligible to be a candidate for the next full term; and

WHEREAS, section 10400 et seq. of the Elections Code allows for the Nominating Municipal election of March 5, 2002 to be consolidated with the statewide primary election to be held on the same date; now, therefore, be it

RESOLVED: That the City Council of the City of Oakland does hereby request that the Board of Supervisors of Alameda County order the consolidation of the Nominating Municipal election of March 5, 2002, with the statewide primary election of March 5, 2002, consistent with the provisions of state law; and, be it

FURTHER RESOLVED: That the text of the proposed charter amendment shall be as follows:

The Oakland City Charter is amended to read:
Section 303. Vacancy, Filling of. Upon the declaration of vacancy in the office of the Mayor, the office of the Mayor shall be filled by the Vice-Mayor of the Council. Except as otherwise provided in this Section, wWhen the ViceMayor of the Council assumes the office of Mayor upon declaration of a vacancy , she/he shall serve for the unexpired term if such term is less than one year: otherwise she/he shall serve until the vacancy is filled by Comethas provided herein. Whenever, the period of vacancy in a Mayor's term of office is less than one year and the Vice Mayor notifies the Council in writing that she/he OM-32
does not wish to serve as Mayor for the unexpired term, the vacancy shall be filled by appointment through a majority vote of the remaining Councilmembers; provided the appointee shall be ineligible to be a candidate for the next full term of the Office of Mayor. If at the time of a Any vacancy declaration the unexpired term is one year or more, the office of Mayor shall be filled by-mpeintment by the-majority vote-of the remmining members of the-Couneil; provided, that if two or less members remain, the appeintment of Mayor shall be made by the majority vote of abedy eonsisting of the remaining members and the-members of the Alameda-County Board of Supervivers representing distriets-ineluding apart of the City. In the event sueh bedy is unable tor fails within a period of five days tak sueh ation, appointment shall be made by the Gevernor of Califernit. special election within 120 days of such vacancy. An extension of up to 60 days may be allowed for the express purpose of consolidating the special election with the next Municipal Election. If no candidate receives the majority of the votes cast in the special election, then a run-off election shall be held for the two candidates who received the highest number of votes no later than 60 days after the date of the special election; provided that all persons receiving a number of votes equal to the highest number of votes received by any candidate shall also be candidates at such run-off election. The candidate receiving the highest number of votes cast for all candidates for the office at the run-off election shall be declared elected. The candidate elected to fill the vacancy An appeinte effer of Mayor for the batanee of an whelxpired term-shall hold office for the balance of the unexpired term-thtill the next general-mmieipal election. Notwithstanding any other provision of this section or the Charter, the Council shall have the authority to provide by ordinance for preferential voting procedures as an alternative to a run-off election. Alternative legal voting procedures shall be used to the greatest extent feasible to increase voter participation in special elections including but not limited to mail ballot voting, electronic voting, and extended voting period.

The Council of the City of Oakland does hereby submit on its own motion the following proposed Charter Amendment to be voted upon by the qualified electors of the City of Oakland at the Statewide Primary Election to be held in the City of Oakland on Tuesday, March 5, 2002:

## PROPOSED CHARTER AMENDMENT <br> MEASURE PROVIDING FOR LIVING WAGE AND LABOR STANDARDS AT PORT-ASSISTED BUSINESSES

## CITY OF OAKLAND MEASURE

IMEASURE I: Shall the Charter be amended to: require certain Port of Oakland contractors and tenants with over 20 employees and contracts/leases with the Port over $\$ 50,000$ to: • Pay employees at least what Oakland's Living Wage Ordinance requires (currently $\$ 9.13$ per hour with health benefits; $\$ 10.50$ without benefits); and • If replacing a previous contractor/tenant, retain the prior employer's non-management employees for at least 90 days unless there is cause for discharge or layoff?

## CITY ATTORNEY'S BALLOT TITLE AND SUMMARY OF MEASURE I BALLOT TITLE: <br> PROPOSED OAKLAND CITY CHARTER AMENDMENT REGARDING LIVING WAGE AND WORKER RETENTION REQUIREMENTS AT PORT-ASSISTED BUSINESSES <br> BALLOT SUMMARY:

Article VII of the City Charter gives the Board of Port Commissioners the exclusive control and management of the City of Oakland's Port Department. The Board oversees and manages the operations of the Port of Oakland, adjacent waterfront properties and lands and the Port Area of the City, which includes but is not limited to the Oakland International Airport. Measure I would amend Article VII to require that covered entities pay a "living wage" and retain for 90 days certain employees of covered entities that they replace.

## Covered Entities

Entities that:

- principally provide services related to maritime or aviation business related services, or are located in the maritime or aviation division areas of the Port as defined by the Port; and
- employ more than 20 employees per pay period; and
- either,
(a) are receiving in excess of $\$ 50,000$ worth of financial assistance from the Port, or
(b) after the enactment of this measure, enter into or amend (i) a service or other contract, lease or license with the Port involving payments of more than $\$ 50,000$ over the contract term; or (ii) a subcontract, sublease, management
does not wish to serve as Mayor for the unexpired term, the vacancy shall be filled by appointment through a majority vote of the remaining Councilmembers; provided the appointee shall be ineligible to be a candidate for the next full term of the Office of Mayor. If at the time of a Any vacancy declaration the unexpired term is one year or more, the ourringvacancy occurring in the office of Mayor shall be filled by mpointment by the the remaining members of the Couneit; provided, that if two or less members remain, the appeinmen Mayer shall be made by the majority refabedy enniding of the remnining members and the members of the Alameda-County Beard of supervisors representing distriets ineluding apar of the City. In the
 netion, uppointment be made by the Governor Califemin. special election within 120 days of such vacancy. An extension of up to 60 days may be allowed for the express purpose of consolidating the special election with the next Municipal Election. If no candidate receives the majority of the votes cast in the special election, then a run-off election shall be held for the two candidates who received the highest number of votes no later than 60 days after the date of the special election; provided that all persons receiving a number of votes equal to the highest number of votes received by any candidate shall also be candidates at such run-off election. The candidate receiving the highest number of votes cast for all candidates for the office at the run-off election shall be declared elected. The candidate elected to fill the vacancy An the
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The Council of the City of Oakland does hereby submit on its own motion the following proposed Charter Amendment to be voted upon by the qualified electors of the City of Oakland at the Statewide Primary Election to be held in the City of Oakland on Tuesday, March 5, 2002:

## PROPOSED CHARTER AMENDMENT MEASURE PROVIDING FOR LIVING WAGE AND LABOR STANDARDS AT PORT-ASSISTED BUSINESSES

## CITY OF OAKLAND MEASURE

IMEASURE I: Shall the Charter be amended to: require certain Port of Oakland contractors and tenants with over 20 employees and contracts/leases with the Port over $\$ 50,000$ to: - Pay employees at least what Oakland's Living Wage Ordinance requires (currently $\$ 9.13$ per hour with health benefits; $\$ 10.50$ without benefits); and • If replacing a previous contractor/tenant, retain the prior employer's non-management employees for at least 90 days unless there is cause for discharge or layoff?

## CITY ATTORNEY'S BALLOT TITLE AND SUMMARY OF MEASURE I BALLOT TITLE: <br> PROPOSED OAKLAND CITY CHARTER AMENDMENT REGARDING LIVING WAGE AND WORKER RETENTION REQUIREMENTS AT PORT-ASSISTED BUSINESSES <br> BALLOT SUMMARY:

Article VII of the City Charter gives the Board of Port Commissioners the exclusive control and management of the City of Oakland's Port Department. The Board oversees and manages the operations of the Port of Oakland, adjacent waterfront properties and lands and the Port Area of the City, which includes but is not limited to the Oakland International Airport. Measure I would amend Article VII to require that covered entities pay a "living wage" and retain for 90 days certain employees of covered entities that they replace.

## Covered Entities

Entities that:

- principally provide services related to maritime or aviation business related services, or are located in the maritime or aviation division areas of the Port as defined by the Port; and
- employ more than 20 employees per pay period; and
- either,
(a) are receiving in excess of $\$ 50,000$ worth of financial assistance from the Port, or
(b) after the enactment of this measure, enter into or amend (i) a service or other contract, lease or license with the Port involving payments of more than $\$ 50,000$ over the contract term; or (ii) a subcontract, sublease, management
agreement or other transfer or assignment of any right, title or interest received from the Port under a covered contract or lease.


## Exemptions from Coverage

- Entities that employ not more than 20 employees per pay period.
- Employees (1) under age twenty-one who are employed by a nonprofit entity for after school or summer employment or for training for no longer than 90 days, or (2) who spend less than $25 \%$ of work time on Port-related employment.


## Key Provisions:

Covered entities must:

- pay not less than required by the City of Oakland living wage ordinance (currently $\$ 10.50$ without health benefits, $\$ 9.13$ with health benefits), and
- with certain exceptions, retain for 90 days employees (except managers, supervisors, professionals, paraprofessionals, confidential and office employees) of prior covered entities that they replace, if the employees can perform the replacement work, and terminate such employees during the 90 day period only for just cause.


## Enforcement

- includes reporting, notification and access requirements regarding pay rates and health benefits and notification to employees of their rights, and allows City Manager to develop certain implementing regulations;
- allows the Port Board to waive the living wage requirement upon finding demonstrated economic hardship and that waiver will further the public interest in providing training positions that will enable employees to advance into permanent living wage jobs or better;
- prohibits retaliation and discrimination against persons making a complaint to the Port or asserting rights under the measure;
- provides a $\$ 500.00$ /day penalty for not timely submitting pay and health benefit records to the Port; and
- allows persons claiming a violation of the measure to file an action in state court. Remedies for prevailing plaintiffs include three times lost compensation and fringe benefits, interest, consequential damages and reasonable attorneys' fees and costs. Damage claims are not allowed against the City or Port.

s/JOHN A. RUSSO<br>City Attorney

## CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE I

Measure I would apply only to the Port Department ("Port") of the City of Oakland ("City"), which the Board of Port Commissioners ("Board") exclusively manages and controls pursuant to Charter Article VII.

This measure covers entities that:
(1) employ more than 20 employees per pay period; AND
(2) principally provide services related to the Port's maritime or aviation business or are located in the maritime or aviation division areas of the Port as defined by the Port; AND
(3) EITHER
(a) are receiving more than $\$ 50,000$ of Port financial assistance, or
(b) after this measure's enactment, enter into or amend (i) a Port service contract for which the Port is expected to pay more than $\$ 50,000$ over the contract term, (ii) a Port contract, lease or license with payments to the Port that are expected to exceed $\$ 50,000$ over the contract/lease/license term, or (iii) a subcontract, sublease, management agreement and any other transfer or assignment of any right, title or interest received from the Port pursuant to the covered contracts or leases.

Exemptions include certain youth trainees, employees spending less than $25 \%$ of work time on Port-related work; and any entity that employees 20 or fewer employees per pay period.

Measure I would add two key provisions to the Charter:
(1) Living Wage: Covered entities may not pay less than required by the City's Living Wage ordinance (currently $\$ 10.50$ without health benefits, $\$ 9.13$ with health benefits). This adjusts annually for inflation;
(2) Worker Retention: With certain exceptions, requires that covered entities retain for 90 days employees (except managers, professionals and certain others) of covered entities that they replace if the employees can perform the replacement work, and allows termination only for just cause of such employees during the 90 day period.
The Board can waive the living wage requirement for one year periods (renewable annually) if it finds the requirement is an economic hardship for the covered entity and that the public interest is served by providing training positions that enable employees to advance to living wage jobs or better.

Any person claiming a violation of these provisions may sue to enforce this measure. Remedies include treble the employee's lost compensation, fringe benefits, plus interest, consequential damages, reasonable attorneys' fees and costs. The measure precludes lawsuits for damages against the City and/or the Port.

There is a strong basis for believing that both the living wage and worker retention provisions would survive legal challenge. Substantial judicial authority supports the living wage provision and similar provisions have been adopt-
ed by many jurisdictions, including the City. Support for the validity of the worker retention provision is provided by the U.S. Court of Appeals for the D.C. Circuit, which upheld a similar law.

However, there is no controlling precedent in the federal appellate (Ninth Circuit) or the California appellate courts regarding the legality of living wage or worker retention provisions. If Measure I were successfully challenged, the City or Port could be held responsible for costs and attorneys' fees.

s/JOHN A. RUSSO<br>City Attorney

## CITY AUDITOR'S IMPARTIAL FINANCIAL ANALYSIS OF MEASURE I

The Oakland City Charter Article VII created the Board of Port Commissioners which oversees the operations of the Port Department that includes the Port of Oakland and the Oakland Airport. However, the City's Living and Wage Ordinance does not apply to the Port of Oakland.
Passage of this measure will add Section 728 entitled "Living Wage and Labor Standards at Port-Assisted Businesses" to the Oakland City Charter and allow the City to effect wage and labor requirements upon Port-assisted businesses.
The proposed amendment will require the payment by Port tenants and contractors doing more than $\$ 50,000$ business with the Port of a "living wage" equal at least to that of the City's Living Wage Ordinance rate, and the hiring of the non-management and non-professional employees of a prior Port contractor for a period of not less than 90 days if those employees can perform the new contractor's work.
Passage of this measure will subject the contractors to as much as $68 \%$ increase in their hourly labor cost as they move from the State minimum wage rate to the City's living wage rate based on 2001 levels. Contractors may likely pass this increase to the Port and thereby cause an increase in the cost of City government. The magnitude of the increase in City government cannot be estimated but will depend on a variety of factors - the number and amounts of contracts, the percentage of the labor portion, and the variance of the contractors' existing hourly labor rates from the prevailing minimum wage rate.
s/ROLAND E. SMITH, CPA
City Auditor

## ARGUMENT IN FAVOR OF MEASURE I

The Bay Area is one of the most expensive places in the nation to raise a family. Between soaring rents, gas, and utility costs, people struggle to make ends meet. The minimum wage - just $\$ 6.75$ an hour, or $\$ 13,500$ a year - is a poverty wage in the Bay Area.
That's why the City Council passed a Living Wage Ordinance in 1998 requiring businesses that benefit from public investment to pay their employees at least $\$ 10.50$ an hour. Unfortunately, that law doesn't cover thousands of workers at the Port of Oakland. The Port will be investing over $\$ 3$ billion of capital improvements to expand the Oakland Airport and shipping operations. The workers should share the economic benefit of this public investment.
The government is encouraging people to leave welfare for work. People who are working full time should be paid enough to support their families. Workers who will benefit under Measure I will include airport security workers, restaurant workers, retail clerks, parking attendants, car washers, rental car employees, warehouse workers, airline and shipping line employees, baggage handlers, air cargo workers, airplane fuelers and flight school employees, among others.
This measure does not cover retail and hotel businesses located in the Jack London area that receive no public subsidy. It only requires businesses that will benefit from the public investments in the airport and maritime areas to share that investment with workers by paying wages that reflect the cost of living in the East Bay.
Measure I will mean workers will have more money, and more time, to spend with their families. It's about dignity and a fair wage for working people.

## VOTE YES ON MEASURE I!

s/JERRY BROWN, Mayor of Oakland
s/IGNACIO DE LA FUENTE, President, Oakland City Council s/DANNY WAN, Oakland City Council

## NO ARGUMENT AGAINST MEASURE I WAS SUBMITTED.

## FULL TEXT OF MEASURE I

WHEREAS, Oakland City Charter Article VII specifies the role and responsibilities of the City's Port Department and created the Board of Port Commissioners; and

WHEREAS, the Board of Port Commissioners oversees the operations of the Port Department which includes the Port of Oakland and the Oakland airport; and

WHEREAS, with certain exceptions the ordinances passed by the Oakland City Council do not apply to the Port Department; and

WHEREAS, due to the Board of Port Commissioners' role and responsibilities under the current City Charter, the City of Oakland's Living Wage Ordinance does not apply to the Port of Oakland; and

WHEREAS, contractors and lease holders receive a substantial benefit from doing business at the Port of Oakland, in part because of the large public investment in infrastructure, such that it is fair to require them to adhere to certain minimum labor standards in dealing with their emloyees at the Port; and

WHEREAS, an amendment to the Oakland City Charter adding section 728 to Article VII would:
(1) require payment of a "living wage" of at least the rate of the living wage ordinance of the City of Oakland (currently $\$ 10.50$ without health benefits) by certain Port tenants and contractors doing more than $\$ 50,000$ of business with the Port, and
(2) require, with certain exceptions, that new Port contractors and tenants doing more than $\$ 50,000$ of business with the Port, who replace a prior Port contractor; hire the non-management non-professional employees of the prior Port contractor for a period of not less than 90 days if the employees can perform the new contractor's work, and terminate such employees only for just cause during the 90 day period; and
WHEREAS, the proposed Charter amendment would apply to employees of Port contractors and tenants involved in a business that principally provides maritime or aviation business related services or whose business is located in the maritime or aviation division areas of the Port as defined by the Port, and protect workers from displacement by private contractors by requiring that Port contractors/tenant who replace a prior Port contractor assume the non management employees of the prior Port contractor/tenant; now, therefore, be it

RESOLVED: That the Oakland City Charter is amended to add the following section 728 , which shall read as follows:

## 728. LIVING WAGE AND LABOR STANDARDS AT PORT-ASSISTED BUSINESSES

## 1. Scope and Definitions

The following definitions shall apply throughout this Section:
A. "Port" means the Port of Oakland.
B. "Port-Assisted Business" or "PAB" means (1) any person involved in a Port Aviation or Port Maritime Business receiving in excess of $\$ 50,000$ worth of financial assistance from the Port, or (2) any Port Contractor involved in a Port Aviation or Port Maritime Business if the person employs more than 20 persons per pay period, unless in the prior 12 pay periods the person has not had more than 20 such employees and will not have more than 20 persons in the next 12 pay periods. A PAB shall be deemed to employ more than 20 persons if it is part of an 'enterprise' as defined under the Fair Labor Standards Act employing more than 20 persons. "Port Contractor" means any person party to a Port Contract as herein defined.
C. "Port Contract" means:
(1) Any service contract with the Port for work to be performed at the Port under which the Port is expected to pay more than $\$ 50,000$ over the term of the contract;
(2) Any contract, lease or license from the Port involving payments to the Port expected to exceed $\$ 50,000$ either (a) over the term of the contract, lease or license, or (b) during the next 5 years if the current term is less than 1 year but may be renewed or extended, either with or without amendment;
(3) any subcontract, sublease, sublicensed, management agreement or other tránsfer or assignment of any right, title or interest received from the Port pursuant to any of the foregoing contracts, leases or licenses.
A contract, lease or license with the Port or any agreement derived therefrom shall not be deemed a Port Contract unless entered into after enactment of this Section, or amended after enactment of this Section to benefit in any way the party dealing with the Port.
D. "Employee" means any individual employed by a PAB in Port related employment.
E. "Person" includes any natural person, corporation, partnership, limited liability company, joint venture, sole proprietorship, association, trust or any other entity.
F. "Valid collective bargaining agreement" as used herein meatsts a collective bargaining agreement entered into between the person and a labor organization lawfully serving as the exclusive collective bargaining representative for such person's employees.
G. "Port Aviation or Port Maritime business" means any business that principally provides services related to maritime or aviation business related services or whose business is located in the maritime or aviation division areas as defined by the Port.

## 2. Exemptions from Coverage

In addition to the above exemption for workforces of fewer than 20 workers, the following persons shall also be exempt from coverage under this Section:
A. An Employee who is (1) under twenty-one (21) years of age and (2)
employed by a nonprofit entity for after-school or summer employment or for training for a period not longer than ninety ( 90 ) days, shall be exempt.
B. An Employee who spends less than 25 percent of his work time on Port-related employment.
C. A person who employs not more than 20 employees per pay period.

## 3. Payment of Minimum Compensation to Employees

Port-Assisted Businesses shall provide compensation to each Employee of at least the following:

## A. Minimum Compensation

The minimum compensation shall be wages and health benefits totaling at least the rate of the living wage ordinance of the City of Oakland

## B. Credit for Health Benefits

The PAB shall receive a credit against the minimum wage required by this Section for health benefits in the amount provided by and in accordance with the living wage ordinance of the City of Oakland.

## 4. Notifying Employees of their Potential Right to the Federal Earned Income Credit

Each PAB shall inform each Employee who makes less than twelve dollars ( $\$ 12.00$ ) per hour of his or her possible right to the federal Earned Income Credit ("EIC") under Section 2 of the Internal Revenue Code of 1954, 26 U.S.C. §32, and shall make available the forms required to secure advance EIC payments from the business. These forms shall be provided to the eligible Employees in English (and other languages spoken by a significant number of such Employees) within thirty (30) days of employment under this Section and as required by the Internal Revenue Code.

## 5. Preventing Displacement of Workers

Each PAB, which is to replace a prior PAB shall offer employment to the Service Employees of the prior PAB, if, these Employees worked for the prior PAB for at least 90 calendar days. Such Employees may not be terminated by the new PAB during the first 90 workdays except for just cause. The new PAB may operate at lower staffing levels than its predecessor but in such event, shall place the prior Employees on a preferential reinstatement list based on seniority. For purposes of this Section, a PAB "replaces" another if it (1) assumes all or part of the lease, contract or subcontract of a prior employer or obtains a new lease, contract, or sublease, and (2) offers employment which Employees of the prior PAB can perform. In the case of a replacement connected to the new PAB relocating from another location, in staffing decisions the new PAB may recognize seniority from its prior locations in addition to the seniority of the prior PAB's workforce. "Service Employees" means all employees except manager, supervisors, professionals, paraprofessionals, confidential and office employees.

## 6. Waiver

A. A PAB who contends it is unable to pay all or part of the living wage must provide a detailed explanation in writing to the Port Executive Director who may recommend a waiver to the Port board. The explanation must set for the reasons for its inability to comply, including a complete cost accounting for the proposed work to be performed with the financial assistance sought, including wages and benefits to be paid all employees, as well as an itemization of the wage and benefits paid to the five highest paid individuals employed by the PAB . The PAB must also demonstrate that the waiver will further the public interests in creating training positions which will enable employees to advance into permanent living wage jobs or better and will not be used to replace or displace existing positions or employees or to lower the wages of current employees.
B. The Port Board will grant a waiver only upon a finding and determination that the PAB has demonstrated the necessary economic hardship and that waiver will further the public interests in providing training positions which will enable employees to advance into permanent living wage jobs or better. However, no waiver will be granted if the effect of the waiver is to replace or displace existing positions or employees or to lower the wages of current employees.
C. Such waivers are disfavored, and will be granted only where the balance of competing interests weighs clearly in favor of granting the waiver. If waivers are to be granted, partial waivers are favored over blanket waivers. Moreover, any waiver shall be granted for no more than one year. At the end of the year the PAB may reapply for a new waiver which may be granted subject to the same criteria for granting the initial waiver.
D. Any party who objects to the grant of a waiver by the Port Board may appeal such decision to the City/Port Liaison Committee, who may reject such waiver.

## 7. Retaliation and Discrimination Barred; no Waiver of Rights.

A. A PAB shall not discharge, reduce the compensation of or otherwise discriminate against any person for making a complaint to the Port, participating in any of its proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under this Section.
B. Any waiver by an individual of any of the provisions of this Section shall be deemed contrary to public policy and shall be void and unenforceable, except that Employees shall not be barred from entering into a written valid collective bargaining agreement waiving a provision of this Section if such waiver is set forth in clear and unambiguous terms. Any request to an individual by a PAB to waive his or her rights under this Section shall constitute a violation of this Section.

## 8. Enforcement

A. Each PAB shall maintain for each person in Port-related employment a record of his or her name, pay rate and, if the PAB claims credit for OM-42
health benefits, the sums paid by the PAB for the Employee's health benefits. The PAB shall submit a copy of such records to the Port at least by March 31st, June 30th, September 30th and December 31st of each year, unless the PAB has employed less than 20 persons during the preceding quarter, in which case the PAB need only submit a copy of such records every December 31st. Failure to provide a copy of such records within five days of the due date will result in a penalty of five hundred dollars ( $\$ 500.00$ ) per day. Each PAB shall maintain a record of the name, address, job classification, hours worked, and pay and health benefits received of each person employed, and shall preserve them for at least three years.
B. If a PAB provides health benefits to persons in Port-related employment but does not pay for them on a per-hour basis, then upon the PAB's request, the amount of the hourly credit against its wage obligation shall be the Port's reasonable estimate of the PAB's average hourly cost to provide health benefits to its Employees in Port-related employment. The PAB shall support its request with such documentation as is reasonably requested by the Port or any interested party, including labor organizations in such industry.
C. Each PAB shall give written notification to each current Employee, and to each new Employee at time of hire, of his or her rights under this Section. The notification shall be in the form provided by the Port in English, Spanish and other languages spoken by a significant number of the Employees, and shall also be posted prominently in areas at the work site where it will be seen by all Employees.
D. Each PAB shall permit access to work sites and relevant payroll records for authorized Port representatives for the purpose of monitoring compliance with this Section, investigating employee complaints of noncompliance and evaluating the operation and effects of this Section, including the production for inspection and copying of its payroll records for any or all persons employed by the PAB. Each PAB shall permit a representative of the labor organizations in its industry to have access to its workforce at the Port during nonworking time and in non-work areas for the purpose of ensuring compliance with this Section.
E. Notwithstanding any provisions in Article VI of this Charter to the contrary, the City Manager may develop rules and regulations for the Port's activities in (1) Port review of contract documents to insure that relevant language and information are included in the Port's RFP's, agreements and other relevant documents, (2) Port monitoring of the operations of the contractors, subcontractors and financial assistance recipients to insure compliance including the review, investigation and resolution of specific concerns or complaints about the employment practices of a PAB relative to this section, and (3) provision by the Port of notice and hearing as to alleged violations of this section.

## 9. Private Rights of Action

A. Any person claiming a violation of this Section may bring an action against the PAB in the Municipal Court or Superior Court of the State of California, as appropriate, to enforce the provisions of this Section and shall be OM-43
entitled to all remedies available to remedy any violation of this Section, including but not limited to back pay, reinstatement or injunctive relief. Violations of this Section are declared to irreparably harm the public and covered employees generally.
B. Any employee proving a violation of this Section shall recover from the PAB treble his or her lost normal daily compensation and fringe benefits, together with interest thereon, and any consequential damages suffered by the employee.
C. The Court shall award reasonable attorney's fees, witness fees and costs to any plaintiff who prevails in an action to enforce this Section.
D. No criminal penalties shall attach for any violation of this Section, nor shall this Section give rise to any cause of action for damages against the Port or the City.
E. No remedy set forth in this Section is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This Section shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

## 10. Severability

If any provision or application of this Section is declared illegal, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof and applications not declared illegal, invalid or inoperative shall remain in full force or effect. The courts are hereby authorized to reform the provisions of this Section in order to preserve the maximum permissible effect of each subsection herein. Nothing herein may be construed to impair any contractual obligations of the Port. This Section shall not be applied to the extent it will cause the loss of any federal or state funding of Port activities.

