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CITY COUNCIL

Roy Swearingen, Mayor
Norma Martinez-Rubin, Mayor Pro Tem
Peter Murray, Council Member
Vincent Salimi, Council Member
Anthony Tave, Council Member

**PINOLE CITY COUNCIL
SPECIAL MEETING AGENDA**

**TUESDAY
APRIL 14, 2020**

VIA ZOOM TELECONFERENCE

6:00 P.M.

**DUE TO THE STATE OF CALIFORNIA'S DECLARATION OF EMERGENCY – THIS
MEETING IS BEING HELD PURSUANT TO AUTHORIZATION FROM GOVERNOR
NEWSOM'S EXECUTIVE ORDERS – CITY COUNCIL AND COMMISSION MEETINGS ARE
NO LONGER OPEN TO IN-PERSON ATTENDANCE.**

SUBMIT PUBLIC COMMENTS TO CITY CLERK BEFORE OR DURING THE MEETING VIA EMAIL

hiopu@ci.pinole.ca.us

Comments received before the close of the item will be read into the record and limited to 3 minutes. Please include your full name, city of residence and agenda item you are commenting on.

WAYS TO WATCH THE MEETING

LIVE ON CHANNEL 26. They are retelecast the following Thursday at 6:00 p.m. The Community TV Channel 26 schedule is published on the city's website at www.ci.pinole.ca.us.

VIDEO-STREAMED LIVE ON THE CITY'S WEBSITE, www.ci.pinole.ca.us. and remain archived on the site for five (5) years.

If none of these options are available to you, or you need assistance with public comment, please contact the City Clerk, Heather Iopu at (510) 724-8928 or hiopu@ci.pinole.ca.us.

Americans With Disabilities Act: In compliance with the Americans With Disabilities Act of 1990, if you need special assistance to participate in a City Meeting or you need a copy of the agenda, or the agenda packet in an appropriate alternative format, please contact the City Clerk's Office at (510) 724-8928. Notification at least 48 hours prior to the meeting or time when services are needed will assist the City staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.

Note: Staff reports are available for inspection on the City Website at www.ci.pinole.ca.us. You may also contact the City Clerk via e-mail at hiopu@ci.pinole.ca.us.

Ralph M. Brown Act. Gov. Code § 54950. *In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies, which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.*

1. CALL TO ORDER & PLEDGE OF ALLEGIANCE IN HONOR OF THE US MILITARY TROOPS

2. ROLL CALL, CITY CLERK'S REPORT & STATEMENT OF CONFLICT

An official who has a conflict must, prior to consideration of the decision: (1) publicly identify in detail the financial interest that causes the conflict; (2) recuse himself /herself from discussing and voting on the matter; and (3) leave the room until after the decision has been made, Cal. Gov't Code § 87105.

3. CONVENE TO A CLOSED SESSION

Citizens may address the Council regarding a Closed Session item prior to the Council adjourning into the Closed Session, by first providing a speaker card to the City Clerk.

A. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Gov. Code § 54957

Title: City Clerk

B. CONFERENCE WITH LABOR NEGOTIATORS

Gov. Code § 54957.6

Agency designated representatives: City Manager Andrew Murray, Greg Ramirez

Employee organizations: IAFF

C. CONFERENCE WITH LABOR NEGOTIATORS

Gov. Code § 54957.6

Agency designated representatives: City Manager Andrew Murray, Assistant City Manager Hector De La Rosa, Greg Ramirez

Employee organizations: Unrepresented positions- Assistant City Manager, Development Services Director, City Engineer, Finance Director, Fire Chief, Police Chief, Fire Battalion Chief, Human Resources Specialist, Planning Manager, Police Lieutenant, Public Works Manager, Recreation Manager, WWTP Manager

4. RECONVENE IN OPEN SESSION TO ANNOUNCE RESULTS OF CLOSED SESSION

5. CITIZENS TO BE HEARD (Public Comments)

Citizens may speak under any item not listed on the Agenda. The time limit is 3 minutes, and is subject to modification by the Mayor. Pursuant to provisions of the Brown Act, no action may be taken on a matter unless it is listed on the agenda, or unless certain emergency or special circumstances exist. The City Council may direct staff to investigate and/or schedule certain matters for consideration at a future Council meeting.

SUBMIT COMMENTS TO THE CITY CLERK BEFORE OR DURING THE MEETING.

hiopu@ci.pinole.ca.us

Comments received before the close of the item will be read into the record.

6. OLD BUSINESS

- A. Resolution Confirming Continued Existence Of Local Emergency [**Action: Adopt Resolution per Staff Resolution (Casher)**]
- B. Update On City Staff Activities Related To Preparing For A Potential November 2020 Charter City Ballot Measure [**Action: Discuss and Provide Direction (A. Murray)**]

7. ADJOURNMENT to the Regular City Council Meeting of April 21, 2020 In Remembrance of Amber Swartz.

I hereby certify under the laws of the State of California that the foregoing Agenda was posted on the bulletin board at the main entrance of Pinole City Hall, 2131 Pear Street Pinole, CA, and on the City's website, not less than 72 hours prior to the meeting date set forth on this agenda.

POSTED: April 9, 2020 at 4:00 P.M.

Heather Iopu, CMC
City Clerk



CITY COUNCIL REPORT

6A

DATE: APRIL 14, 2020

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: ANDREW MURRAY, CITY MANAGER

BY: ERIC CASHER, CITY ATTORNEY

**SUBJECT: RESOLUTION CONFIRMING CONTINUED EXISTENCE OF LOCAL
EMERGENCY**

RECOMMENDATION

Staff recommends that the City Council adopt a resolution confirming the continued existence of a local emergency.

BACKGROUND & DISCUSSION

On March 16, 2020, the City Manager, acting as Director of Emergency Services, proclaimed a local emergency pursuant to California Government Code Section 8630 and Pinole Municipal Code Chapter 2.32. The emergency declaration was based on public health and safety concerns for persons and property within the City as a consequence of the global spread of novel coronavirus 2019 ("COVID-19"), including confirmed cases in Contra Costa County, as well as, the Contra Costa County Department of Health's shelter in place order dated March 16, 2020. The City Council subsequently adopted a resolution affirming the City Manager's emergency declaration.

The California Emergency Services Act requires the City Council to review the need for continuing the local emergency at least once every 60 days. However, the Pinole Municipal Code requires the City Council to review the need for continuing the local emergency every 14 days.

The conditions that prompted the original declaration of a local emergency continue to exist. Since March 16, community transmission of COVID-19 has continued to occur, and the number of cases within Contra Costa County has continued to rise. The Contra Costa Health Officer extended the order for all residents to shelter at home through May 3, 2020, and has further limited the exceptions to that order. Public health and safety concerns for persons and property within the City as a consequence of the global spread of novel coronavirus 2019 continue to exist.

If adopted, the declaration of local emergency will remain in place. In accordance with state law and the Municipal Code, the City Council will review the emergency

declaration every approximately two weeks until the conditions warrant a termination of the emergency declaration.

FISCAL IMPACT

There is no direct fiscal impact from the adoption of the resolution ratifying a local emergency. However, the City will consider all options available to seek reimbursement for indirect expenses and fiscal impacts through the appropriate authorities.

ATTACHMENTS

- A. Resolution Confirming Continued Existence of Local Emergency

**RESOLUTION NO. 2020-XX
CITY OF PINOLE**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PINOLE
CONFIRMING THE CONTINUED EXISTENCE OF A LOCAL EMERGENCY DUE
TO COVID-19**

WHEREAS, Government Code Section 8630 and Pinole Municipal Code Section 2.32.060 authorize the Director of Emergency Service to proclaim a local emergency when conditions of disaster or extreme peril to the safety of persons and property within the territorial limits of a city exist if the City Council is not in session and provides that the City Council shall ratify the proclamation within seven days thereafter; and

WHEREAS, in accordance with Government Code Section 8630 and Pinole Code Section 2.32.060, the Director of Emergency Services proclaimed the existence of a local emergency caused by the Novel Coronavirus (COVID-19), a respiratory disease first identified in China that may result in serious illness or death that is easily transmissible from person to person, on March 16; and

WHEREAS, on March 24, the City Council ratified and confirmed the proclamation of the existence of a local emergency issued by the Director of Emergency Services; and

WHEREAS, pursuant to Government Code Section 8630 and Pinole Municipal Code Section 2.32.060, the City Council must periodically review the need for continuing the local emergency; and

WHEREAS, the conditions that prompted the original declaration of a local emergency continue to exist; and

WHEREAS, the recitals contained in Resolution No. 2020-13, adopted by the City Council on March 24, are incorporated into this Resolution as if stated herein; and

WHEREAS, since March 16, community transmission of COVID-19 has continued to occur, the number of cases within Contra Costa County has continued to rise, and there are now over 500 confirmed cases of COVID-19 within the County; and

WHEREAS, the Contra Costa Health Officer extended the order for all residents to shelter at home through May 3, 2020, and has further limited the exceptions to that order; and

WHEREAS, the public health and safety concerns for persons and property within the City as a consequence of the global spread of novel coronavirus 2019 continue to exist.

ATTACHMENT A

WHEREAS, the health, safety, and welfare of Pinole residents, businesses, visitors, and staff is of utmost importance to the City and additional future measures may be needed to protect the community; and

WHEREAS, the City may require additional assistance in the future, and a formal declaration of emergency allows the City to access resources in a timely manner in a timely fashion; and

WHEREAS, the City Council finds that conditions of extreme peril to the safety of persons and property within the territorial limits of the City related to COVID-19 pandemic continue in existence; and

WHEREAS, the City Council finds that extraordinary measures are required to protect the public health, safety, and of persons and property within the City that are or are likely to be beyond the control or capability of the services, personnel, equipment, and facilities of the City; and

WHEREAS, the City Council desires to confirm the continued existence of a local emergency within Pinole due to COVID-19.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Pinole hereby declares as follows:

1. The local emergency declared by Resolution No. 2020-13 due to the COVID-19 Pandemic continues to exist within the City of Pinole.
2. During the existence of the declared local emergency, the powers, functions, and duties of the City Manager, acting as Director of Emergency Services, and the emergency organization of this City shall be those prescribed by State law and by ordinances and resolutions of the City of Pinole.
3. The declaration of local emergency shall remain in effect until such time that the Council determines that the emergency conditions have been abated.

PASSED AND ADOPTED at a special meeting of the Pinole City Council held on the 14th day of April 2020 by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:

ATTACHMENT A

I, hereby certify that the foregoing resolution was regularly introduced, passed, and adopted on this 14th day of April, 2020.

Heather Iopu, CMC
City Clerk

3508821.1



CITY COUNCIL REPORT

6B

DATE: APRIL 14, 2020

TO: MAYOR AND COUNCIL MEMBERS

FROM: ANDREW MURRAY, CITY MANAGER

**SUBJECT: UPDATE ON CITY STAFF ACTIVITIES RELATED TO PREPARING
FOR A POTENTIAL NOVEMBER 2020 CHARTER CITY BALLOT
MEASURE**

RECOMMENDATION

City staff recommends that the City Council accept an update on City staff activities related to preparing for a potential November 2020 charter city ballot measure and provide direction to staff on further activities.

BACKGROUND

At the City Council meeting on March 19, 2019, City staff provided a general overview of the nature of charter cities and the process for becoming a charter city. The Council expressed interest in continuing to consider becoming a charter city, and directed that the matter be brought back for further discussion in the future. At the City Council meeting on November 5, 2019, City staff provided additional information on the nature of charter cities, the process of becoming a charter city, and the nature of a real property transfer tax (RPTT). The City Council provided direction to staff to prepare an initial draft charter authorizing the City to impose an increased RPTT but not authorizing the City to exercise any other powers of a charter city. On January 21, 2020, the City Council considered and provided feedback on the draft charter. In addition, the Council requested the convening of a special meeting solely focused on issues related to the possibility of Pinole becoming a charter city, including issues related to a potential RPTT.

On February 25, 2020, City staff presented a revised draft charter (Staff Report and presentation attached). The City Council directed staff to work towards executing the plan to prepare a charter city ballot measure for the November 2020 election which only included an increase to the RPTT. Council specifically directed staff to retain a polling consultant to gather information on public opinion regarding a charter city ballot measure limited to an increase in the RPTT and directed staff to retain a communications consultant.

As described at the February 25, 2020 City Council meeting, in order to meet statutory timelines, the City would need to hold the first of two public hearings on a proposed charter measure within the first two weeks of May. That hearing would need to be noticed 21 days in advance. A second public hearing would need to be held, at least 30 days after the first hearing (mid-June). Finally, the Council would need to vote to submit the proposed charter measure at least 21 days after the second hearing, and at least 88 days before the election (early August), on November 3, 2020.

Pursuant to Council direction, City staff solicited proposals from public opinion research firms, and received proposals from three highly-regarded firms in response, the last on March 16, 2020. City staff and the City Council anticipated having polling results in time to inform discussion at a first public hearing, in May.

Beginning on March 16, 2020 and since, City staff has directed the bulk of its attention to responding to the onset of the coronavirus (COVID-19). Staff has not executed a contract with a public opinion research firm nor a communications firm. The firms that submitted proposals to the City are still conducting surveys and expect to be able to continue doing so throughout any stay at home orders. Were the City to execute a contract with a public opinion research firm the week of April 13, 2020, the City would likely get initial results back during the second week of May, with final results one or two weeks later. As such, the City Council will likely not have final polling results in time to inform discussion of a charter measure at a first public hearing held in early May. Note that a number of Bay Area cities are proceeding with polling for November 2020 revenue measures despite COVID-19.

REVIEW & ANALYSIS

Since the City Council provided direction to staff on February 25, 2020 to engage a public opinion research firm and communications firm to advance a charter measure, the City, State, and nation have been severely impacted by the onset of COVID-19. The epidemic has already had a significant impact on the health, activities, and livelihood of many Americans, and is expected to continue to do so for many months. City staff seeks further direction from the Council regarding whether to proceed with prior direction given the changed circumstances resulting from the COVID-19 pandemic.

In particular, City staff is seeking Council direction on whether staff should proceed to execute a contract with a public opinion research firm, execute a contract with a communications firm, and issue a notice for a public hearing to be held in early May at which the Council would consider placing a charter measure on the November 2020 ballot.

FISCAL IMPACT

The City Council has already directed staff to execute contracts with a public opinion research firm and a communications firm. Those contracts have not yet been executed, but there would be no fiscal impact beyond what has already been authorized by Council if the City were to proceed to execute those contracts and notice a public hearing related to a November 2020 ballot measure.

ATTACHMENT(S):

A February 25, 2020 Staff Report and Presentation



CITY COUNCIL REPORT

ATTACHMENT A

4A

DATE: FEBRUARY 25, 2020

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

**FROM: ERIC S. CASH, CITY ATTORNEY
ANDREW MURRAY, CITY MANAGER**

**SUBJECT: PROVIDE DIRECTION ON PROPOSED CHARTER MEASURE &
REAL PROPERTY TRANSFER TAX**

RECOMMENDATION

Staff recommends that the City Council provide direction on the proposed charter measure and real property transfer tax. Specifically, staff is seeking direction on the proposed rate of a real property transfer tax, whether to hire a communications consultant and/or pollster, and what community engagement activities the City Council desires to pursue.

BACKGROUND

Cities in California are organized as either general law cities or charter cities. A general law city has the authority to act locally, but its acts must be consistent with all general laws adopted by the Legislature. In contrast, a charter city is only required to act consistent with state laws regarding matters of statewide concern. A charter city may use its "home rule" authority to adopt laws regarding "municipal affairs" that vary from state laws. Cities are general law cities as a default, but may go through a process to become a charter city. The City of Pinole is currently a general law city.

The City Council has considered the possibility of becoming a charter city at three previous meetings, on March 19 and November 5, 2019, as well as January 21, 2020. On March 19, 2019 the differences between charter cities and general law cities were discussed in detail. A copy of the staff report from the November 5 meeting is attached for reference.

A significant authority possessed by charter cities is the authority, with voter approval, to impose a real property transfer tax ("RPTT") at an increased rate. A RPTT is a tax imposed on the deed, instrument, or writing by which interests in real property are transferred. Under the California Revenue and Taxation Code, general law cities may impose a RPTT of no more than \$.55 per \$1,000 of value on the property transferred (the County may also impose a RPTT equal to this rate). Pinole currently has a RPTT of the maximum allowed for general law cities of \$.55 per \$1,000 of value.

Charter law cities are not subject to state law regarding RPTTs because RPTTs are deemed municipal affairs. As a result, charter cities may impose RPTTs at a rate higher than the maximum statutory rate of \$0.55 per \$1,000 of value. The median RPTT rate for charter cities in Contra Costa and Alameda Counties is \$12.00 per \$1,000 of value.

At its November 19, 2019 meeting the City Council preliminarily decided to move forward with the process to become a charter city. The Council directed the City Attorney's Office to prepare a draft charter that prohibited the City from executing any of the powers of a charter city, except for the power to impose a RPTT. On January 21, 2020, the City Council considered and provided feedback on the draft charter. In addition, the Council requested the convening of a special meeting solely focused on issues related to possibility of Pinole becoming a charter city, including issues related to a potential RPTT.

DISCUSSION

A. Initial Draft Charter

The City Attorney's Office has revised the draft charter based on feedback provided by the City Council on January 21, 2020. Specifically, the charter has been revised to more clearly articulate that the only power of a charter city that the City of Pinole can exercise is the ability to impose an increased RPTT. In addition, the draft charter specifies that the charter may not be amended except by the voters at an election, which is an existing requirement of state law.

The City Council is asked to review and provide comment on this initial draft charter. Importantly, the Council will have multiple additional opportunities to edit this draft charter, as well as an ordinance implementing the RPTT, including after a public input process.

B. RPTT

A RPTT is a tax imposed on the deed, instrument, or writing by which interests in real property are transferred. The tax is imposed only once, when the property is transferred, and is not an annual tax. The City of Pinole currently has a RPTT of the maximum allowed for general law cities of \$0.55 per \$1,000 of value. Charter cities can impose a higher RPTT rate, but that rate must be approved by the voters.

Below is a chart of the base RPTT rates applied in charter cities in Contra Costa and Alameda Counties.

City	Base Tax (per thousand dollars)
Alameda	\$12.00
Albany	\$11.50
Berkeley	\$15.00
El Cerrito	\$12.00
Emeryville	\$12.00
Hayward	\$8.50
Oakland	\$15.00
Piedmont	\$13.00
Richmond	\$7.00
San Leandro	\$6.00
Median	12.00

Over the last 10 years, Pinole has received an average of \$76,310 from the RPTT, with a low of \$44,699 in 2009-10 and a high of \$98,593 in 2016-17. Adjusting the City's RPTT rate to the area median rate of \$12 per \$1,000 of value would have produced a 10-year average of \$1,664,946 annually in RPTT.

There are two methods for the City to collect the RPTT. First, the City can collect the RPTT itself. However, this would create a significant administrative burden for the City. In addition, since the City is not directly involved in most property sales, the City would have to rely mostly on buyers and sellers reporting the sale to the City. This creates the potential for a significant number of transactions to "hide" from the RPTT, which has been the case in other cities that have chosen to self-administer the RPTT. Alternatively, the City can contract with the County for the County to collect the tax when deeds or similar instruments are recorded. The County charges other charter cities a 3% administrative fee for this service.

In general, most charter cities simply have RPTT whereby all property sales are subject to the same base RPTT rate. However, a very limited number of cities have adopted tiered RPTT rates, with higher rates for property valued at over a certain amount. In addition, a small number of cities provide RPTT rebates for certain improvements to the property. For example, El Cerrito provides a rebate of up to 1/3 of the RPTT paid for energy efficiency improvements or structural improvements made within one year of the sale. Both tiered rates and rebates are uncommon elements of a RPTT, but have been adopted by a very small number of cities in the Bay Area.

C. Calendar

The City Council must vote to submit the proposed charter to the voters at least eighty-eight (88) days before the election. Prior to approving submission of the charter to the voters, the City Council must hold at least two public hearings on the proposal of the charter and the content of the charter, and notice of those hearings must be published at least twenty one (21) calendar days before the date of each hearing. The second public hearing must be held at least thirty (30) days after the

first hearing, and at least one of the hearings must be held outside of normal business hours. The city council may not vote on submission of the charter to the voters until twenty-one (21) days after the second public hearing.

A sample timeline of the process is below:

Action	Anticipated Date	Restrictions
City Council holds first public hearing on proposed charter	May 8, 2020	Notice of the hearing must be given 21 days in advance
City Council holds second public hearing on proposed charter	June 12, 2020	Must occur at least 30 days after first public hearing
City Council votes on submission of the proposed charter to the voters	August 4, 2020	Must occur at least 21 days after the second public hearing & 88 days before election
Election Date: November 3, 2020		

D. Community Engagement & Feedback

Because many voters might not know the difference between the form and powers of a general law city versus a charter city, many jurisdictions have retained communications professionals to help explain to the public what becoming a charter city entails and enables. The City Council has previously expressed a desire to launch a community engagement process to inform the public about what becoming a charter city would entail and receive feedback prior to placing a charter measure on the ballot.

Many cities that have recently become a charter city and adopted a RPTT have hired a communications consultant to assist with educating the public regarding the proposed measure. Many cities have also hired a pollster to gauge community interest regarding the issue. To be effective, if the City Council desires to retain a communication consultant and/or a pollster, it should do so soon. Polling would need to be conducted during the spring in order for the Council to consider the result before deciding whether or not to place the proposed measure on the ballot.

Since the draft charter would prohibit the City from exercising any of the powers of a charter city except for the enactment of an increased RPTT, becoming a charter city and the transfer tax are inextricably linked. Therefore, the Council may want to consider some initial preliminary decisions about the RPTT, such as the rate. This is only an initial decision, and the Council will have the authority to make changes prior to submitting the measure to the voters based on feedback received during the engagement process and further review.

DIRECTION

Staff seeks direction from the City Council on the following:

1. Does the Council want to make preliminary decisions regarding the RPTT prior to starting the public engagement process?
 - What should the base rate be?
 - If the Council wants any tiers, what should the tiers be?
 - If the Council wants any rebates, what should the scope of the rebates be?
2. Should the City retain a communications professional and/or pollster?
3. What public engagement should the City conduct?
 - Should this be deferred until a communications consultant is retained?

FISCAL IMPACT

If the City Council decides to proceed with pursuing a measure to become a charter city and impose an increased RPTT, there will be a fiscal impact related to preparing a proposed charter measure and undertaking the process to place the measure on the ballot. The exact amount of the impact will depend on what type of community engagement the Council desires and whether a consultant and/or pollster is retained. Any process will involve staff time, including the City Attorney's Office. In addition, there will be costs to place the measure on the ballot. If an increased RPTT is approved by the voters as part of a charter city measure, it is anticipated that the additional revenue from the first year of the increased RPTT will greatly exceed these costs. However, it is uncertain whether voters will approve an increased RPTT.

The City is currently in solid financial condition. It has assets (primarily capital assets and cash reserves) and liabilities (primarily employee retirement-related costs) common to similar California cities. It has relatively stable General Fund revenues that support the City's basic public services. As a result of savings and one-time revenues, the City has assembled a significant General Fund reserve and pension liability reserve, and has minimal long-term debt.

The City has been able to maintain a balanced budget over the past few years due to modestly growing revenues and limiting expenditures to providing basic services. The City's finance staff forecasts that, absent any major change to the economy, the City's budget will remain balanced over the next five years if the City continues to operate in its current fashion. The balanced budget is in part due to the pension liability reserve and employee cost sharing offsetting increasing pension costs.

The City implemented its current basic service expenditure model as a result of the Great Recession of 2008, which was followed by the State's dissolution of redevelopment agencies in 2011. This model allowed the City to provide essential services. However, the model defers investment in capital assets, business systems, and human capital. This underinvestment, while acceptable in the short run, is detrimental in the long run, as it will lead to the deterioration of assets and systems. As such, ideally, the City should increase investment in these assets and capabilities to amounts that will sustain critical functions over the long run. A RPTT is one option for raising additional revenue for increased investment.

Because a RPTT is a volatile revenue source, if a RPTT were enacted, the City would likely desire to create a policy to smooth expenditure of RPTT revenues.

ATTACHMENTS

A – Draft Charter

B – November 5 Staff Report

DRAFT
CHARTER OF THE CITY OF PINOLE

ARTICLE I. CONTINUATION OF BOUNDARIES

Section 101. Incorporation and Succession.

The municipal corporation now existing and known as the City of Pinole, hereafter referred to as “the City”, shall remain and continue to be a municipal body corporate and politic in name, in fact, and in law. The boundaries of the City shall continue as established prior to this Charter taking effect until changed in the manner authorized by law. The City shall remain vested with and shall continue to own, have, possess, control, and enjoy all property rights and rights of action of every nature and description owned, had, possessed, controlled, or enjoyed by it at the time this Charter takes effect. The City shall be subject to all debts, obligations, and liabilities of the City at the time this Charter takes effect.

ARTICLE II. FORM OF GOVERNMENT AND EXISTING LAW

Section 201. Form of Government.

The government of the City shall continue to be the Council-Manager form of government as established by the Pinole Municipal Code at the time that this Charter takes effect and by the laws of the State of California. The Council-Manager form of government of the City may be changed in the same ways and using the same procedures as a general law city.

Section 202. City Council, City Manager, and City Attorney.

- (a) The City Council shall establish the policy of the City. The City Manager shall carry out that policy.
- (b) The City Council shall appoint the City Manager.
- (c) The City Manager, as the chief administrative officer of the City, shall appoint all department heads other than the City Attorney and City Clerk. Involvement in administrative matters by the City Council or by any individual Councilmember shall occur only through the City Manager or pursuant to direction by the City Manager to members of the administrative staff.
- (d) The City Council shall appoint the City Attorney. The City Attorney may be an employee of the City or an independent contractor providing legal services pursuant to a contract.

Section 203. Continuation of Existing Local Laws.

All ordinances, codes, resolutions, regulations, rules, and portions thereof, in force at the time this Charter takes effect, and not in conflict or inconsistent herewith, shall continue in force until repealed, amended, changed, or superseded in the manner provided by this Charter and any other applicable laws.

ARTICLE III. POWERS OF THE CITY

Section 301. Real Property Transfer Tax

The City may exercise the powers of a charter city to impose a tax on the conveyance of real property, based upon the price paid for the real property ("real property transfer tax"). Any real property transfer tax imposed by the City shall be in addition to any similar tax authorized by the general laws of the State of California.

Section 302. General State Laws.

The City shall not exercise any of the powers of a charter city except as expressly provided for herein. Except as provided in this Charter, the powers of the City shall otherwise be constrained by, subject to, and governed by the general laws of the State as now and hereafter existing relating to cities organized under such general laws.

Section 303. Voter Approval

This Charter shall not be amended except by the electorate of the City of Pinole at a municipal election in accordance with the applicable laws of the State.

3459348.3



CITY COUNCIL REPORT

9A

DATE: NOVEMBER 5, 2019

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: ERIC S. CASHER, CITY ATTORNEY

COPY: MICHELLE FITZER, CITY MANAGER

SUBJECT: PROVIDE DIRECTION ON PROCESS AND ACTIVITIES RELATED TO BECOMING A CHARTER CITY

RECOMMENDATION

Staff recommends that the City Council provide direction on how the City Council would like to proceed with activities related to becoming a charter city, in particular, what process the City Council wants to use for developing a proposed charter.

BACKGROUND

Cities in California are organized as either general law cities or charter cities. General law cities derive their powers from general laws enacted by the Legislature, while charter cities derive their powers from the California Constitution and their own charters. Thus, general law cities are bound by the state's general laws. In contrast, the "home rule provision" of the California Constitution provides that charter cities have full authority over municipal affairs, and are only subject to laws regarding matters of statewide concern. A significant authority possessed by charter cities is the authority to impose a real property transfer tax ("RPTT") at an increased rate. Becoming a charter city requires approval by a majority of voters, as does any increase in the RPTT.

The City of Pinole is currently a general law city. At the City Council's meeting on March 19, 2019, the City Attorney's Office provided a general overview of the nature of charter cities and the process for becoming a charter city. The Council expressed interest in continuing to consider becoming a charter city, and directed that the matter be brought back for further discussion in the future.

DISCUSSION

A. Charter City vs. General Law City

A general law city has the authority to act locally, but its acts must be consistent with all general laws adopted by the Legislature. In contrast, a charter city is only required to act consistent with state laws regarding matters of statewide concern. A

charter city may use its “home rule” authority to adopt laws regarding “municipal affairs” that vary from state laws. A city’s charter defines the structure of the city’s government and the scope of a city’s authority over municipal affairs. Some cities have very detailed charters, while other cities have charters that are limited in scope. Some charters specify that the city may exercise all powers a charter city has unless a power is expressly excluded by the charter, while other charters specify that a city may only authorize a power if expressly authorized by the charter. A city’s charter must be approved by the voters, as must any amendment to the charter.

There is no constitutional or statutory “list” of municipal affairs. Courts, not the Legislature, decide on a case-by-case basis what constitutes a municipal affair. However, what constitutes a municipal affair can change over time with changes in case law. Areas that the courts have said constitute municipal affairs include: the form of city government; local elections, including qualifications for office and public funding of campaigns; some aspects of zoning and land use; the process of contracting for public works; and the scope of authority related to fines, taxes and assessments.

A significant authority possessed by charter cities is the authority to impose a real property transfer tax (“RPTT”) at an increased rate. A RPTT is a tax imposed on the deed, instrument, or writing by which interests in real property are transferred. Under the California Revenue and Taxation Code, general law cities may impose a RPTT of no more than \$.55 per \$1,000 of value on the property transferred (the County may also impose a RPTT equal to this rate). Pinole currently has a RPTT of the maximum allowed for general law cities of \$.55 per \$1,000 of value.

Charter law cities are not subject to state law regarding RPTTs because RPTTs are deemed municipal affairs. As a result, charter cities may impose RPTTs at a rate higher than the maximum statutory rate of \$.055 per \$1,000.

Below is a chart of the base RPTT rates applied in neighboring charter cities.

City	Tax (per thousand dollars)
Alameda	\$12.00
Albany	\$11.50
Berkeley	\$15.00
El Cerrito	12.00
Emeryville	\$12.00
Oakland	\$15.00
Piedmont	\$13.00
Richmond	\$7.00
Median	12.00

Over the last 10 years, Pinole has received an average of \$71,754 from the RPTT, with a low of \$44,699 in 2009-10 and a high of \$98,593 in 2016-17. Adjusting the RPTT rate to \$12 per \$1,000 would have produced a 10-year average of

\$1,565,543, with a low of \$975,251 in 2009-10. The City can choose to adopt tiered RPTT rates, with higher rates for property valued at over a certain amount, and provide RPTT rebates for certain improvements performed by the property owner prior to sale. Under state law and the California Constitution, cities cannot impose, increase or extend any tax unless the tax is approved by the voters. Accordingly, the increased RPTT would require a vote of the electorate.

B. Process of Becoming Charter City

Becoming a charter city requires approval by a majority of voters. The City Council may, on its own motion, propose a new charter and submit it directly to the voters for approval at the next established statewide general election. The City Council must vote to submit the proposed charter to the voters at least 88 days before the election. Prior to approving submission of the charter to the voters, the City Council must hold at least two public hearings on the proposal of the charter and the content of the charter. There are special noticing requirements for these hearings. In order for the City Council to place a charter measure on the ballot for November 3, 2020, the City would need to hold the first public hearing on a proposed charter at the first meeting in May 2020.

A proposed charter may be developed in any of the following ways:

1. *Council Developed*

The City Council can develop the proposed charter itself and then submit it to the voters for consideration. This could be done either through a special meeting or through workshops prior to the start of regular council meetings.

2. *Council Subcommittee Developed*

The City Council can appoint a subcommittee of 2 Councilmembers to draft a proposed charter. The Council can appoint a subcommittee at an upcoming meeting, and then the subcommittee will likely need to meet 2-3 times.

3. *Community Committee Developed*

The City Council can appoint a larger community committee consisting of up to 2 Councilmembers and members of the community to draft a proposed charter. In creating the subcommittee, the City Council can choose the number of members and decide whether there should be any special requirements regarding the makeup of the committee. For example, some cities have decided that one member of the committee should be an employee representative. If the Council desires to appoint a committee, staff can prepare a proposed process for selecting the committee to be approved at an upcoming meeting. The recruitment and application process will likely take an additional few weeks before the Council will be able to formally appoint the committee. The community committee will likely need to meet 3-5 times

Regardless of what method the Council uses to develop a draft charter, the proposed charter must be approved by the City Council before it is submitted to the voters. The Council will have the opportunity at that time to make any changes to the proposed charter, if desired. Staff, including the City Attorney's Office, will assist the Council and/or any appointed committee in preparing the proposed charter.

C. Polling

Most local jurisdictions that have become a charter city recently have conducted polling to gauge community interest before placing the measure on the ballot. The City Council can direct staff to retain a pollster to conduct polling regarding a potential charter city measure. This polling can be done now, or later once the content of the proposed charter is established. In addition, because becoming a charter city is a complicated issue that can easily cause confusion, many other jurisdictions have retained communications professionals to help explain to the public what becoming a charter city entails. At the City Council's direction, a communications consultant can be retained later in the process.

FISCAL IMPACT

If the City Council decides to proceed with pursuing a measure to become a charter city, there will be a fiscal impact related to preparing a proposed charter and undertaking the process to place the measure on the ballot. The exact amount of the impact will depend on what process is used for preparing the draft charter. Any process will involve staff time, including the City Attorney's Office. In addition, there will be costs to place the measure on the ballot. If an increased RPTT is approved by the voters as part of a charter city measure, the additional revenue from the first year of the increased RPTT will greatly exceed these costs. However, it is uncertain whether voters will approve an increased RPTT.

ATTACHMENTS

None

Special Meeting: Charter City & RPPT

Pinole City Council
February 25, 2020



Previous Meetings

- March 19, 2019: initial presentation on becoming a charter city, including a discussion of the potential powers of a charter city
- November 5, 2019: preliminarily decision to move forward with becoming a charter city
- January 21, 2020: review of initial draft charter and direction to hold a special meeting for more complete discussion

Tonight's Discussion

- I. Review of Draft Charter
- II. Real Property Transfer Tax
- III. Schedule
- IV. Public Engagement
- V. Direction

Overview:

Authority in General Law vs. Charter City

A General Law City has the authority to act locally but its acts must be consistent with: the California Constitution, state statutes, and state administrative regulations.

A Charter City has the additional authority to adopt laws regarding "municipal affairs" that are inconsistent with state statutes, as long as they are still consistent with US and California Constitutions.

- This is known as “Home Rule”
- Authority also limited by charter itself

Initial Draft Charter

- A charter may be very detailed, or very broad, or somewhere in between
- Council previously directed that the proposed charter should be limited to authorizing the City to collect Real Property Transfer Tax
- Draft charter prohibits the City from exercising any other charter city powers

Initial Draft Charter

- Maintains the current form of government
 - Would not create a strong mayor
- Municipal Code would be maintained
- City would operate the same as a general law city, except for RPPT
- Any change to the charter requires voter approval
 - Voters could add additional powers in future

Real Property Transfer Tax (RPTT)

- General law cities may charge a RPTT of up to \$1.10 per \$1,000 of value, which is split with the County
- Pinole currently receives \$0.55 cents per \$1,000 of value
- RPTT is paid once, only upon the sale of the property for value (i.e. does not apply to inherited property)
 - Not an annual tax

Real Property Transfer Tax (RPTT)

- RPTT is usually a general tax that can be used for any purpose
 - Requires simple majority to pass
- Can be structured a special tax with proceeds used for a specific purpose
 - Would require 2/3 voter approval
- No noticeable impact on home prices or housing market in other cities that have adopted transfer taxes

Local RPTT

City	Base Tax (per thousand dollars)
Alameda	\$12.00
Albany	\$11.50
Berkeley	\$15.00
El Cerrito	\$12.00
Emeryville	\$12.00
Hayward	\$8.50
Oakland	\$15.00
Piedmont	\$13.00
Richmond	\$7.00
San Leandro	\$6.00
Median	12.00

- These are the cities in Alameda and Contra Costa Counties with a RPTT

Tiered Rates

- RPTT may include tiered rates, with tax increasing for more expensive properties
 - Can create confusion with voters
- Berkeley charges:
 - \$15 for \$0-to \$1.5 million
 - \$25 for >\$1.5 million
- Oakland charges:
 - \$10 for up to \$300,000
 - \$15 for \$300,000 - \$2 million
 - \$17.5 for \$2-\$5 million
 - \$25 for over \$5 million

Rebates

- RPTT can include rebates, whereby property owner is eligible for refund of part of RPTT to cover certain repairs
- El Cerrito will rebate up to 1/3 of transfer tax for cost of seismic upgrades and energy efficiency upgrades
 - Repairs must be made within one year of sale (before or after)
- Creates administrative burden for City

RPTT in Pinole

- Over last ten years, Pinole has received an average of \$76,310 under the existing RPTT
- Low of \$44,699 in 2009-10, and a high of \$98,593 in 2016-17
- If City adopts its own RPTT, it can collect the RPTT itself or contract with County
 - County will charge 3%
 - Significant administrative burden to self-collection

Potential Rates

RPTT	10-Year Low	10-Year Average
\$6.00	\$473,000	\$807,498
\$8.00	\$630,668	\$1,076,664
\$10.00	\$788,335	\$1,345,830
\$12.00	\$946,000	\$1,614,996
\$14.00	\$1,103,669	\$1,884,163
\$16.00	\$1,261,336	\$2,153,329

*Amounts are approximates and include 3% administrative fee

Budget Outlook

City currently in solid financial condition

- Assets and liabilities common to similar cities
 - Primarily capital assets and cash reserves, and employee retirement-related liabilities
- Relatively stable General Fund revenues that support the City's public services at a basic level
- Significant General Fund reserve and pension liability reserve from savings and one-time revenues
- Minimal long-term debt

Budget Outlook

City has a balanced budget

Budget forecasted to remain balanced over the next four years if City continues to operate in its current fashion (basic level of public services)

- Balanced budget due in part to the pension liability reserve and employee pension cost sharing
- Major change in economy would require use of General Fund reserve

Budget Outlook

CITY OF PINOLE GENERAL FUND FORECAST

Including Measure S 2006 and 2014, Excluding Dispatch (\$ Millions)

	2020-21	2021-22	2022-23	2023-24
SOURCES				
Revenue	\$17.9	\$18.2	\$18.5	\$18.9
Pension Reserve Transfer In	\$1.5	\$1.9	\$2.3	\$2.5
Total Sources	\$19.3	\$20.1	\$20.8	\$21.4
EXPENDITURES				
Total Expenditures	\$19.4	\$20.1	\$20.7	\$21.5
SURPLUS/DEFICIT	\$0.0	\$0.0	\$0.1	\$0.0
ENDING FUND BALANCES				
GF Balance	\$4.8	\$4.8	\$4.7	\$4.4
Measure S 2006 and 2014 Balances	\$4.7	\$4.7	\$5.0	\$5.2
ENDING RESERVE BALANCES				
GF Reserve Balance	\$7.6	\$7.8	\$8.0	\$8.3
Pension Reserve Fund Balance	\$14.8	\$12.9	\$10.7	\$8.1

Budget Outlook

City implemented current basic service expenditure model as a result of the Great Recession

- Followed by the State's dissolution of redevelopment in 2011

Current model allows the City to provide essential services, but defers some investment in capital assets, business systems, and human capital

- This deferral of investment will lead to the deterioration of some assets and systems in the long run

Budget Outlook

Ideally, City should increase investment in capital assets, business systems, and human capital to amounts that will sustain critical functions over the long run

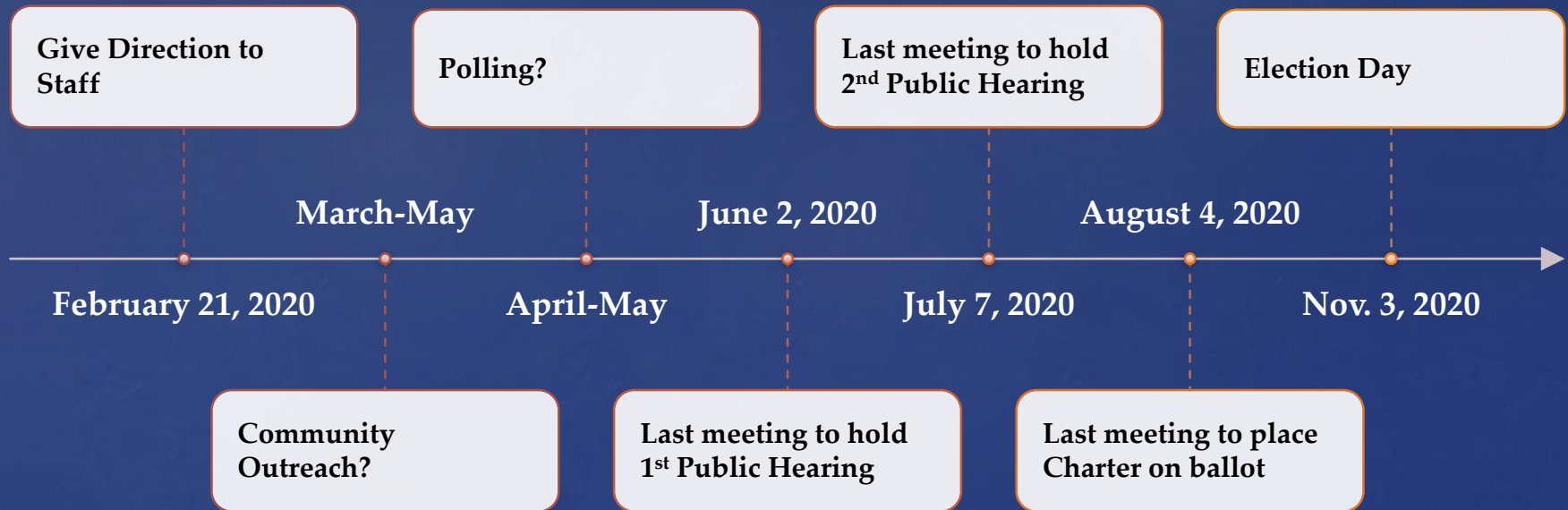
RPTT is one option for raising additional revenue for increased investment

- Because RPTT is volatile revenue source, City would likely desire to create a policy to smooth expenditure of RPTT revenues

Process for Submitting Charter to Voters

- Before putting a charter measure on the ballot Council must hold two public hearings
- Hearings must be at least 30 days apart, with 21 days' notice of hearings required
- Can't put charter on ballot until at least 21 days after second public hearing
- First public hearing would have to occur in June 2020 to be placed on November 2020 ballot

Calendar



Community Engagement

- Becoming a charter city and RPTT can be a confusing topic
- Engagement process would provide opportunity to inform public about what becoming a charter city means, and receive feedback from the community before measure is placed on ballot

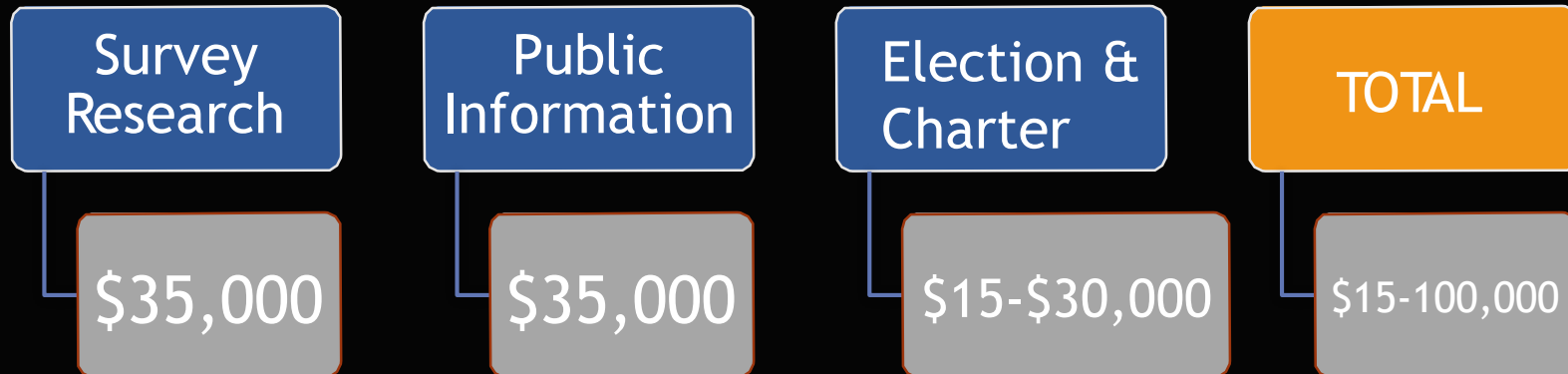
Possible Examples of Community Engagement

- Conducting official town halls
- Mailing information and FAQs to residents
- Building a page on the website
- Outreach to realtor groups and other interested parties
- Conduct polling to gauge community interest
- Hiring a communication professional to assist with outreach and education

Polling & Consultant

- Cities that have recently undertaken charter city measures have retained consultants to help City inform and educate public about measure
- Consultant usually retains a pollster, but City could perform polling without retaining consultant
- Polling could be done in Spring to help Council decide whether to place measure on ballot

Preliminary Cost Estimates



Scope of RPTT

- Charter City Measure & RPTT are closely linked and would be part of same measure on the ballot
- Community engagement process and any potential polling may be more effective if the Council has made preliminary decisions regarding scope of the RPTT
 - Base Rate
 - Tiered Rates
 - Rebates

Requesting Direction On

1. Preliminary decisions regarding the RPTT?
 - Base rate
 - Any tiers and/or rebates?
2. Should the City retain a pollster and/or communications professional?
3. What outreach and engagement should the City undertake?
 - Wait for consultant?