

Office of the City Manager

ACTION CALENDAR

October 14, 2003

To: Honorable Mayor and
Members of the City Council

From: Weldon Rucker, City Manager

Subject: Process to Call a Special Election for March 2, 2004

RECOMMENDATION

That Council 1) decide which, if any charter amendments and/or other measures it desires to place on the March ballot; 2) give further direction to the City Manager on specific measures to be placed on the ballot and request staff return with ballot language by November 4, 2003; and 3) give direction to the City Manager and City Clerk to prepare resolutions calling for the March 2, 2004 election including making findings of urgent necessity, if necessary, and requesting consolidation with Alameda County.

FISCAL IMPACTS OF RECOMMENDATION

The City must pay actual costs of printing and translation of ballot materials including the measure text and arguments in three languages. This cost varies depending on the length of the measure, and is estimated at \$10,000 for each measure.

Alameda County also bills each city for its pro rata share of printing the ballots and administering the election. This cost varies depending on the number of jurisdictions participating in any given election. The more jurisdictions that consolidate for any given election, the more this cost can be shared among jurisdictions. The Alameda County Registrar of Voters has provided the City Clerk with an estimate of \$1 per registered voter for a March 2004 election and \$ 0.50 per registered voter for a November 2004 election. However these are merely estimates. Based on these estimates the cost for placing measures on the March 2004 ballot would be approximately \$80,000 plus the cost of each measure.

The City Clerk Department's budget for FY 2004/FY 2005 provides funding for a November 2, 2004 General Municipal Election and a November 30, 2004 Runoff Election(s). No funding has been provided for a March 2, 2004 Election.

CURRENT SITUATION AND ITS EFFECTS

The Berkeley Charter and State election laws establish deadlines and certain actions that must be taken prior to placing any Council-sponsored measure or citizen initiative on the ballot for any election. At present there are no citizen initiatives circulating and it is unlikely that any petition could be circulated and filed in time to meet the deadlines for the March 2004 election.

At tonight's meeting Council is being provided information related to several possible ballot measures and is being asked to decide whether or not any of these measures should be placed on the March 2004 ballot. A special meeting has been scheduled for 5:00 p.m. on October 21, 2003 to continue discussion on any outstanding issues. Staff will prepare ballot measure language based on Council direction at the meetings of October 14th and October 21st and will present the ballot text for Council's review at the meeting of November 4th. Council must vote on calling the election and approval of all ballot measures no later than November 25, 2003 in order to make the legal deadlines for placing any measure on the March 2004 ballot. Charter amendments related to changing the date of runoff elections and changing requirements for nomination to office would need to be placed on the March 2004 ballot to be effective for the November 2, 2004 General Municipal Election. The Council must vote on the measures for the November 2004 election by July 20, 2004.

BACKGROUND

Berkeley Charter Article III, Section 4(c) requires that **a special municipal election**, except in the case of a recall, vacancy in office, or successful 10% initiative, **may only be held upon determination by a vote of two-thirds of the Council that an urgent necessity exists**. Conducting an election on a date other than the City's general municipal election date in November of even-numbered years qualifies as a "special" municipal election under the City's Charter. The City Attorney has issued opinions interpreting this section.

One City Attorney opinion concluded that the specialized finding by a two-thirds vote is not required if the Council has a mandatory duty to place an initiative or referendum on the special election ballot under Article XIII of the charter because the requisite number of signatures has been submitted. The second City Attorney opinion explains that the state has preempted the process for amending charters. The opinion concludes that since a charter can be amended at both general and special elections, the Council need not make specialized findings by a two-thirds vote in order to call a special election to amend the charter. The City Attorney's opinion goes on to conclude that once a special election has been called, pursuant to state law, other matters may be added to the ballot without making any additional findings.

The charter contains one additional limitation – ordinances adopted by the voters may only be amended at a November general municipal election under Article XIII Section 92(9). Thus, for example, the Berkeley Election Reform Act may only be amended at a general municipal election (e.g. in November 2004) unless it is amended under the double green light provisions of the ordinance, which allow its amendment upon a two-thirds vote of both the Fair Campaign Practices Commission and the Council, after a public hearing. Similarly, special taxes adopted by the electorate can only be amended at the November 2004 general municipal election whereas new taxes may be placed upon either the March or November 2004 ballot.

In conclusion, for a March 2004 ballot, a specialized finding by a two-thirds vote will be required to call a special election, unless the Council has already determined to call the special election to consider charter amendments. In such case additional measures may be added without a further finding or super majority vote.

RATIONALE FOR RECOMMENDATION

In order to provide Council with sufficient time to discuss the substance of proposed measures and to allow sufficient time for the preparation of the title, text, financial implication and City Attorney analysis, Council should start discussion on October 14 of the proposed ballot measures to be considered at the March 2, 2004 Election and give staff direction at the October 14 Council meeting to come back with proposed ballot language no later than November 4, 2003.

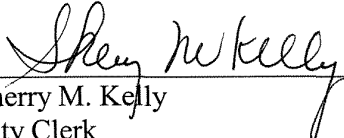
ALTERNATIVE ACTIONS TO BE CONSIDERED

If Council decides to delay placing any measures on the March 2004 ballot, it should consider starting discussion on any measures to be placed on the November 2, 2004 ballot by March 2004 and will need to take all final actions no later than July 20, 2004.

CONTACT PERSON

Sherry M. Kelly, City Clerk, 981-6900

Approved:



Sherry M. Kelly
City Clerk

2004

- 2/2 First day to issue **Absentee Ballots.** (EC 3001)
- 2/16 **Deadline for Voter Registration** (EC 2102)
- 2/24 **Deadline for issuing Absentee Ballots.** (EC 3001)
- 3/2 **Election Day**
- 3/23 Tentative date for Council to confirm certified Election Results. Ordinance effective 10 days after confirmation. (EC 9217, 10262, 10263, 15372)