Resolution No. 9189

Resolution of the Council of the City of Palo Alto Calling a Special Election for November 8, 2011 Submitting to the Electorate for Special Election a Measure to Eliminate the Binding Interest Arbitration Requirement for Disputes with Public Safety Employees by Repealing Article V of the City Charter

WHEREAS, Article IX , section 1 of the Charter of the City of Palo Alto authorizes the City Council to propose and submit Charter amendments to the voters of the City for approval at any established municipal election date; and

WHEREAS, Article V of the Charter currently requires compulsory arbitration, commonly referred to as binding interest arbitration, as the sole method for resolving disputes with Fire and Police Department employees over all matters involving wages, hours and working conditions; and

WHEREAS, the Santa Clara County Civil Grand Jury issued a report in May 2010 concluding that cities must rein in unsustainable employee costs, and finding that binding arbitration limits the ability of city leaders to craft solutions that work for the City's budget, resulting in wage and benefit decisions that have been greater than the growth in basic revenue sources; and

WHEREAS, local agencies, including the City of Palo Alto, are currently facing difficult challenges regarding matters affecting the financial viability of local government, and the Council finds and declares that ensuring the City's financial viability over the long term is critical to the quality of life in and services available to the residents and businesses of the City of Palo Alto; and

WHEREAS, maintaining an effective, efficient and high quality level of City services depends on policies and financial decisions directed toward ensuring the financial stability of the City on a short and long term basis; and

WHEREAS, labor costs are a substantial component of the City's finances, and high costs can affect the City's ability to preserve and enhance services; and

WHEREAS, the voters and residents of Palo Alto rely on the City Council to make financial decisions considering both short-term economic impacts as well as the consequences for the City's long term financial viability; and

WHEREAS, when the City and represented public safety employee organizations are not able to reach agreement on collective bargaining disputes, Article V of the City Charter restricts the ability of the City Council to make decisions on financial matters because it requires that a third party arbitrator make a final decision in any dispute affecting wages, hours and working conditions; and

WHEREAS, because the City Council is duly elected by the electorate of the City of Palo Alto to exercise all powers necessary and appropriate to a municipal corporation and the general welfare of its inhabitants, the Council finds and declares that it is in the best interest of the City, consistent with principles of sound management and fiscal responsibility, and to the fullest extent permitted by State law, to vest in the duly elected City Council final decision making authority over and management of the City's agreements governing wages, hours or terms and conditions of City employment; and

WHEREAS, in order to ensure that the City has the means to make decisions affecting the City's short and long term financial health and the flexibility to craft solutions for managing labor costs, the City Council finds that it is in the best interest of the City to propose a Charter Amendment to repeal Article V of the Charter in its entirety, which, if approved, would eliminate the binding arbitration requirement for public safety employee groups and make the dispute resolution procedures under State law applicable to the City's public safety employees as well as all other represented employee groups; and

WHEREAS, elections will be held on November 8, 2011, in certain school districts and certain special districts in Santa Clara County; and

WHEREAS, pursuant to Education Code section 5342 and Part 3 of Division 10 of the Elections Code commencing at section 10400, such elections may be partially or completely consolidated.

NOW, THEREFORE, the City Council of the City of Palo Alto does hereby RESOLVE as follows:

SECTION 1. Special Election. Pursuant to Elections Code sections 1405 and 9255 there is called and ordered to be held in the City of Palo Alto, California, on Tuesday, November 8, 2011 a special municipal election. Pursuant to Article IX of the Charter of the City of Palo Alto, this Council orders the following question to be submitted to the voters at the Election:

CITY OF PALO ALTO MEASURE _____:

> To provide the City with greater control over employee costs, staffing and services and allow the City Council to make final decisions regarding all matters related to public safety employee compensation, benefits, and working conditions, shall Article V of the Palo Alto City Charter be repealed in its entirety, eliminating the requirement that public safety employee disputes be resolved through binding interest arbitration?

For the Amendment ____
Against the Amendment ____

SECTION 2. Adoption of Measure. If a majority of qualified electors voting on such measure shall vote in favor of City of Palo Alto Measure "___", it shall be deemed ratified and the following provisions shown in strikethrough shall be repealed and deleted from the City Charter:

~~Article V. Compulsory Arbitration for Fire and Police Department Employee Disputes~~

~~Sec. 1. Declaration of policy.~~

~~It is hereby declared to be the policy of the city of Palo Alto that strikes by firefighters and police officers are not in the public interest and should be prohibited, and that a method should be adopted for peacefully and equitably resolving disputes that might otherwise lead to such strikes.~~

~~Sec. 2. Prohibition against strikes.~~

~~If any firefighter or peace officer employed by the city of Palo Alto wilfully engages in a strike against the city, said employee shall be dismissed from his or her employment and may not be reinstated or returned to city employment except as a new employee. No officer, board, council or commission shall have the power to grant amnesty to any employee charged with engaging in a strike against the city.~~

~~Sec. 3. Obligation to negotiate in good faith.~~

~~The city, through its duly authorized representatives, shall negotiate in good faith with the recognized fire and police department employee organizations on all matters relating to the wages, hours, and other terms and conditions of city employment, including the establishment of procedures for the resolution of grievances submitted by either employee organization over the interpretation or application of any negotiated agreement including a provision for binding arbitration of those grievances. Unless and until agreement is reached through negotiations between the city and the recognized employee organization for the fire or police department or a determination is made through the arbitration procedure hereinafter provided, no existing benefit or condition of employment for the members of the fire department or police department bargaining unit shall be eliminated or changed.~~

~~Sec. 4. Impasse resolution procedures.~~

~~All disputes or controversies pertaining to wages, hours, or terms and conditions of employment which remain unresolved after good faith negotiations between the city and either the fire or police department employee organization shall be submitted to a three member board of arbitrators upon the declaration of an impasse by the city or by the recognized employee organization involved in the dispute.~~

~~Representatives designated by the city and representatives of the recognized employee organization involved in the dispute, controversy or grievance shall each select one arbitrator to the board of arbitrators within three days after either party has notified the other, in writing, that it desires to proceed to arbitration. The third member of the arbitration board shall be selected by agreement between the two arbitrators selected by the city and the employee organization, and shall serve as the neutral arbitrator and chairman of the board. In the event that the arbitrators selected by the city and the employee organization cannot agree upon the selection of the third arbitrator within ten days from the date that either party has notified the other that it has declared an impasse, then either party may request the State of California Conciliation Service to provide a list of seven persons who are qualified and experienced as labor arbitrators. If the arbitrators selected by the city and the employee organization cannot agree within three days after receipt of such list on one of seven to act as the third arbitrator, they shall alternately strike names from the list of nominees until only one name remains and that person shall then become the third arbitrator and chairman of the arbitration board.~~

~~Any arbitration convened pursuant to this article shall be conducted in conformance with, subject to, and governed by Title 9 of Part 3 of the California Code of Civil Procedure.~~

~~At the conclusion of the arbitration hearings, the arbitration board shall direct each of the parties to submit, within such time limit as the board may establish, a last offer of settlement on each of the issues in dispute. The arbitration board shall decide each issue by majority vote by selecting whichever last offer of settlement on that issue it finds most nearly conforms with those factors traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of public and private employment, including, but not limited to, changes in the average consumer price index for goods and services, the wages, hours, and other terms and~~

~~conditions of employment of other employees performing similar services, and the financial condition of the city and its ability to meet the cost of the award.~~

~~After reaching a decision, the arbitration board shall mail or otherwise deliver a true copy of its decision to the parties. The decision of the arbitration board shall not be publicly disclosed and shall not be binding until ten days after it is delivered to the parties. During that ten-day period the parties may meet privately, attempt to resolve their differences, and by mutual agreement amend or modify any of the decisions of the arbitration board. At the conclusion of the ten-day period, which may be extended by mutual agreement between the parties, the decision of the arbitration board together with any amendments or modifications agreed to by the parties shall be publicly disclosed and shall be binding upon the parties. The city and the recognized employee organization shall take whatever action is necessary to carry out and effectuate the award.~~

~~The expense of any arbitration convened pursuant to this article, including the fee for the services of the chairman of the arbitration board, shall be borne equally by the parties. All other expenses which the parties may incur individually are to be borne by the party incurring such expenses.~~

~~(Added by amendment filed with the city clerk, July 17, 1978)~~

SECTION 3. Notice of Election. Notice of the time and place of holding the election is hereby given, and the City Clerk is authorized, instructed and directed to give further or additional notice of the election in time, form, and manner as required by law.

SECTION 4. Impartial Analysis. Pursuant to California Elections Code section 9280, the City Council hereby directs the City Clerk to transmit a copy of the measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure, and transmit such impartial analysis to the City Clerk on or before August 23, 2011.

SECTION 5. Ballot Arguments. Pursuant to Elections Code section 9286 et seq., August 16, 2011 at 5:30 p.m. shall be the deadline for submission of arguments in favor of, and arguments against, any local measures on the ballot. If more than one argument for and/or against is received, the priorities established by Elections Code section 9287 shall control.

SECTION 6. Rebuttal Arguments. The provisions of Elections Code section 9285 shall control the submission of any rebuttal arguments. The deadline for filing rebuttal arguments shall be August 23, 2011.

SECTION 7. Effective Date. If a majority of those voting in the election on November 8, 2011 vote for the amendment to repeal Article V of the City Charter, that repeal shall be effective upon certification and filing with the Secretary of State, and shall apply to resolution of all impasses after that date, regardless of when the impasse arose.

SECTION 8. Consolidation Request. The Council of the City of Palo Alto requests the Governing Body of any such other political subdivision, or any officers otherwise authorized by law, to partially or completely consolidate such elections and to further provide that the canvass be made by any body or official authorized by law to canvass the returns of the election, except that in accordance with Article III, section 4, of the Palo Alto Charter, the City Council must meet and declare the results of said elections; and that this City Council consents to such consolidation.

SECTION 9. Request for County Services. Pursuant to section 10002 of the California Elections Code, the Council of the City of Palo Alto hereby requests the Board of Supervisors of Santa Clara County to permit the Registrar of Voters to render services to the City of Palo Alto relating to the conduct of Palo Alto's General Municipal and Special Elections which are called to be held on Tuesday, November 8, 2011.

The services shall be of the type normally performed by the Registrar of Voters in assisting the clerks of municipalities in the conduct of elections including, but not limited to, checking registrations, mailing ballots, hiring election officers and arranging for polling places, receiving absent voter ballot applications, mailing and receiving absent voter ballots and opening and counting same, providing and distributing election supplies, and furnishing voting machines.

Subject to approval of the Board of Supervisors of Santa Clara County of the foregoing request, the City Clerk is hereby authorized to take all necessary actions to engage the services of the Registrar of Voters of the County of Santa Clara to aid in the conduct of said elections including canvassing the returns of said election. Further, the Director of Administrative Services is authorized and directed to pay the cost of said services provided that no payment shall be made for services which the Registrar of Voters is otherwise required by law to perform.

SECTION 10. Transmittal of Resolution. The City Clerk is directed to submit a certified copy of this resolution to the Board of Supervisors of the County of Santa Clara and to the Registrar of Voters and take all other actions necessary in order to facilitate the Special Election in the timeframe specified herein and comply with the applicable provisions of the Elections Code, City Charter, ordinances resolutions and policies related to the conduct of special municipal elections.

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SECTION 11. Exemption from CEQA. The Council finds that this ballot measure to repeal binding interest arbitration from the City Charter is not a project under the California Environmental Quality Act and, therefore, no environmental impact assessment is necessary.

INTRODUCED AND PASSED: July 18, 2011

AYES: ESPINOSA, HOLMAN, SCHARFF, SCHMID, YEH

NOES: BURT, KLEIN, PRICE, SHEPHERD

ABSENT:

ABSTENTIONS:

ATTEST:

Donna J. Grider

City Clerk

Mayor

APPROVED AS TO FORM:

City Attorney

APPROVED:

City Manager

Sandra J. R. Blanch

Director of Human Resources

Joseph Berrio for Lalo Perez

Director of Administrative Services