

Agenda Report

November 6, 2023

TO: Honorable Mayor and City Council

THROUGH: Finance/Audit Committee (October 23, 2023)

FROM: Department of Finance

SUBJECT: **DIRECTION TO STAFF TO PREPARE THE NECESSARY RESOLUTIONS TO SUBMIT PROPOSED CITY CHARTER AMENDMENTS FOR VOTER CONSIDERATION AT THE MARCH 5, 2024 PRIMARY MUNICIPAL ELECTION RELATED TO CONTRACTS AND PURCHASES, REVISION OF PROCUREMENT TERMS TO UTILIZE ALTERNATIVE PROJECT DELIVERY METHODS, THE GENERAL FUND TRANSFER FROM THE ELECTRIC UTILITY, AND VARIOUS OTHER CLERICAL CORRECTIONS AND AMENDMENTS**

RECOMMENDATION:

1. Find that the recommended action is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines per Section 15061(b)(3), the "Common Sense" exemption that CEQA only applies to projects that may have an effect on the environment;
2. Direct staff to prepare and return with resolutions required to place a Charter Amendment measure regarding contracts and purchases as described in the report to amend Section 1001 and 1002 of the Charter on the General Municipal Election of the City of Pasadena on Tuesday, March 5, 2024; and
3. Direct staff to prepare and return with resolutions required to place a Charter amendment measure regarding the General Fund transfer from the electric utility to Amend Article XIV, Section 1408 of the Charter, and various other clerical corrections/amendments to Articles VII, XII, and XVIII, as detailed in the agenda report, on the General Municipal Election of the City of Pasadena on Tuesday, March 5, 2024.

BACKGROUND:

As directed by the City Council on September 18, 2023, City staff have been working on technical charter amendments for City Council consideration that may be placed on the March 5, 2024, Primary Municipal Election ballot. This report encompasses

recommendations that fall within the technical charter amendment category and include revisions for procurement limits and methods, the General Fund Transfer from the Electric Utility, and clerical changes in various sections of the Charter.

Contracts and Purchases

Procurement Limit

Section 1001 of the City Charter establishes that all contracts of \$75,000 or more shall be approved by the City Council. The \$75,000 amount was increased from \$10,000 in 1984 as approved by voters. The \$75,000 amount was originally approved by the City Council for consideration in April 1983; however, that election was not conducted due to financial considerations. While the Charter does not provide for periodic or annual increases based on the Consumer Price Index (CPI), an analysis was completed to determine what the \$75,000 would equate to in today's dollars. Using the methodology of Chapter 1.08.060 of the Pasadena Municipal Code (PMC) for annual CPI adjustments, the \$75,000 would be equivalent to \$245,000 in 2023.

In consideration of the Charter and PMC requirements, staff conducted peer research and hired a consultant to make recommendations regarding the various limits to improve the overall procurement process and facilitate more contracts with Pasadena businesses. The following recommendation was approved by the Finance Committee:

Propose an amendment to increase the Charter Section 1001 threshold from \$75,000 to \$250,000. This increase is commensurate with the Consumer Price Index growth over time.

The Finance/Audit Committee expressed interest in language that would allow the amount to be increased over time by CPI; however, that was not included in the motion, but it is being presented as an option.

The proposed increase to the procurement limit is exclusive to procurements. Limits related to claims against the City, the Taxpayer Protection Act, or other non-procurement related authorizations in the Charter or PMC would not be affected by the proposed changes.

Alternative Project Delivery

In an effort to deliver capital improvement projects in the most efficient and cost-effective manner, staff is proposing to use alternative project delivery methods that are prevalent in the design and construction industry to help expedite project delivery, resulting in lower overall project cost and significant time savings. Section 1002 of the City Charter establishes that Competitive Bidding is required except as otherwise provided in the Charter. In addition to the exceptions enumerated in the Charter, a published (precedential) California Court of Appeal case involving the Plaza Pasadena underground parking garage held that cities may dispense with competitive bidding when it "would not produce an advantage" and advertisement for competitive bid would

be undesirable, impractical, or impossible. *Graydon v. Pasadena Redevelopment Agency*, 104 Cal. App. 3d 631 (1980).

Unless a project falls within one of the foregoing exceptions, the City must use competitive bidding. Because certain projects may not qualify for the enumerated exceptions or meet the requirements of the *Graydon* exception, Staff recommends a charter amendment for clarity and certainty on authorized procurement procedures, and to permit alternative procurement for all suitable projects. The Finance/Audit Committee reviewed and supported the proposal (Attachment A - Memo to Finance/Audit Committee) to amend the Charter to allow the City to use alternative procurement methods. Staff presented two types of alternative procurement methods, Design-Build and Construction Manager at Risk, as examples that have been authorized by the Public Contracts Code and that are used by other California municipalities and could be beneficial to Pasadena for delivery of large and complex capital projects in the future. Staff recommends that Section 1002 of the Charter be amended to enumerate an additional exception to competitive bidding that permits a City department to use alternative procurement methods.

This amendment is intended to authorize alternative procurement methods when appropriate and in accordance with rules and regulations as the City may later adopt. Staff proposes to recommend procedures for alternative procurement through a revision to the PMC should the voters approve the Charter amendment. The future ordinance revision would address administration of alternative procurement contracts including matters such as use of local labor and other requirements as appropriate.

Subsequent Updates to PMC

In addition to the procurement threshold and alternative procurement changes, the Finance/Audit Committee also received recommendations to clean-up the PMC language regarding how solicitations for procurement are advertised, how bids are submitted, and the requirement to encumber funds for all contracts. All the proposed PMC changes will return to the City Council in a future meeting.

General Fund Transfer

In November 2020, Pasadena voters passed Measure P, with over 85 percent voting to approve the measure. Measure P amended the Charter by reconfirming the General Fund Transfer (GFT) from the Light and Power Fund, limiting the maximum GFT, and simplifying the restrictions on the transfer. The maximum GFT was reduced from 16 percent to 12 percent of the electric utility's gross income. The entire 12 percent maximum GFT may now be used for any municipal purpose, so the Charter no longer has improvement/bond restrictions on a portion of the transfer.

Section 1408 of the City Charter establishes the transfer amount at 12 percent of gross income, and also provides that, "The amount to be so transferred from the Light and Power Fund shall not exceed the net income of the electric works as shown on the books of account of the power utility, after payment of the maintenance and operating expenses of such works, the expenses of conducting the power utility, depreciation, and

the principal, interest, and premiums, if any, upon the redemption thereof, of electric works revenue bonds.”

This language regarding the net income of the power utility does not reflect how net income is presently calculated under Generally Accepted Accounting Principles (GAAP), nor does it reflect how net income is presently reported in the City's and utility's annual financial reports. The language in the Charter specifically provides for the double counting of expenditures related to capital investments funded by bond proceeds. Both the depreciation on the capital investment and the principal on the debt results in a duplication of amounts and does not reflect GAAP.

The Finance/Audit Committee considered several options for a Charter amendment and approved the following recommendation:

Amend Charter Section 1408 - Remove the net income requirement and replace it with language that empowers the City Council to establish a process for determining if the transfer would be detrimental to the proper functioning and administration of the power utility.

Charter Section 1408 currently states, “If the City Council shall determine that the transfer of an amount less than twelve percent (12%) from the Light and Power Fund would not be detrimental to the proper functioning and administration of the power utility during the budget year under consideration, the City Council may so declare by resolution, and shall transfer a smaller amount.” Therefore, it is not necessary to add language establishing a process as the existing language provides for a resolution that can include a process or findings to clarify how the transfer was determined. Instead, the Finance/Audit Committee's recommendation can be implemented by simply removing the existing paragraph that describes the net income requirement.

Clerical Corrections/Amendments

In addition, staff is suggesting several corrections and minor amendments that are needed in the City Charter to ensure provisions contained in Articles VII, XII, and XVIII are accurate and clear. These proposed changes have been identified by staff and have occurred over time, during prior Charter Amendment changes. Following are the proposed changes:

- Article VII, Board of Education, Section 704, codify the removal of the term “primary election”, as the Board of Education now only conducts General Elections utilizing plurality voting.
- Article XII, Elections, Section 1204, add the words, “Except that,” changing the sentence to read, “Except that, any person who, at the primary election, shall receive a majority of the total vote cast for candidates for said office shall be elected to such office.”
- Article XVIII, Pasadena Fair and Equitable Housing Charter Amendment:
 - Section 1803(v), codify the replacement of “~~1811(k)(1)~~” with “1811(l)(1)”

- Section 1811(a), codify the replacement of "~~1810(j)~~" with "1811(k)"
- Section 1811(e)(4), codify the replacement of "~~1813(a)~~" with "1814(a)", "~~1810(b)~~" with "1811(c)", and "~~1810(p)~~" with "1811(q)"
- Section 1811(k), codify the replacement of "~~1810(b)~~" with "1811(c)", and "~~1810(a) and 1810(b)~~" with "1811(a) and 1811(b)"
- Section 1812(g), codify the replacement of "~~(e) and (f)~~" with "(d) and (e)"
- Section 1812(i), codify the replacement of "~~1817(f)~~" with "1817(g)"
- Section 1813(6)(A)(x), codify the replacement of "~~1810(k)(1)~~" with "1803(v) and 1811(l)(1)".

ENVIRONMENTAL ANALYSIS:

The action proposed herein has been determined to be exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061(b)(3), the "Common Sense" exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Such is the case with the proposed Charter amendment.

FISCAL IMPACT:

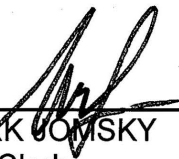
There is no direct fiscal impact the to the proposed changes; however, there will be a cost to place a charter amendment on the ballot. The adopted Fiscal Year 2024 Election Budget is \$515,000, and recent changes to the Los Angeles County's estimated election cost calculator may cause the City's direct costs to exceed the budgeted amount. Once cost factors are more fully known, the City Clerk's Office will return after January 2024 as part of a future budget clean-up report to request additional appropriation of funds for City Council consideration.

Respectfully submitted,




MATTHEW E. HAWKESWORTH
Director of Finance

Concurred by:



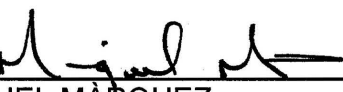
MARK TOMSKY
City Clerk

Concurred by:




TONY OLMOS
Director of Public Works

Approved by:



MIGUEL MARQUEZ
City Manager

Concurred by:



SIDNEY JACKSON
General Manager, Water and Power

Attachments (2)

Attachment A - Memo to Finance/Audit Committee: Alternative Project Delivery Methods
Attachment B - Section 1408 of the City Charter