

# ALBANY CALIFORNIA



**CITY OF ALBANY**  
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Agenda Date: April 1, 2024

## **MEMORANDUM**

To: Albany City Council Members

From: Councilmember Jordan

Re: Override City officer bonding requirement via the Charter

## **RECOMMENDATIONS**

That the Council direct staff to prepare a ballot measure replacing Charter section 3.03, which requires each City officer to post a bond prior to the start of work, with a section affirmatively stating bonds are not required, overriding California's Government Code.

## **BACKGROUND**

While seeking to understand the source of confusion regarding a nexus between the City's and the Albany Unified School District's bonding capacity, a search of the Charter on "bond" returned section 3.03 among the results. This section consists of the following:

"The Council shall determine which officers shall give bonds for the faithful performance of their official duties, and fix the amount of said bonds. Such officers, before entering upon their official duties, shall execute a bond to the City in the penal sum required, which bond shall include any other offices of which they may be ex-officio or by appointment incumbent. Said bonds shall be approved by the Council and filed with the City Clerk, except that of the City Clerk, which shall be filed with the Mayor."

The Charter does not define the City's officers. Chapter III, titled "Administrative," does include sections regarding the City Manager, City Clerk, City Treasurer, City Attorney, City Tax Collector, Chief of Police, and Chief of the Fire Department. Chapter 2, Article II, of the City's Municipal Code is titled "City Officers." It contains sections regarding the Administrative Officer, City Clerk, City Treasurer, City Engineer, City Attorney, and City Tax Collector. It is not clear if these positions in Code are the City's officers or if those also include the Police Chief and Chief of the Fire Department given the section regarding each in the Charter.

Searching the Municipal Code, I do not find it contains prior determination “which officers shall give bonds for the faithful performance of their official duties.”

Discussing the matter with the City Attorney, she noted Government Code section 36518 contains similar provision, albeit only for “city clerk and city treasurer.” California adopted the Government Code by way of Chapter 134 of the Statutes of California passed by the fifty-fifth session of the legislature in 1943. Section 3.03 of Albany’s Charter is undated. The oldest amendment year listed in Albany’s Charter is 1935. While the online version of the Charter is undated, as Albany was incorporated in 1908, it appears likely Charter Section 3.03 predates California’s adoption of the Government Code.

The City Attorney’s office, researching further back, found the earliest provision in State law akin to Charter section 3.03 was Section 853 of the Statutes of California and Amendments To The Codes passed by the twenty-fifth session of the legislature in 1893. This section states, in relevant part:

“The Clerk, Treasurer, and Marshal shall, respectively, before entering upon the duties of their respective on offices, each execute a bond to such city or town in such penal sum as the Board of Trustees by ordinance may determine, conditioned for the faithful performance of his duties, including in the same bond the duties of all offices of which he is made by this chapter ex officio incumbent; such bonds shall be approved by the Board of Trustees.”

This is likely the inspiration for Charter section 3.03.

## **DISCUSSION**

I cannot find provision in the Municipal Code that the Council has determined “which officers shall give bonds for the faithful performance of their official duties, and fix the amount of said bonds,” despite Charter section 3.03 requiring it to do so.

I am not aware any City staff member has been required to post a bond as a condition of serving in a position. If my understanding is correct, neither are staff.

I have not heard of any other city in the area requiring any prospective staff member to put up a bond prior to serving in the position. To my knowledge, requiring such is not current practice nor has been for at least the decades of my attention to and involvement with government in the area. If correct, requiring such a bond of a prospective staff member prior to their occupying the position would put Albany at a substantial competitive disadvantage.

As such, I suggest Charter section 3.03 be replaced in whole with the following:

“No City Officer is required to post a bond prior to taking up their official duties. This provision overrides any such requirements in California’s Government Code.”

### **SUSTAINABILITY CONSIDERATIONS**

The recommended action does not have sustainability implications.

### **SOCIAL EQUITY AND INCLUSIVITY CONSIDERATIONS**

The recommended action has the minor social equity and inclusivity implication of not requiring a prospective staff member serving in an officer position to post a personal bond prior to taking the position. Such a requirement would limit applicants to those with personal wealth sufficient to post such bond.

### **CITY COUNCIL STRATEGIC PLAN INITIATIVES**

The recommended action does not relate to any City Council Strategic Plan Goal.

### **FINANCIAL CONSIDERATIONS**

The recommended action incurs expense in the form of staff time to draft the charter amendment, the ballot measure by which it would be placed in front of the voters, the resolution by which this would be done, and the report to Council accompanying the resolution.