

**CITY OF ALBANY  
CITY COUNCIL AGENDA  
STAFF REPORT**

Agenda Date: June 3, 2024  
Reviewed by: NA

**SUBJECT:** Charter Amendment Regarding Delegating Appointment Authority for City Officers and Department Heads from the City Council to the City Manager, Except for the City Attorney and Delegating Authority Organizing the City to the City Manager

**REPORT BY:** Anne Hsu, City Clerk  
Mala Subramanian, City Attorney

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**STAFF RECOMMENDATION**

That the Council adopt Resolution No. 2024-43, Charter Amendment for the November 5, 2024 General Municipal Election

**CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

This action relates to organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment, and therefore is not a “project” within the meaning of the California Environmental Quality Act (“CEQA”) and the State CEQA Guidelines, section 15378(b)(5).

**BACKGROUND/DISCUSSION**

On May 20, 2024, the City Council directed staff to move forward with the possible placement of a City Charter amendment on the November 5, 2024 General Municipal Election ballot. The Charter Amendment would delegate appointment authority for City Officers and Department Heads, from the City Council to the City Manager, except for the City Attorney. In addition, the Charter Amendment would delegate authority organizing the City to the City Manager.

The Council may take public comment and is free to propose additions, deletions or other changes to the text of the measure during this meeting. If the Council wishes to place the Charter amendment measure on the ballot as written, or with minor amendments, it may adopt the attached resolution with Charter amendment language.

If placed on the ballot and approved by a majority of Albany voters, the Charter amendment would become legally effective.

## **FINANCIAL CONSIDERATIONS**

Each measure placed on the ballot will be incorporated into the overall costs as part of the election. In 2022, the cost of the election with 1 ballot measure was approximately \$104,000. No additional cost to implement the Charter Amendment if passed by the Albany electors.

### **Attachment**

1. Resolution No. 2024-43

**RESOLUTION NO. 2024-43**

**A RESOLUTION OF THE ALBANY CITY COUNCIL SUBMITTING  
TO THE QUALIFIED VOTERS OF THE CITY A PROPOSED AMENDMENT  
TO THE CITY CHARTER TO DELEGATE APPOINTMENT AUTHORITY FOR  
CITY OFFICERS AND DEPARTMENT HEADS, EXCEPT FOR THE CITY  
ATTORNEY, FROM THE CITY COUNCIL TO THE CITY MANAGER, AND TO  
DELEGATE AUTHORITY ORGANIZING THE CITY TO THE CITY MANAGER  
AT A GENERAL MUNICIPAL ELECTION TO BE CONSOLIDATED WITH THE  
STATEWIDE GENERAL ELECTION TO BE HELD NOVEMBER 5, 2024;  
DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS  
OF THE PROPOSED CHARTER AMENDMENT AND PROVIDING FOR THE  
FILING OF PRIMARY AND REBUTTAL ARGUMENTS AND SETTING RULES  
FOR THE FILING OF WRITTEN ARGUMENTS REGARDING  
THE PROPOSED CHARTER AMENDMENT**

**WHEREAS**, Albany City Charter section 3.01 currently provides that all officers and department heads of the City of Albany shall be appointed by the City Council and shall hold office at the pleasure of the City Council; and

**WHEREAS**, pursuant to authority provided by California Constitution, Article XI, Section 3, California Government Code Sections 34450 et. seq. and California Elections Code sections 1415 and 9255, the City Council of the City of Albany desires to submit to the voters a proposed amendment to the City Charter which would delegate this appointment authority for City officers and department heads, except for the City Attorney, from the City Council to the City Manager, as more specifically set forth therein (the “Charter Amendment” or “Measure”); and

**WHEREAS**, California Constitution, Article XI, Section 3, requires that any charter amendment be approved by a majority of City voters voting at an election called for that purpose; and

**WHEREAS**, pursuant to California Government Code Section 34458(a), this resolution is being adopted at a City Council meeting which is at least eighty-eight (88) days

1 prior to next established statewide general election pursuant to Section 1200 of the Elections  
2 Code (November 5, 2024); and

3 **WHEREAS**, pursuant to California Elections Code sections 1415 and 9255, the City  
4 Council is authorized by statute to submit the proposed Charter Amendment to the voters at  
5 the General Municipal Election to be held on November 5, 2024; and

6  
7 **WHEREAS**, the City Council desires to consolidate the General Municipal Election  
8 for the Charter Amendment described herein with the Statewide General Election to be held  
9 on November 5, 2024; and

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11 **WHEREAS**, the City Council further desires to set deadlines and rules for primary  
12 and rebuttal arguments for and against the Charter Amendment.

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14 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE**  
15 **CITY OF ALBANY AS FOLLOWS:**

16 **SECTION 1. Recitals.** The City Council of the City hereby find and determine that  
17 the foregoing recitals are true and correct, are incorporated herein and by this reference made  
18 an operative part hereof.

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20 **SECTION 2. Submission of Charter Amendment.** The City Council of the City,  
21 pursuant to its right and authority as contained in California Constitution Article XI, Section  
22 3, California Government Code, Sections 34450 *et. seq.*, and California Elections Code,  
23 Sections 1415 and 9255, and any other applicable requirements of the laws of the State of  
24 California relating to charter cities, hereby calls and orders to be held a General Municipal  
25 Election in the City of Albany to be consolidated with the Statewide General Election on  
26 Tuesday, November 5, 2024, for the purpose of submitting to a vote of the qualified electors  
27 of the City of Albany the following proposed Charter Amendment:

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| <p>1 “Shall the City Charter of Albany be amended to delegate the<br/>2 authority to appoint City officers and department heads from the City<br/>3 Council to the City Manager, except for the City Attorney, who would<br/>4 still be appointed by the City Council and delegate authority<br/>5 organizing the City to the City Manager?”</p> | <p>YES</p> |
|  | <p>NO</p>  |

6           **SECTION 3. Text of Charter Amendment.** The text of the Charter Amendment to  
7 be submitted to the voters is attached hereto as Exhibit “A and incorporated herein by this  
8 reference.

9           **SECTION 4. Election Procedures.**

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- 11           A.     Request for Consolidation. Pursuant to the requirements of §10403 of the Elections  
12 Code, the Board of Supervisors of the County of Alameda is hereby requested to  
13 consent and agree to the consolidation of a General Municipal Election with the  
14 Statewide General Election on Tuesday, November 5, 2024, for the purpose of  
15 submitting to the voters the Charter Amendment.
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- 17           B.     Necessary Steps. The Board of Supervisors is requested to issue instructions to the  
18 Alameda County Registrar of Voters/Elections Official to take any and all steps  
19 necessary for the holding of the consolidated election.
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- 21           C.     Canvass of Returns. The Alameda County Registrar of Voters/Elections Official  
22 is authorized to canvass the returns and perform all other proceedings incidental to  
23 and connected with the General Municipal Election for the Charter Amendment.  
24 The Election shall be held in all respects as if there were only one election, and  
25 only one form of ballot shall be used. Pursuant to California Elections Code  
26 Sections 10403 and 10418, the election will be held and conducted in accordance  
27 with the provisions of law regulating the Statewide General Election.  
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- D. Costs. The City Council determines and declares that the City will pay to the County the reasonable and actual expenses incurred by the County by the consolidation of the General Municipal Election with the Statewide General Election. The City shall reimburse the County for services performed when the work is completed and upon presentation to the City of a properly approved bill.
  - E. Form of Ballot. The ballots to be used at the election shall be in the form and content as required by law.
  - F. City Clerk Authorized to Coordinate with County. The City Clerk is authorized, instructed and directed, in coordination with the Alameda County Registrar of Voters/Elections Official, to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.
  - G. Opening and Operation of Polls, Vote Centers, Etc. The polls, vote centers and/or vote-by-mail drop-off boxes shall be open and the procedures for submitting votes-by-mail or votes at polls and vote centers shall be in accordance with those times and procedures established by the County of Alameda, except as otherwise provided in the Elections Code of the State of California.
  - H. Election to Follow Applicable Law. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections in the City.
  - I. Notice of Election. Notice of the time and place of holding the election is 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.

1 J. Tallying of Ballots. All ballots shall be tallied at a central counting place and not  
2 at the precincts. Said central counting place shall be at a County center as  
3 designated by the Registrar of Voters.

4 K. Receipt of Election Results. The City Clerk of the City of Albany shall receive the  
5 canvass as it pertains to the election on the Charter Amendment measure, and shall  
6 certify the results to the City Council, as required by law.  
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8 **SECTION 5. Direct Arguments and City Attorney's Analysis.**  
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10 A. The City Council authorizes (i) the City Council or any member(s) of the City  
11 Council, (ii) any individual voter eligible to vote on the above Charter Amendment,  
12 (iii) a bona fide association of such citizens or (iv) any combination of voters and  
13 associations, to file a written argument in favor of or against the Charter  
14 Amendment, in accordance with Article 4, Chapter 3, Division 9 of the Elections  
15 Code of the State of California and may change the argument according to the  
16 deadlines set by the Alameda County for submittal of primary arguments for or  
17 against the measure after which no arguments for or against the Charter  
18 Amendment may be submitted to the City Clerk. Arguments in favor of or against  
19 the Charter Amendment shall each not exceed 300 words in length. Each argument  
20 shall be filed with the City Clerk, signed, and include the printed name(s) and  
21 signature(s) of the author(s) submitting it, or if submitted on behalf of an  
22 organization, the name of the organization, and the printed name and signature of  
23 at least one of its principal officers who is the author of the argument.

24 B. The City Clerk shall comply with all provisions of law establishing priority of  
25 arguments for printing and distribution to the voters, and shall take all necessary  
26 actions to cause the selected arguments to be printed and distributed to the voters.  
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1 C. Pursuant to Section 9280 of the Elections Code, the City Council directs the City  
2 Clerk to transmit a copy of the Charter Amendment to the City Attorney. The City  
3 Attorney shall prepare an impartial analysis of the Charter Amendment, not to  
4 exceed 500 words in length, showing the effect of the Charter Amendment on the  
5 existing law and the operation of the Charter Amendment. The City Attorney shall  
6 transmit such impartial analysis to the City Clerk, who shall cause the analysis to  
7 be published in the voter information guide along with the Charter Amendment as  
8 provided by law. The impartial analysis shall be filed by the deadline set for filing  
9 of primary arguments as set forth in subsection (A) above. The impartial analysis  
10 shall include a statement indicating whether the Charter Amendment was placed  
11 on the ballot by a petition signed by the requisite number of voters or by the City  
12 Council. In the event the entire text of the Charter Amendment is not printed on  
13 the ballot, nor in the voter information portion of the sample ballot, there shall be  
14 printed immediately below the Impartial Analysis, in no less than 10-font bold type,  
15 the following: **“The above statement is an Impartial Analysis of Charter  
16 Amendment/Measure \_\_\_\_\_. If you desire a copy of the Charter  
17 Amendment/Measure, please call the City Clerk’s Office at (510) 528-5710  
18 and a copy will be mailed at no cost to you.”**

18 D. The provisions herein shall apply only to the election to be held on November 5,  
19 2024.

21 **SECTION 6. Rebuttals.**

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23 A. That pursuant to Section 9285 of the Elections Code of the State of California,  
24 when the Clerk has selected the arguments for and against the Charter Amendment  
25 which will be printed and distributed to the voters, the Clerk shall send copies of  
26 the argument in favor of the Charter Amendment to the authors of the argument  
27 against, and copies of the argument against to the authors of the argument in favor.  
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1 The authors or persons designated by them may prepare and submit rebuttal  
2 arguments not exceeding 250 words. The rebuttal arguments shall be filed with the  
3 City Clerk not later than the deadline as set by the Alameda County for submittal  
4 of rebuttal arguments for or against the measure. Rebuttal arguments shall be  
5 printed in the same manner as the direct arguments. Each rebuttal argument shall  
6 immediately follow the direct argument which it seeks to rebut.

- 7 B. The provisions herein shall apply only to the election to be held on November 5,  
8 2024.

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10 **SECTION 7. Placement on the Ballot.** The full text of the Charter Amendment  
11 shall be printed in the voter information guide. And pursuant to Section 9223 of the Elections  
12 Code, voters may obtain a copy of this Charter Amendment/Measure, at no cost, upon request  
13 made to the City Clerk.

14 **SECTION 8. Delivery of Resolution to County.** The City Clerk shall certify to the  
15 passage and adoption of this Resolution and enter it into the book of original resolutions. The  
16 City Council directs the City Clerk to deliver copies of this Resolution, including the Charter  
17 Amendment attached hereto as Exhibit “A”, to the Clerk of the Board of Supervisors of  
18 Alameda County and to the Registrar of Voters/Elections Official of Alameda County.

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20 **SECTION 9. Public Examination.** Pursuant to Elections Code section 9295, this  
21 Measure will be available for public examination for no fewer than ten (10) calendar days prior  
22 to being submitted for printing in the voter information guide. The City Clerk shall post notice  
23 in the Clerk’s office of the specific dates that the examination period will run.

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25 **SECTION 10. CEQA.** The City Council hereby finds and determines that this  
26 Resolution and the Charter Amendment relates to organizational or administrative activities  
27 of governments that will not result in direct or indirect physical changes in the environment,  
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EXHIBIT "A"

CHARTER AMENDMENT/MEASURE "\_\_\_"

|   |     |
|---|-----|
| "Shall the City Charter of Albany be amended to delegate the authority to appoint City officers and department heads from the City Council to the City Manager, except for the City Attorney, who would still be appointed by the City Council and delegate authority organizing the City to the City Manager?" | YES |
|   | NO  |

THE PEOPLE OF THE CITY OF ALBANY DO HEREBY AMEND THE ALBANY CITY CHARTER AS FOLLOWS:

**SECTION 1. Text of Charter Amendment.** Subject to the approval of a majority of the voters of the City of Albany at the scheduled election so designated by City Council resolution placing the proposal on the ballot for such election, the Albany City Charter is hereby amended to read as follows:

[deletions are shown in ~~strikeout~~ and additions are shown in **bold underline**]

**"CHAPTER III: ADMINISTRATIVE**

**Section 3.01. OFFICERS AND EMPLOYEES.**

(a) **Except as otherwise provided herein,** ~~All~~ officers and department heads **of the City, except for the City Attorney,** shall be appointed by the ~~City Council~~ **City Manager** and shall hold office at the pleasure of the ~~City Council~~ **City Manager, subject to any applicable City civil service rules and procedures.** ~~The Council shall establish by ordinance the administrative offices of the City and~~ **The City Manager** shall designate the **administrative officers and** department heads of the City. The ~~City Council~~ **City Manager** shall be empowered to create, abolish, or reorganize departments and divisions as necessary

1 for the proper administration of the City business, but not inconsistent with other sections of  
2 this Charter.

3 (b) ~~Effective December 10, 2020, or sooner if there is a vacancy in the office,~~  
4 **Notwithstanding anything above to the contrary,** ~~the City Treasurer,~~ **the City Attorney**  
5 shall be appointed by the City Council as provided herein. ~~Effective at the November 2010~~  
6 ~~election the City Attorney shall be elected from the City at large for a term ending on~~  
7 ~~December 5, 2011. Commencing December 6, 2011, or sooner if there is a vacancy in the~~  
8 ~~office, the City Attorney shall be appointed by the City Council as provided herein.~~

9 **Section 3.05. CITY MANAGER.**

10 The City Manager shall be the administrative head of the government of the City. As  
11 such, the City Manager shall be responsible to the Council for the efficient implementation of  
12 its policy and effective administration of all the affairs of the City government which the office  
13 controls. Any action, determination or omission of the City Manager ~~or staff~~ shall be subject  
14 to review by the Council, but no individual Councilmember or the Mayor shall overrule,  
15 change or modify any such action, determination or omission except by affirmative vote of at  
16 least three (3) members of said Council at a duly constituted session.

17 The City Manager shall advise and make recommendations to the Council concerning  
18 any conditions or governmental situations which need Council direction or policy  
19 determination.

20 The City Manager will insure that the Council as a whole or as individuals are  
21 permitted timely and complete freedom of access to requested information **as permitted by**  
22 **law.**

23 The City Manager shall be chosen on the basis of executive and administrative  
24 qualifications, as defined by ordinance.

25 **Section 3.06 CITY CLERK.**

26 There shall be a City Clerk. It shall be the Clerk's duty to keep a full, true and correct  
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1 record of the proceedings of the Council and other books and accounts as are now required by  
2 law for clerks of cities, and may be required by resolution or ordinance of the Council. All  
3 powers, except as in this Charter otherwise provided, now or hereafter conferred upon the  
4 clerks of cities by law, shall be exercised by the City Clerk. The Clerk shall have such other  
5 powers and perform such other duties as may be prescribed by resolution or ordinance.

6 The City Clerk shall be appointed by the ~~Council~~City Manager. The Council shall  
7 establish, by ordinance, the qualifications for the position of City Clerk.

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9 **Section 3.14. CHIEF OF THE FIRE DEPARTMENT.**

10 There shall be a Fire Chief ~~appointed by the Council~~. The Fire Chief shall be head of  
11 the Fire Department of the City, and shall have charge of and supervision over all matters  
12 relating to the prevention and extinction of fires, and of all measures necessary to guard and  
13 protect all property impaired thereby.

14 **Section 3.17 DEPUTIES**

15 All officers shall have the power to appoint their own deputies when the same are  
16 necessary, subject, however to the confirmation of the ~~Council~~City Manager.

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18 **Section 3.20. CONTINUING OFFICERS AND EMPLOYEES.**

19 Until the ~~election or~~ appointment and induction into office of the officers and employees in  
20 this ~~Charter~~chapter provided for, the present officers and employees shall without  
21 interruption, continue to perform the duties of their respective offices and employments for  
22 the compensation provided by the existing ordinances.”

23  
24 **SECTION 2. Approval, Filing and Recordation of Charter Amendment.**

25 Pursuant to California Government Code Section 34460, if approved by a majority of voters,  
26 the Mayor and City Clerk shall certify, authenticate and attest to the passage of this Charter  
27 Amendment. The City Clerk shall also (i) record one copy of this Charter Amendment with  
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1 the Alameda County Recorder’s Office, (ii) file one copy in the City’s archives and (iii) file  
2 one copy with the California Secretary of State. Each copy recorded with the County Recorder  
3 and filed in the City’s archives shall also be filed with the following documents:

4 A. Certified copies of all publications and notices required of the City by  
5 State law in connection with the calling of an election to propose the Charter  
6 Amendment.

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8 B. Certified copies of any arguments for or against the Charter  
9 Amendment that were mailed to voters pursuant to California Elections Code Sections  
10 9281 et. seq.

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12 C. A certified abstract of the vote at the election at which the Charter  
13 Amendment was approved by the voters.

14 **SECTION 3. Ratification and Effective Date.** Pursuant to California Government  
15 Code Section 34459, this Charter Amendment shall be deemed ratified if approved by a  
16 majority of the eligible voters of the City of Albany voting at the General Municipal Election  
17 of November 5, 2024. However, this Charter Amendment shall not take effect until it has been  
18 accepted and filed by the Secretary of State pursuant to Government Code Section 34460.

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20 **SECTION 4. Severability.** If any provision of this Charter Amendment or the  
21 application thereof to any person or circumstance is held invalid, the remainder of the Charter  
22 Amendment and the application of such provision to other persons or circumstances shall not  
23 be affected thereby.

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26 I hereby certify that the foregoing Charter Amendment was PASSED, APPROVED  
27 AND ADOPTED by the People of the City of Albany at the November 5, 2024 General  
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Municipal Election.

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Anne Hsu, City Clerk