

# CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney  
Barbara J. Parker  
City Attorney

(510) 238-3601  
FAX: (510) 238-6500  
TTY/TDD: (510) 238-3254

## PUBLIC LEGAL OPINION

November 15, 2019

**HONORABLE CITY COUNCIL**  
One Frank H. Ogawa Plaza, Second Floor  
Oakland, California 94612

**Re: Whether City Council Can Rescind a Resolution Declaring that a Ballot Measure Amending the Charter of the City of Oakland Passed after the Charter Amendment has been accepted and filed by the Secretary of State**

Dear President Kaplan and Members of the City Council:

### I. INTRODUCTION

This public opinion addresses whether the City Council can rescind a resolution declaring that a ballot measure amending the Charter of the City of Oakland (“Charter”) passed after the Charter amendment has been accepted and filed by the Secretary of State.

### II. QUESTION AND BRIEF ANSWER

#### Question

Can City Council rescind a resolution declaring that a ballot measure amending the Charter passed after the Charter amendment has been accepted and filed by the Secretary of State?

#### Brief Answer

No. A charter amendment is effective when it is accepted and filed by the Secretary of State and a city charter can be amended or repealed *only* by majority vote of the electorate.

### III. ANALYSIS

**A. A Resolution Declaring that a Ballot Measure Amending a City Charter Passed cannot be Rescinded after the Charter Amendment has been accepted and filed by the Secretary of State**

The California Elections Code generally requires that the governing body of a city “declare the results of each election under its jurisdiction as to each measure voted on at the election.”<sup>1</sup> With regard to measures proposing charter amendments however, the governing

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<sup>1</sup> California Elections Code section 15400.

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body of the city must pass a resolution reciting the results of the election and must “then cause the adopted measures to be submitted to the Secretary of State pursuant to sections 34459 and 34460 of the Government Code.”<sup>2</sup>

The Secretary of State must accept and file a charter amendment submitted in accord with sections 34459 and 34460 of the Government Code.<sup>3</sup> Once it is accepted and filed by the Secretary of State, the charter amendment takes effect and becomes part of the charter.<sup>4</sup>

Under the California Constitution, a city charter may be amended, revised or repealed *only* by majority vote of the electorate.<sup>5</sup> In accord with this well-settled law, the California Court of Appeals stated in *Howard Jarvis Taxpayers Association v. City of Roseville*, 106 Cal. App. 4<sup>th</sup> 1178, 1186 (2003) that a ballot measure that proposed to incorporate a special tax into the city charter would have “*placed the tax beyond the control of the city council.*” The court of appeals explained further that, if the measure passed, city council would have “no power to increase, decrease, amend or repeal” the special tax without a majority vote of the electorate.

For the foregoing reasons, California law prohibits the City Council from taking any action, including rescinding a resolution declaring that a ballot measure amending the Charter passed, that would have the effect of amending, revising or repealing the Charter without a majority vote of the electorate.

Very truly yours,



BARBARA J. PARKER  
City Attorney

Attorney Assigned:  
Jennifer Logue

cc: Mayor Libby Schaaf  
City Administrator Sabrina Landreth

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<sup>2</sup> California Elections Code section 9269.

<sup>3</sup> California Elections Code section 34461 (“A charter . . . amendment . . . submitted to the Secretary of State in compliance with this chapter shall be accepted and filed by the Secretary of State.”)

<sup>4</sup> California Constitution, Article XI, Section 3 (a charter amendment “is effective when filed with the Secretary of State”); California Elections Code section 34459 (a charter amendment “shall not take effect until accepted and filed by the Secretary of State . . .”); *Kevelin v. Jordan*, 62 Cal.2d 82, 83 (1964) (Secretary of State’s filing of the declaration of the vote is “the last step required to put a ballot measure into effect”)

<sup>5</sup> California Constitution, Article XI, Section 3; *Howard Jarvis Taxpayers Assn. v. City of Roseville*, 106 Cal. App. 4<sup>th</sup> 1178, 1186 (2003).