



**PINOLE CITY COUNCIL
SPECIAL CITY COUNCIL MEETING
AGENDA**

**TUESDAY
February 25, 2020**

6:00 P.M.

2131 Pear Street, Pinole, California

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**Roy Swearingen, Mayor
Norma Martinez-Rubin, Mayor Pro Tem
Peter Murray, Council Member
Vincent Salimi, Council Member
Anthony Tave, Council Member**

Public Comment: The public is encouraged to address the City Council on any matter listed on the agenda or on any other matter within its jurisdiction subject to the rules of decorum described in Council Resolution 2019-03. If you wish to address the City Council, please complete the gold card that is provided at the rear entrance to the Council Chambers and hand the card to the City Clerk. City Council will hear public comment on items listed on the agenda during discussion of the matter and prior to a vote. City Council will hear public comment on matters **not** listed on the agenda during Citizens to be Heard, Agenda Item 3.

Americans With Disabilities Act: In compliance with the Americans With Disabilities Act of 1990, if you need special assistance to participate in a City Meeting or you need a copy of the agenda, or the agenda packet in an appropriate alternative format, please contact the City Clerk's Office at (510) 724-8928. Notification at least 48 hours prior to the meeting or time when services are needed will assist the City staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service. Assisted listening devices are available at this meeting. Ask the City Clerk if you desire to use this device.

Note: Staff reports are available for inspection at the Office of the City Clerk, City Hall, 2131 Pear Street during regular business hours, 8:00 a.m. to 4:30 p.m. Monday – Thursday, and on the City Website at www.ci.pinole.ca.us. You may also contact the City Clerk via e-mail at hiopu@ci.pinole.ca.us

COUNCIL MEETINGS ARE TELEVISED LIVE ON CHANNEL 26. They are retelecast the following Thursday at 6:00 p.m. The Community TV Channel 26 schedule is published on the city's website at www.ci.pinole.ca.us. City Council meetings are video-streamed live on the City's website, and remain archived on the site for five (5) years.

Ralph M. Brown Act. Gov. Code § 54950. In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies, which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

1. CALL TO ORDER & PLEDGE OF ALLEGIANCE IN HONOR OF THE US MILITARY TROOPS

2. ROLL CALL, CITY CLERK'S REPORT & STATEMENT OF CONFLICT

An official who has a conflict must, prior to consideration of the decision: (1) publicly identify in detail the financial interest that causes the conflict; (2) recuse himself /herself from discussing and voting on the matter; and (3) leave the room until after the decision has been made, Cal. Gov't Code § 87105.

3. CITIZENS TO BE HEARD (Public Comments)

Citizens may speak under any item not listed on the Agenda. The time limit is 3 minutes, and is subject to modification by the Mayor. Pursuant to provisions of the Brown Act, no action may be taken on a matter unless it is listed on the agenda, or unless certain emergency or special circumstances exist. The City Council may direct staff to investigate and/or schedule certain matters for consideration at a future Council meeting.

4. WORKSHOP ITEM

- A. Provide Direction On Proposed Charter Measure & Real Property Transfer Tax **[Action: Discuss and Provide Direction, per Staff Recommendation (Casher)]**

5. ADJOURNMENT to the Regular City Council Meeting of March 3, 2020 In Remembrance of Amber Swartz.

I hereby certify under the laws of the State of California that the foregoing Agenda was posted on the bulletin board at the main entrance of Pinole City Hall, 2131 Pear Street Pinole, CA, and on the City's website, not less than 72 hours prior to the meeting date set forth on this agenda.

POSTED: February 20, 2020 at 4:00 P.M.

Heather Iopu, CMC
City Clerk



CITY COUNCIL REPORT

4A

DATE: FEBRUARY 25, 2020

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

**FROM: ERIC S. CASHER, CITY ATTORNEY
ANDREW MURRAY, CITY MANAGER**

**SUBJECT: PROVIDE DIRECTION ON PROPOSED CHARTER MEASURE &
REAL PROPERTY TRANSFER TAX**

RECOMMENDATION

Staff recommends that the City Council provide direction on the proposed charter measure and real property transfer tax. Specifically, staff is seeking direction on the proposed rate of a real property transfer tax, whether to hire a communications consultant and/or pollster, and what community engagement activities the City Council desires to pursue.

BACKGROUND

Cities in California are organized as either general law cities or charter cities. A general law city has the authority to act locally, but its acts must be consistent with all general laws adopted by the Legislature. In contrast, a charter city is only required to act consistent with state laws regarding matters of statewide concern. A charter city may use its "home rule" authority to adopt laws regarding "municipal affairs" that vary from state laws. Cities are general law cities as a default, but may go through a process to become a charter city. The City of Pinole is currently a general law city.

The City Council has considered the possibility of becoming a charter city at three previous meetings, on March 19 and November 5, 2019, as well as January 21, 2020. On March 19, 2019 the differences between charter cities and general law cities were discussed in detail. A copy of the staff report from the November 5 meeting is attached for reference.

A significant authority possessed by charter cities is the authority, with voter approval, to impose a real property transfer tax ("RPTT") at an increased rate. A RPTT is a tax imposed on the deed, instrument, or writing by which interests in real property are transferred. Under the California Revenue and Taxation Code, general law cities may impose a RPTT of no more than \$.55 per \$1,000 of value on the property transferred (the County may also impose a RPTT equal to this rate). Pinole currently has a RPTT of the maximum allowed for general law cities of \$.55 per \$1,000 of value.

Charter law cities are not subject to state law regarding RPTTs because RPTTs are deemed municipal affairs. As a result, charter cities may impose RPTTs at a rate higher than the maximum statutory rate of \$0.55 per \$1,000 of value. The median RPTT rate for charter cities in Contra Costa and Alameda Counties is \$12.00 per \$1,000 of value.

At its November 19, 2019 meeting the City Council preliminarily decided to move forward with the process to become a charter city. The Council directed the City Attorney's Office to prepare a draft charter that prohibited the City from executing any of the powers of a charter city, except for the power to impose a RPTT. On January 21, 2020, the City Council considered and provided feedback on the draft charter. In addition, the Council requested the convening of a special meeting solely focused on issues related to possibility of Pinole becoming a charter city, including issues related to a potential RPTT.

DISCUSSION

A. Initial Draft Charter

The City Attorney's Office has revised the draft charter based on feedback provided by the City Council on January 21, 2020. Specifically, the charter has been revised to more clearly articulate that the only power of a charter city that the City of Pinole can exercise is the ability to impose an increased RPTT. In addition, the draft charter specifies that the charter may not be amended except by the voters at an election, which is an existing requirement of state law.

The City Council is asked to review and provide comment on this initial draft charter. Importantly, the Council will have multiple additional opportunities to edit this draft charter, as well as an ordinance implementing the RPTT, including after a public input process.

B. RPTT

A RPTT is a tax imposed on the deed, instrument, or writing by which interests in real property are transferred. The tax is imposed only once, when the property is transferred, and is not an annual tax. The City of Pinole currently has a RPTT of the maximum allowed for general law cities of \$0.55 per \$1,000 of value. Charter cities can impose a higher RPTT rate, but that rate must be approved by the voters.

Below is a chart of the base RPTT rates applied in charter cities in Contra Costa and Alameda Counties.

City	Base Tax (per thousand dollars)
Alameda	\$12.00
Albany	\$11.50
Berkeley	\$15.00
El Cerrito	\$12.00
Emeryville	\$12.00
Hayward	\$8.50
Oakland	\$15.00
Piedmont	\$13.00
Richmond	\$7.00
San Leandro	\$6.00
Median	12.00

Over the last 10 years, Pinole has received an average of \$76,310 from the RPTT, with a low of \$44,699 in 2009-10 and a high of \$98,593 in 2016-17. Adjusting the City's RPTT rate to the area median rate of \$12 per \$1,000 of value would have produced a 10-year average of \$1,664,946 annually in RPTT.

There are two methods for the City to collect the RPTT. First, the City can collect the RPTT itself. However, this would create a significant administrative burden for the City. In addition, since the City is not directly involved in most property sales, the City would have to rely mostly on buyers and sellers reporting the sale to the City. This creates the potential for a significant number of transactions to "hide" from the RPTT, which has been the case in other cities that have chosen to self-administer the RPTT. Alternatively, the City can contract with the County for the County to collect the tax when deeds or similar instruments are recorded. The County charges other charter cities a 3% administrative fee for this service.

In general, most charter cities simply have RPTT whereby all property sales are subject to the same base RPTT rate. However, a very limited number of cities have adopted tiered RPTT rates, with higher rates for property valued at over a certain amount. In addition, a small number of cities provide RPTT rebates for certain improvements to the property. For example, El Cerrito provides a rebate of up to 1/3 of the RPTT paid for energy efficiency improvements or structural improvements made within one year of the sale. Both tiered rates and rebates are uncommon elements of a RPTT, but have been adopted by a very small number of cities in the Bay Area.

C. Calendar

The City Council must vote to submit the proposed charter to the voters at least eighty-eight (88) days before the election. Prior to approving submission of the charter to the voters, the City Council must hold at least two public hearings on the proposal of the charter and the content of the charter, and notice of those hearings must be published at least twenty one (21) calendar days before the date of each hearing. The second public hearing must be held at least thirty (30) days after the

first hearing, and at least one of the hearings must be held outside of normal business hours. The city council may not vote on submission of the charter to the voters until twenty-one (21) days after the second public hearing.

A sample timeline of the process is below:

Action	Anticipated Date	Restrictions
City Council holds first public hearing on proposed charter	May 8, 2020	Notice of the hearing must be given 21 days in advance
City Council holds second public hearing on proposed charter	June 12, 2020	Must occur at least 30 days after first public hearing
City Council votes on submission of the proposed charter to the voters	August 4, 2020	Must occur at least 21 days after the second public hearing & 88 days before election
Election Date: November 3, 2020		

D. Community Engagement & Feedback

Because many voters might not know the difference between the form and powers of a general law city versus a charter city, many jurisdictions have retained communications professionals to help explain to the public what becoming a charter city entails and enables. The City Council has previously expressed a desire to launch a community engagement process to inform the public about what becoming a charter city would entail and receive feedback prior to placing a charter measure on the ballot.

Many cities that have recently become a charter city and adopted a RPTT have hired a communications consultant to assist with educating the public regarding the proposed measure. Many cities have also hired a pollster to gauge community interest regarding the issue. To be effective, if the City Council desires to retain a communication consultant and/or a pollster, it should do so soon. Polling would need to be conducted during the spring in order for the Council to consider the result before deciding whether or not to place the proposed measure on the ballot.

Since the draft charter would prohibit the City from exercising any of the powers of a charter city except for the enactment of an increased RPTT, becoming a charter city and the transfer tax are inextricably linked. Therefore, the Council may want to consider some initial preliminary decisions about the RPTT, such as the rate. This is only an initial decision, and the Council will have the authority to make changes prior to submitting the measure to the voters based on feedback received during the engagement process and further review.

DIRECTION

Staff seeks direction from the City Council on the following:

1. Does the Council want to make preliminary decisions regarding the RPTT prior to starting the public engagement process?
 - What should the base rate be?
 - If the Council wants any tiers, what should the tiers be?
 - If the Council wants any rebates, what should the scope of the rebates be?
2. Should the City retain a communications professional and/or pollster?
3. What public engagement should the City conduct?
 - Should this be deferred until a communications consultant is retained?

FISCAL IMPACT

If the City Council decides to proceed with pursuing a measure to become a charter city and impose an increased RPTT, there will be a fiscal impact related to preparing a proposed charter measure and undertaking the process to place the measure on the ballot. The exact amount of the impact will depend on what type of community engagement the Council desires and whether a consultant and/or pollster is retained. Any process will involve staff time, including the City Attorney's Office. In addition, there will be costs to place the measure on the ballot. If an increased RPTT is approved by the voters as part of a charter city measure, it is anticipated that the additional revenue from the first year of the increased RPTT will greatly exceed these costs. However, it is uncertain whether voters will approve an increased RPTT.

The City is currently in solid financial condition. It has assets (primarily capital assets and cash reserves) and liabilities (primarily employee retirement-related costs) common to similar California cities. It has relatively stable General Fund revenues that support the City's basic public services. As a result of savings and one-time revenues, the City has assembled a significant General Fund reserve and pension liability reserve, and has minimal long-term debt.

The City has been able to maintain a balanced budget over the past few years due to modestly growing revenues and limiting expenditures to providing basic services. The City's finance staff forecasts that, absent any major change to the economy, the City's budget will remain balanced over the next five years if the City continues to operate in its current fashion. The balanced budget is in part due to the pension liability reserve and employee cost sharing offsetting increasing pension costs.

The City implemented its current basic service expenditure model as a result of the Great Recession of 2008, which was followed by the State's dissolution of redevelopment agencies in 2011. This model allowed the City to provide essential services. However, the model defers investment in capital assets, business systems, and human capital. This underinvestment, while acceptable in the short run, is detrimental in the long run, as it will lead to the deterioration of assets and systems. As such, ideally, the City should increase investment in these assets and capabilities to amounts that will sustain critical functions over the long run. A RPTT is one option for raising additional revenue for increased investment.

Because a RPTT is a volatile revenue source, if a RPTT were enacted, the City would likely desire to create a policy to smooth expenditure of RPTT revenues.

ATTACHMENTS

A – Draft Charter

B – November 5 Staff Report

DRAFT
CHARTER OF THE CITY OF PINOLE

ARTICLE I. CONTINUATION OF BOUNDARIES

Section 101. Incorporation and Succession.

The municipal corporation now existing and known as the City of Pinole, hereafter referred to as “the City”, shall remain and continue to be a municipal body corporate and politic in name, in fact, and in law. The boundaries of the City shall continue as established prior to this Charter taking effect until changed in the manner authorized by law. The City shall remain vested with and shall continue to own, have, possess, control, and enjoy all property rights and rights of action of every nature and description owned, had, possessed, controlled, or enjoyed by it at the time this Charter takes effect. The City shall be subject to all debts, obligations, and liabilities of the City at the time this Charter takes effect.

ARTICLE II. FORM OF GOVERNMENT AND EXISTING LAW

Section 201. Form of Government.

The government of the City shall continue to be the Council-Manager form of government as established by the Pinole Municipal Code at the time that this Charter takes effect and by the laws of the State of California. The Council-Manager form of government of the City may be changed in the same ways and using the same procedures as a general law city.

Section 202. City Council, City Manager, and City Attorney.

- (a) The City Council shall establish the policy of the City. The City Manager shall carry out that policy.
- (b) The City Council shall appoint the City Manager.
- (c) The City Manager, as the chief administrative officer of the City, shall appoint all department heads other than the City Attorney and City Clerk. Involvement in administrative matters by the City Council or by any individual Councilmember shall occur only through the City Manager or pursuant to direction by the City Manager to members of the administrative staff.
- (d) The City Council shall appoint the City Attorney. The City Attorney may be an employee of the City or an independent contractor providing legal services pursuant to a contract.

Section 203. Continuation of Existing Local Laws.

All ordinances, codes, resolutions, regulations, rules, and portions thereof, in force at the time this Charter takes effect, and not in conflict or inconsistent herewith, shall continue in force until repealed, amended, changed, or superseded in the manner provided by this Charter and any other applicable laws.

ARTICLE III. POWERS OF THE CITY

Section 301. Real Property Transfer Tax

The City may exercise the powers of a charter city to impose a tax on the conveyance of real property, based upon the price paid for the real property ("real property transfer tax"). Any real property transfer tax imposed by the City shall be in addition to any similar tax authorized by the general laws of the State of California.

Section 302. General State Laws.

The City shall not exercise any of the powers of a charter city except as expressly provided for herein. Except as provided in this Charter, the powers of the City shall otherwise be constrained by, subject to, and governed by the general laws of the State as now and hereafter existing relating to cities organized under such general laws.

Section 303. Voter Approval

This Charter shall not be amended except by the electorate of the City of Pinole at a municipal election in accordance with the applicable laws of the State.

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CITY COUNCIL REPORT

9A

DATE: NOVEMBER 5, 2019

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: ERIC S. CASHER, CITY ATTORNEY

COPY: MICHELLE FITZER, CITY MANAGER

SUBJECT: PROVIDE DIRECTION ON PROCESS AND ACTIVITIES RELATED TO BECOMING A CHARTER CITY

RECOMMENDATION

Staff recommends that the City Council provide direction on how the City Council would like to proceed with activities related to becoming a charter city, in particular, what process the City Council wants to use for developing a proposed charter.

BACKGROUND

Cities in California are organized as either general law cities or charter cities. General law cities derive their powers from general laws enacted by the Legislature, while charter cities derive their powers from the California Constitution and their own charters. Thus, general law cities are bound by the state's general laws. In contrast, the "home rule provision" of the California Constitution provides that charter cities have full authority over municipal affairs, and are only subject to laws regarding matters of statewide concern. A significant authority possessed by charter cities is the authority to impose a real property transfer tax ("RPTT") at an increased rate. Becoming a charter city requires approval by a majority of voters, as does any increase in the RPTT.

The City of Pinole is currently a general law city. At the City Council's meeting on March 19, 2019, the City Attorney's Office provided a general overview of the nature of charter cities and the process for becoming a charter city. The Council expressed interest in continuing to consider becoming a charter city, and directed that the matter be brought back for further discussion in the future.

DISCUSSION

A. Charter City vs. General Law City

A general law city has the authority to act locally, but its acts must be consistent with all general laws adopted by the Legislature. In contrast, a charter city is only required to act consistent with state laws regarding matters of statewide concern. A

charter city may use its “home rule” authority to adopt laws regarding “municipal affairs” that vary from state laws. A city’s charter defines the structure of the city’s government and the scope of a city’s authority over municipal affairs. Some cities have very detailed charters, while other cities have charters that are limited in scope. Some charters specify that the city may exercise all powers a charter city has unless a power is expressly excluded by the charter, while other charters specify that a city may only authorize a power if expressly authorized by the charter. A city’s charter must be approved by the voters, as must any amendment to the charter.

There is no constitutional or statutory “list” of municipal affairs. Courts, not the Legislature, decide on a case-by-case basis what constitutes a municipal affair. However, what constitutes a municipal affair can change over time with changes in case law. Areas that the courts have said constitute municipal affairs include: the form of city government; local elections, including qualifications for office and public funding of campaigns; some aspects of zoning and land use; the process of contracting for public works; and the scope of authority related to fines, taxes and assessments.

A significant authority possessed by charter cities is the authority to impose a real property transfer tax (“RPTT”) at an increased rate. A RPTT is a tax imposed on the deed, instrument, or writing by which interests in real property are transferred. Under the California Revenue and Taxation Code, general law cities may impose a RPTT of no more than \$.55 per \$1,000 of value on the property transferred (the County may also impose a RPTT equal to this rate). Pinole currently has a RPTT of the maximum allowed for general law cities of \$.55 per \$1,000 of value.

Charter law cities are not subject to state law regarding RPTTs because RPTTs are deemed municipal affairs. As a result, charter cities may impose RPTTs at a rate higher than the maximum statutory rate of \$.055 per \$1,000.

Below is a chart of the base RPTT rates applied in neighboring charter cities.

City	Tax (per thousand dollars)
Alameda	\$12.00
Albany	\$11.50
Berkeley	\$15.00
El Cerrito	12.00
Emeryville	\$12.00
Oakland	\$15.00
Piedmont	\$13.00
Richmond	\$7.00
Median	12.00

Over the last 10 years, Pinole has received an average of \$71,754 from the RPTT, with a low of \$44,699 in 2009-10 and a high of \$98,593 in 2016-17. Adjusting the RPTT rate to \$12 per \$1,000 would have produced a 10-year average of

\$1,565,543, with a low of \$975,251 in 2009-10. The City can choose to adopt tiered RPTT rates, with higher rates for property valued at over a certain amount, and provide RPTT rebates for certain improvements performed by the property owner prior to sale. Under state law and the California Constitution, cities cannot impose, increase or extend any tax unless the tax is approved by the voters. Accordingly, the increased RPTT would require a vote of the electorate.

B. Process of Becoming Charter City

Becoming a charter city requires approval by a majority of voters. The City Council may, on its own motion, propose a new charter and submit it directly to the voters for approval at the next established statewide general election. The City Council must vote to submit the proposed charter to the voters at least 88 days before the election. Prior to approving submission of the charter to the voters, the City Council must hold at least two public hearings on the proposal of the charter and the content of the charter. There are special noticing requirements for these hearings. In order for the City Council to place a charter measure on the ballot for November 3, 2020, the City would need to hold the first public hearing on a proposed charter at the first meeting in May 2020.

A proposed charter may be developed in any of the following ways:

1. *Council Developed*

The City Council can develop the proposed charter itself and then submit it to the voters for consideration. This could be done either through a special meeting or through workshops prior to the start of regular council meetings.

2. *Council Subcommittee Developed*

The City Council can appoint a subcommittee of 2 Councilmembers to draft a proposed charter. The Council can appoint a subcommittee at an upcoming meeting, and then the subcommittee will likely need to meet 2-3 times.

3. *Community Committee Developed*

The City Council can appoint a larger community committee consisting of up to 2 Councilmembers and members of the community to draft a proposed charter. In creating the subcommittee, the City Council can choose the number of members and decide whether there should be any special requirements regarding the makeup of the committee. For example, some cities have decided that one member of the committee should be an employee representative. If the Council desires to appoint a committee, staff can prepare a proposed process for selecting the committee to be approved at an upcoming meeting. The recruitment and application process will likely take an additional few weeks before the Council will be able to formally appoint the committee. The community committee will likely need to meet 3-5 times

Regardless of what method the Council uses to develop a draft charter, the proposed charter must be approved by the City Council before it is submitted to the voters. The Council will have the opportunity at that time to make any changes to the proposed charter, if desired. Staff, including the City Attorney's Office, will assist the Council and/or any appointed committee in preparing the proposed charter.

C. Polling

Most local jurisdictions that have become a charter city recently have conducted polling to gauge community interest before placing the measure on the ballot. The City Council can direct staff to retain a pollster to conduct polling regarding a potential charter city measure. This polling can be done now, or later once the content of the proposed charter is established. In addition, because becoming a charter city is a complicated issue that can easily cause confusion, many other jurisdictions have retained communications professionals to help explain to the public what becoming a charter city entails. At the City Council's direction, a communications consultant can be retained later in the process.

FISCAL IMPACT

If the City Council decides to proceed with pursuing a measure to become a charter city, there will be a fiscal impact related to preparing a proposed charter and undertaking the process to place the measure on the ballot. The exact amount of the impact will depend on what process is used for preparing the draft charter. Any process will involve staff time, including the City Attorney's Office. In addition, there will be costs to place the measure on the ballot. If an increased RPTT is approved by the voters as part of a charter city measure, the additional revenue from the first year of the increased RPTT will greatly exceed these costs. However, it is uncertain whether voters will approve an increased RPTT.

ATTACHMENTS

None