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Staff Report and Request for City Council Comments and Direction on Referral to Transfer City Clerk from City Manager Authority to City Council

Staff Recommendation

The City Attorney and staff request direction from the City Council regarding next steps related to a policy decision to transfer authority over the City Clerk from the City Manager to the City Council. City Council comment and potentially direction is requested regarding:

- Contracting with a public agency management consulting firm, such as MRG, to assist the City Council with information and recommendations on how a City Clerk office would operate under City Council authority. Such information and recommendations would inform the legally necessary meet and confer sessions with the respective represented employee organizations.
- Because of the need for consulting and staff work to study and advise the City Council on the matter, redefine the schedule, including its addition to the City Council policy priorities list to be assessed February 2023 since the matter can no longer move with urgency.

Analysis

At the November 21 regular City Council meeting, the City Council made an urgency referral to present for first reading an ordinance that would effectively transfer authority over the City Clerk from the City Manager to the City Council. Currently, the City Clerk functions and personnel are under the authority of the City Manager, per San Leandro Municipal Code (SLMC) Section 1-2-110. San Leandro Charter Section 435(a) provides that the Council shall appoint a City Clerk, who serves at the pleasure of the Council and perform duties consistent with the Charter as may be required by the Council. Section 435(b) provides that the Council may consolidate the office and functions of the City Clerk with that of the City Manager. In 2002, the City Council did pass an ordinance to consolidate the office and functions of the City Clerk with the City Manager.

Since that time, the City Clerk has become a department of the City, comprised of the City Clerk, a Deputy City Clerk, and administrative assistants. The City Manager recruits and assigns the City Clerk from the City

Manager's office per SLMC Section 1-2-110; the City Council approves the appointment. The City Manager also recruits and hires the subordinate City Clerk Department employees. The Charter only provides for the appointment of the City Clerk; it does not provide for retention of subordinate City Clerk Department employees. Therefore, such employees are under the City Manager's authority.

Before transferring the City Clerk back to the City Council per City Charter Section 435(a), the City must comply with the Meyers-Milias-Brown Act, and engage in meet and confer with the represented employee organizations to which the City Clerk's Department's employees belong, in this case the San Leandro Management Organization and the San Leandro City Employees Association, respectively. Prior to adoption of an implementation ordinance, the Council must engage in collective bargaining with SLMO and SLCEA over provisions of a proposed ordinance that impact mandatory subjects of bargaining.

The Meyers-Milias-Brown Act (MMBA) requires the City to meet and confer in good faith with representatives of its represented employee organizations before making a determination of policy or course of action that involves a mandatory subject of bargaining. Cal. Gov't Code §3505. It is an unfair practice under the MMBA for a public agency employer, like the City, to refuse or fail to comply with this obligation. Cal. Gov't Code §3506.5. The scope of representation under the MMBA includes:

[A]ll matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order. Cal. Gov't Code §3504.11.

Changes to reporting obligations, amongst other issues related to wages, hours and other terms and conditions of employment that are yet to be determined, are subject to meet and confer under the MMBA. To determine the other terms and conditions of employment that may be changed, management consulting services and staff work are necessary to inform the City Council, and assist in policies and procedures that would assist in meet and confer before bringing an ordinance. Given the specific requirements detailed above, staff requires direction on schedule and timing to advance this item or add it to the City Council policy priority session in February.