TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

SUBJECT: CONSIDERATION OF A RESOLUTION CALLING FOR A BALLOT MEASURE TO ASK VOTERS WHETHER THE POSITION OF PLEASANT HILL CITY CLERK SHOULD BE ELECTIVE OR APPOINTIVE

SYNOPSIS

State law requires every general law city to have a City Clerk, who may be either elected by the voters or appointed by the City Council. The City Council proposes to consider whether to ask the Pleasant Hill electorate if the position of City Clerk in Pleasant Hill should be changed from elected to appointed, and has directed staff to present information about this process. A draft Resolution for consideration is included as an attachment to this staff report, should the Council decide to move forward with a ballot measure on the question.

DISCUSSION

Background

The City Council has directed staff to research the process, timing and cost to place a measure on the regular November 2014 ballot, to ask voters whether the position of Pleasant Hill City Clerk should be changed from elective to appointive, and to prepare such a resolution for consideration.

Discussion

Ballot Measure

The California Government Code addresses the election process for this ballot question for a general law city.

“Section 36508. At any municipal election, or a special election held for that purpose, the city council may submit to the electors the question whether the elective officers, or any of them except council members, shall be appointed by the city council; provided, however, that the city council shall not submit such question to the electors more often than once in an 11-month period.

“36509. The question shall be printed on the ballots used at the election substantially in the following form: ‘Shall the office of city clerk be appointive?’

The words ‘yes’ and ‘no’ shall be so printed on the ballots that the voters may express their choice.
“36510. If a majority of the votes cast on the proposition is for it, the city council shall appoint such officer at the expiration of the terms of the officer then in office, and on a vacancy in any such office. Such officer shall hold office during the pleasure of the city council and, notwithstanding Section 36502 to the contrary, is not required to be a resident or elector in the city. The city council may by ordinance vest in the city manager its authority to appoint such officer.”

Placing a ballot measure before the electorate is accomplished by City Council adoption of a resolution that:

- Submits proposed ballot measure wording to the Contra Costa County Elections Department,
- Authorizes City Council members and/or other individuals (up to five) to file a written argument regarding the measure, including providing for the filing of rebuttal arguments to the measure in accordance with filing deadlines, and
- Directs the City Attorney to prepare an impartial analysis of the measure.

City Clerk Duties and Responsibilities
The basic duties of the City Clerk are set forth in the Government Code.

“40801. The city clerk shall keep an accurate record of the proceeding of the legislative body … in books bearing appropriate titles and devoted exclusively to such purposes, respectively. The books shall have a comprehensive general index.

“40806. The city clerk shall keep a book marked "ordinances" and record in it all city ordinances with his certificate annexed to each, stating:

(a) It is a true and correct copy of a city ordinance.
(b) The ordinance number.
(c) It has been published or posted pursuant to law.

“40811. The city clerk is the custodian of the city seal.

“40812. [The city clerk] shall perform such additional duties as are prescribed by ordinance.

“40813. The city clerk may appoint deputies, for whose acts he and his bondsmen are responsible. The deputies shall hold office at the pleasure of the city clerk and receive such compensation as is provided by the legislative body.

“40814. The city clerk and his deputies may administer oaths or affirmations and take and certify affidavits and depositions pertaining to city affairs and business which may be used in any court or proceedings in the state. The acknowledgment of an instrument may be made before a city clerk and his deputies within the city in which they were elected or appointed.”
Additional City Clerk Responsibilities

In addition to these basic, historic duties, the legislature has assigned ever greater and more complex responsibilities to the City Clerk over the years.

Per Election Code Section 320, the City Clerk is the Election Official for the City. In this capacity, the City Clerk interacts with the County Elections Department during all local elections to assure compliance with all election laws and regulations.

Under Section 54950 et seq. of the Government Code, the City Clerk is responsible for ensuring compliance with the Brown Act (“Open Meeting Laws”), regarding conduct of city business and responses to public inquiries.

The Political Reform Act, Government Code Section 83111, designates the City Clerk as the official responsible for coordinating, recording and retaining the Statements of Economic Interests of all elected and appointed officials and staff, and for collecting and maintaining all candidate Campaign Finance Forms.

Elective Versus Appointive City Clerk

Of the 482 cities in California, 328 (68%) have appointed City Clerks and 154 (32%) have elected City Clerks. Nationally, over 80% of City Clerks are appointed. In Contra Costa County, fifteen of the nineteen cities have appointed City Clerks. Only four cities (Antioch, Martinez, Pittsburg and Pleasant Hill) now have elected City Clerks.

Most recently, voters in Concord approved changing the City Clerk position from elective to appointive in 2008, while Walnut Creek did so in 2004 and Pinole did so in 2002. A July 6, 2004 memorandum to the Walnut Creek City Council, attached, and an April 1, 2008 memorandum to the Concord City Council, attached, present the respective staff analyses to those City Councils.

The percentage of elected City Clerks in California has continued to decline. As the legal responsibilities and professional expertise required to fulfill the duties of the position have increased, elected City Clerks are being replaced by appointed professional staff with appropriate training and experience who typically perform both City Clerk and other City staff duties.

Integration of City Clerk Function with City Staff Operations

In Pleasant Hill, many of the increased obligations imposed on the position of City Clerk over time are performed by City staff. The office of the City Attorney is responsible for Brown Act compliance and response to Public Records Act requests; the office of the City Manager is responsible for Elections and Campaign Finance Law compliance, as well as Agenda preparation, public information and overall records management.

If the position of City Clerk becomes appointive, it would be expected that the employee assigned those duties would work under the direction of the City Manager, with those duties comprising only part of a larger scope of responsibilities. A City Clerk function in which all of the work is performed by in-house staff, as opposed to the current arrangement
in which some work is performed by staff and other work by an elected official, would be more straightforward to effectively manage.

Ballot Measure Timing
The resolution calling for the municipal election must be adopted at least 88 days prior to the election, which for the November 4, 2014 election would be by August 8, 2014. The last scheduled City Council meeting before the 88 day deadline is August 4, 2014.

Should the measure pass, it will become effective at the end of the existing term, in November of 2016.

FISCAL IMPACT
The cost to the City to place this question on the November 2014 ballot will vary, depending on the number of words in the measure and the amount of information put into the voter information pamphlet. However, the County elections staff advises that the total cost would be expected to be approximately $1 per registered voter. With some 19,000 registered voters in Pleasant Hill, the cost to the City for the election would be approximately $19,000.

As to ongoing costs, in the event the position of City Clerk becomes appointive, the cost of having appointed staff perform the duties currently performed by the Clerk would be roughly offset by the stipend savings of the elected Clerk.

PUBLIC CONTACT
Public contact was made through posting of the City agenda on the City’s official notice bulletin board, posting of the agenda on the City’s web page, and availability of the agenda and staff report in the City Clerk’s office, at the County Central Library, and at the Pleasant Hill Police Department.

ALTERNATIVES TO RECOMMENDED ACTION
None.

RECOMMENDED ACTION
As a policy matter, the City Council must decide whether to propose the subject ballot measure. If the Council decides to do so, staff recommends adoption of the attached Resolution.

Prepared by: Robert Stewart, Redevelopment Administrator
Janet Coleson, City Attorney

Reviewed by: June Catalano, City Manager

Attachments: July 6, 2004 Memorandum to Walnut Creek City Council
April 1, 2008 Memorandum to Concord City Council
Resolution