

MEASURE D

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE D

This Charter amendment would repeal Article V of the Palo Alto City Charter which requires that a three-member arbitration panel decide disputes over wages, hours and terms and conditions of employment for the City's fire and police (public safety) employees.

State law sets certain requirements for labor negotiations with all public employee unions. Under State law, the City must meet and confer in good faith with unions over wages, hours and terms and conditions of employment for City employees. If these matters cannot be resolved through negotiations, either party may declare impasse. After a declaration of impasse, the parties may mutually agree to an impasse resolution procedure, such as mediation, to try to reach an agreement. If the parties are unable to agree on a resolution procedure or they are unable to resolve their disputes after engaging in an agreed-upon procedure, the City may implement its last, best and final offer made during negotiations. If the City implements its last, best and final offer, it must meet and confer on the issues with the union prior to adoption of the budget for the next fiscal year. State law requires local government employers to meet these minimum requirements. Charter cities may choose to provide additional procedures for some or all employee groups.

In Palo Alto, Article V of the Charter provides an additional procedure called "interest arbitration" to resolve impasses with public safety unions. If negotiations with public safety unions result in impasse, the City may not implement its last, best and final offer. Rather, the parties appoint a three-member arbitration panel to decide all unresolved issues. After conducting a hearing, the arbitration panel makes a final decision on each disputed issue. The panel's decision is binding on both sides.

If Article V is repealed, the City would still be subject to the State law requirement to negotiate in good faith with public safety unions. Upon impasse, the City could implement its last, best and final offer made during negotiations. Disputes would no longer be decided by an arbitration panel.

In addition to requiring interest arbitration, Article V also states that any fire or police employee who participates in a strike shall be terminated from employment and may not be reinstated except as a new employee. State law also prohibits firefighters and police officers from striking. Because of State law, if Article V is repealed, the City's firefighters and police officers would still be prohibited from striking.

A vote "For the Amendment" will remove the binding interest arbitration provisions from the Charter. A vote "Against the Amendment" will retain in the Charter the requirement that unresolved disputes between the City and public safety unions be submitted to an arbitration panel for a final decision.

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE D - Continued

This Charter amendment will become effective if a majority of those voting on the measure vote in favor.

Dated: August 23, 2011

/s/ Molly S. Stump
City Attorney

COMPLETE TEXT OF MEASURE D

Article V. Compulsory Arbitration for Fire and Police Department Employee Disputes

Sec. 1. Declaration of policy.

It is hereby declared to be the policy of the city of Palo Alto that strikes by firefighters and police officers are not in the public interest and should be prohibited, and that a method should be adopted for peacefully and equitably resolving disputes that might otherwise lead to such strikes.

Sec. 2. Prohibition against strikes.

If any firefighter or peace officer employed by the city of Palo Alto wilfully engages in a strike against the city, said employee shall be dismissed from his or her employment and may not be reinstated or returned to city employment except as a new employee. No officer, board, council or commission shall have the power to grant amnesty to any employee charged with engaging in a strike against the city.

Sec. 3. Obligation to negotiate in good faith.

The city, through its duly authorized representatives, shall negotiate in good faith with the recognized fire and police department employee organizations on all matters relating to the wages, hours, and other terms and conditions of city employment, including the establishment of procedures for the resolution of grievances submitted by either employee organization over the interpretation or application of any negotiated agreement including a provision for binding arbitration of those grievances. Unless and until agreement is reached through negotiations between the city and the recognized employee organization for the fire or police department or a determination is made through the arbitration procedure hereinafter provided, no existing benefit or condition of employment for the members of the fire department or police department bargaining unit shall be eliminated or changed.

Sec. 4. Impasse resolution procedures.

All disputes or controversies pertaining to wages, hours, or terms and conditions of employment which remain unresolved after good faith negotiations between the city and either the fire or police department employee organization shall be submitted to a three member board of arbitrators upon the declaration of an impasse by the city or by the recognized employee organization involved in the dispute.

Representatives designated by the city and representatives of the recognized employee organization involved in the dispute, controversy or grievance shall each select one arbitrator to the board of arbitrators within three days after either party has notified the other, in writing, that it desires to proceed to arbitration. The third member of the arbitration board shall be selected by agreement between the two arbitrators selected by the city and the employee organization, and shall serve as the neutral arbitrator and chairman of the board. In the event that the arbitrators selected by the city and the employee organization cannot agree upon the selection of the third arbitrator within ten days from the date that either party has notified the other that it has declared an impasse, then either party may request the State of California Conciliation Service to provide a list of seven persons who are qualified and experienced as labor arbitrators. If the arbitrators selected by the city and the employee organization cannot agree within three days after receipt of such list on one of seven to act as the third arbitrator, they shall alternately strike names from the list of nominees until only one

COMPLETE TEXT OF MEASURE D - Continued

name remains and that person shall then become the third arbitrator and chairman of the arbitration board.

Any arbitration convened pursuant to this article shall be conducted in conformance with, subject to, and governed by Title 9 of Part 3 of the California Code of Civil Procedure.

At the conclusion of the arbitration hearings, the arbitration board shall direct each of the parties to submit, within such time limit as the board may establish, a last offer of settlement on each of the issues in dispute. The arbitration board shall decide each issue by majority vote by selecting whichever last offer of settlement on that issue it finds most nearly conforms with those factors traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of public and private employment, including, but not limited to, changes in the average consumer price index for goods and services, the wages, hours, and other terms and conditions of employment of other employees performing similar services, and the financial condition of the city and its ability to meet the cost of the award.

After reaching a decision, the arbitration board shall mail or otherwise deliver a true copy of its decision to the parties. The decision of the arbitration board shall not be publicly disclosed and shall not be binding until ten days after it is delivered to the parties. During that ten day period the parties may meet privately, attempt to resolve their differences, and by mutual agreement amend or modify any of the decisions of the arbitration board. At the conclusion of the ten day period, which may be extended by mutual agreement between the parties, the decision of the arbitration board together with any amendments or modifications agreed to by the parties shall be publicly disclosed and shall be binding upon the parties. The city and the recognized employee organization shall take whatever action is necessary to carry out and effectuate the award.

The expense of any arbitration convened pursuant to this article, including the fee for the services of the chairman of the arbitration board, shall be borne equally by the parties. All other expenses which the parties may incur individually are to be borne by the party incurring such expenses.

(Added by amendment filed with the city clerk, July 17, 1978)

ARGUMENT IN FAVOR OF MEASURE D

Yes on Measure D

Repeal Binding Arbitration

In 1978 binding arbitration was added to the Palo Alto City Charter for the purpose of preventing strikes by fire and police unions. In 1985 the California Supreme Court ruled those strikes by public safety unions are not legal. The Palo Alto City Council agrees that binding arbitration as it exists today is not working.

While City policy is for fairness across employee groups, binding arbitration for public safety unions has prevented the City from ensuring equitable reforms across all employee groups and balancing its budget. This Charter provision needs to be repealed.

The current city budget calls for \$4.3 million in salary and benefit reductions by public safety unions. Without these concessions the City may be forced to cut police staff, reducing vital emergency services. Alternately, the city may need to cut public services including streets, parks and libraries. All other City workers have already supported the City during hard financial times by accepting significant salary and benefit cuts and pension reforms.

*"In our view, **this outdated practice cannot continue...**If voters have an opportunity to end binding arbitration, it could assure that all the city's unions will take part in meeting the city's budget obligations."* Palo Alto Weekly, May 6, 2011.

The Santa Clara County Civil Grand Jury recommended eliminating binding arbitration in its May 2010 report, **"Cities Must Rein In Unsustainable Employee Costs"**. Strikingly, less than 5% of California cities have binding arbitration.

This initiative repeals binding arbitration only; all other collective bargaining practices remain.

Let Palo Alto join the other 95% of California cities including Mountain View, Menlo Park and East Palo Alto that manage their labor contracts with fairness and equity without binding arbitration.

Vote **YES** to repeal binding arbitration.

For more information visit: www.RepealBindingArbitration.org

/s/ Helene S. Wheeler
Former Mayor, City of Palo Alto

/s/ Patrick Burt
Council Member

/s/ Karen Holman
Council Member

/s/ Greg Scharff
Council Member

/s/ Yoriko Kishimoto
Former Mayor of Palo Alto

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE D

Vote NO on Measure D

The City of Palo Alto has a long history as a fair and reasonable employer. That is why the City, for 33 years, has utilized the binding arbitration process for its public safety employees who do not have the same collective bargaining rights that other city employees have. Binding arbitration promotes our City's policy of providing equal treatment and fairness to our public safety employees.

The binding arbitration process for Palo Alto's public safety employees provides an equitable way to settle disputes. It works like this: Each side makes an offer to resolve the dispute. If either party makes an unreasonable demand, that offer will be rejected. If both offers are reasonable, one offer will be selected by the arbitrator. Binding arbitration encourages both sides to be fair, realistic and reasonable.

Over the last 33 years, 90% of collective bargaining agreements for our public safety employees have been successfully negotiated without resorting to binding arbitration. Binding arbitration is so rarely used, why repeal it?

Measure D will repeal binding arbitration and force labor disputes into court, subjecting Palo Alto's taxpayers to bear the expense of lengthy litigation. Repeal is neither sensible nor fair.

The responsible approach is to give the City and our public safety employees an opportunity to work together to modify the existing process, if appropriate.

Vote **NO** to repeal binding arbitration

Vote **No** on Measure D

For more information visit: www.PaloAltoForFairness.com

/s/ A. Yiaway Yeh
Vice Mayor of Palo Alto

/s/ Gail A. Price
Councilmember, City of Palo Alto

/s/ LaDoris H. Cordell
Former City Council Member and Retired Judge

/s/ John Barton
Former City Council Member

/s/ Richard Alexander
Attorney/Resident 35 Years

ARGUMENT AGAINST MEASURE D

Binding Arbitration is a fair system to settle disputes for Police Officers and Firefighters.

The Citizens of Palo Alto vote was 57.2 % to 42.8 % to place Binding Interest Arbitration in the City Charter in 1978. The repeal of binding arbitration would undo 33 years of a system with a proven track record that works.

Police officers and Firefighters do not have the right to strike; binding arbitration is the best alternative and remedy for the City and its public safety officers. In the Palo Alto City Charter it states both, the City or the employees, could call for arbitration. Under the arbitration process the City and the employees would name one member of the three-member arbitration board, and their designees would agree on a neutral arbitrator to be chairperson. Each side would present its "last best offer" and the arbitrators would be empowered only to choose one or the other, this provision is an incentive to negotiate to as close a position as possible.

The City Charter requires the arbitrators take into account the City's financial ability to pay before issuing a decision. Twenty-six states and twenty two California cities provide binding interest arbitration. The state of Wisconsin eliminated employee's collective bargaining rights recently but kept intact binding interest arbitration for their police officers and firefighters.

Binding Arbitration, in the rare occasions that it has been used since 1978, has proven to be a fair resolution process for the City, police and firefighters. Join respected city leaders and citizens for a fair process and Vote No on repeal of Binding Interest Arbitration.

/s/ A. Yiaway Yeh
Vice Mayor of Palo Alto

/s/ Gail A. Price
Councilmember City of Palo Alto

/s/ John Barton
Former City Council Member

/s/ LaDoris H. Cordell
Former City Councilmember and Retired Judge

/s/ Richard Alexander
Attorney/Resident 35 years

REBUTTAL TO ARGUMENT AGAINST MEASURE D

Since binding arbitration was added to the City Charter in 1978, conditions have changed. Escalating employee costs are outpacing cities' ability to generate revenue. Binding arbitration restricts the ability of the City Council to manage employee costs and make significant financial decisions.

- When impasse is declared by either party during negotiations for wages, benefits, hours, or working conditions, a third party arbitrator makes the final decision. The arbitrator sides with one party or the other, no compromise is permitted. Binding arbitration ends negotiations.
- Since 2010 all other city employees have reduced their compensation and benefits while firefighters received two 4% raises and police received a 6% raise. Fire and police budgets have grown 12% since 2009 while other City departments have taken cuts. Pension costs for fire and police are projected to grow 34% between 2009 and 2012. If the City cannot achieve equitable public safety compensation reductions, balancing the budget will depend on cuts in other departments and reduced City services.
- Other essential employees, like utility safety workers do not have binding arbitration and yet cannot strike.

These differences are not fair to other City employees, and are not fair to Palo Altans.

Palo Alto's residents rely on the City Council to make financial decisions considering both short and long term economic impacts. Binding arbitration puts the City at risk of forcing deeper cuts to all other city services.

Restore fairness and fiscal responsibility.

Vote Yes on Measure D - Repeal Binding Arbitration

/s/ Annette Glanckopf
Chair, Palo Alto Emergency Preparedness

/s/ Samir Tuma
Co-Chair, Measure A School Campaign

/s/ Vicky Ching
Owner, Ming's Chinese Cuisine

/s/ Larry Klein
Palo Alto Council Member and Former Mayor

/s/ Bern Beecham
Former Mayor, City of Palo Alto