



Office of the Attorney

## **SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** July 30, 2020

**Item Number:** 6

**Item Description:** Supplemental Materials for Item 2a - Placing Charter Amendment Measure on the November 3, 2020 Ballot to Amend Multiple Administrative Provisions

**Submitted by:** Farimah Faiz Brown, City Attorney

At the Special City Council Meeting on July 21, 2020, an item was discussed to adopt a resolution placing a charter amendment measure on November 3, 2020 Ballot to amend and clarify several administrative provisions. One component of the item proposes amendments to administrative provisions related to the Office of the City Attorney. In reviewing the item, a couple of clarifications appear in order. First, in line with existing practice, it is recommended to clarify that the City Attorney can enter into contracts to prosecute or defend any action or proceeding or when necessary to advise the Council, any board or commission, the City Manager, or any division, department, or bureau of the City Government. Second, the language presented should be clarified that the City Attorney shall not compromise or settle cases except when authorized by council unless authorized to do so by ordinance. The Council has delegated settlement authority to the City Attorney for cases not exceeding \$15,000.

RESOLUTION NO. -N.S.

SUBMITTING TO THE BERKELEY ELECTORATE ON THE NOVEMBER 3, 2020 BALLOT AN AMENDMENT TO THE BERKELEY CITY CHARTER TO ELIMINATE THE RESIDENCY REQUIREMENT FOR SWORN MEMBERS OF THE FIRE DEPARTMENT, CONFORM THE PROVISIONS OF ARTICLE V, SECTION 9.5, AND SECTION 10 REGARDING REDISTRICTING TO STATE LAW, ~~AND REMOVE GENDER-SPECIFIC LANGUAGE THROUGHOUT THE CHARTER, AND AMEND ARTICLE VII, SECTION 28 AND ARTICLE XVI, SECTION 113 TO CONFORM UPDATE TERMS AND DUTIES OF THE OFFICE OF CITY ATTORNEY TO LEGAL AND ETHICAL STANDARDS ON THE NOVEMBER 3, 2020 BALLOT~~

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 3, 2020 General Municipal Election, a measure to amend certain administrative provisions of the City Charter; and

WHEREAS, in accordance with the provisions of Section 10002 and 10403 of the Elections Code of the State of California, the Alameda County Board of Supervisors is requested to consolidate the City of Berkeley General Municipal Election with the Statewide General Election to be held November 3, 2020; and

WHEREAS, the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services to include all necessary services related to official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, polling places, poll workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the conduct of the consolidated election; and

WHEREAS, the Council desires to submit this measure to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that the full text of the measure shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above Charter amendment requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that Pursuant to Elections Code Section 9285 (b), the City Council hereby adopts the provisions of Elections Code Section 9285 (a) providing for the filing of rebuttal arguments for city ballot measures.

BE IT FURTHER RESOLVED that the City will reimburse the Registrar of Voters for the costs associated with placing the measure on the ballot.

BE IT FURTHER RESOLVED that said proposed Charter Amendment measure shall appear and be printed upon the ballots to be used at said election as follows:

<b>CITY OF BERKELEY CHARTER AMENDMENT</b>	
Shall the measure amending the City Charter to eliminate the residency requirement for sworn members of the fire department, conform the provisions of Article V, Section 9.5 and Section 10 regarding the eligibility requirements for the Redistricting Commission to state law, <del>allow for amendments to the redistricting ordinance due to changes in the Charter, and remove gender-specific language and amend Article VII, Section 28 and Article XVI, Section 113 to conform update terms and duties of the office of City Attorney with legal and ethical standards</del> be adopted?	YES
	NO

BE IT FURTHER RESOLVED that the text of the Charter Amendment be shown as Exhibit A, attached hereto and made a part hereof.

Exhibits

A: Text of Charter Amendment

AMENDMENT TO THE BERKELEY CITY CHARTER TO ELIMINATE THE RESIDENCY REQUIREMENT FOR SWORN MEMBERS OF THE FIRE DEPARTMENT, CONFORM THE PROVISIONS OF ARTICLE V, SECTION 9.5 AND SECTION 10 REGARDING REDISTRICTING TO STATE LAW, ~~AND REMOVE GENDER-SPECIFIC LANGUAGE, AND AMEND ARTICLE VII, SECTION 28 AND ARTICLE XVI, SECTION 113 TO CONFORM~~UPDATE TERMS AND DUTIES OF THE OFFICE OF CITY ATTORNEY ~~TO LEGAL AND ETHICAL STANDARDS~~

The People of the City of Berkeley hereby amend the Charter of the City of Berkeley as follows:

Section 1. Section 37a of Article VII of the Charter of the City of Berkeley is amended as follows:

**Section 37a. ~~Repealed.~~Residency requirement for sworn members of the fire department.**

~~Any sworn member of the fire department who is hired subsequent to January 1, 1995, may not reside greater than a radius of forty (40) air miles from the boundaries of the City of Berkeley.~~

Section 2. Article V, Section 9.5 and Article V, Section 10 of the Charter of the City of Berkeley are amended throughout to change all instances of the name of the commission from the “Citizens Redistricting Commission” to the “Independent Redistricting Commission.”

Section 3. Article V, Section 9.5(a)(4) of the Charter of the City of Berkeley is amended as follows:

(4) The City Council, by a two-thirds vote, shall adopt an ordinance establishing procedures to implement this Charter section. An implementation ordinance cannot be modified by the Council for a period of five years after initial adoption, and without a two-thirds vote of the Council, unless adoption of an amendment to the Charter, a change in applicable state or federal statute, or court decision necessitates an earlier modification.

Section 4. Article V, Section 9.5(b)(1) of the Charter of the City of Berkeley is amended as follows:

(1) Membership. The Commission shall consist of thirteen members, each of whom is a ~~registered voter~~resident ~~of~~in the City of Berkeley. The application and selection

process set forth below and by ordinance is intended to produce an Independent Citizens Redistricting Commission that is independent from legislative and political influence, and reasonably representative of the City's population.

Section 5. The first paragraph of Article V, Section 9.5(b)(3) of the Charter of the City of Berkeley is amended as follows:

(3) Qualifications and eligibility. All ~~registered~~ Berkeley residents who are 18 years of age or older at the time their application is submitted, who have voted in the last two General Municipal elections, unless ineligible to do so by reason of age, are eligible for membership on the Citizens-Independent Redistricting Commission, subject to the following limitations.

Section 6. Article V, Section 9.5(b)(3)(i) of the Charter of the City of Berkeley is amended as follows:

(i) The following individuals are prohibited from serving on the Citizens-Independent Redistricting Commission:

(A) any individual who currently holds, has held, or who has been a qualified candidate for the office of Mayor or City Councilmember within the two -years preceding the date of application;

(B) any other individual who holds or has held any City of Berkeley elective office identified in this Charter within the two years preceding the date of application;

(C) the immediate family of the Mayor or any Councilmember, as well as immediate family of staff to the Mayor or Councilmember;

(D) any employee of the City of Berkeley;

(E) any person performing paid services under a contract with the City of Berkeley, including employees of subcontractors;

(F) any individual who has served as an officer, paid staff, or paid consultant of a campaign committee of a candidate for Mayor or City Council within the two years preceding the date of the application;

(G) any individual who is currently, or within the two years preceding the date of application, has been a paid staff member or unpaid intern to the Mayor or any Councilmember;

(H) any individual ineligible to serve in public office under

Government Code sections 1021, 1021.5, 1770, or the Constitution and laws of the State of California, except for those laws requiring citizenship status.

Section 7. Article V, Section 9.5(b)(5) of the Charter of the City of Berkeley is amended as follows:

(5) Application process. The City Clerk shall initiate and advertise a 30-day nomination period for appointment to the Citizens-Independent Redistricting Commission. The nomination process shall be open to ~~all registered~~ Berkeley residents/voters who are 18 years of age or older at the time their application is submitted, and be conducted in a manner that promotes a diverse and qualified applicant pool.

Section 8. Article V, Section 9.5(e)(2) of the Charter of the City of Berkeley is amended as follows:

(2) In the event of substantial neglect of duty, gross misconduct in office or inability to discharge the duties of office, or if it is determined that a commissioner is ineligible under subdivision ~~(d)~~(b)(3), a Commissioner may be removed by a two-thirds vote of the IndependentCitizens Redistricting Commission, after having been served written notice and provided with an opportunity to respond.

Section 9. Article XVI, Section 109.5 is hereby added to the Charter of the City of Berkeley as follows:

### **Section 109.5 Gender-neutral language.**

The Charter of the City of Berkeley is amended throughout to remove all gender-specific language such as “he,” “she,” “him,” “her,” or “his” and any other gendered pronouns or nouns. Gendered language shall be replaced with appropriate gender-neutral pronouns such as “they,” “their,” or “them” or with gender neutral nouns such as “the candidate,” “the voter,” “the Clerk,” or “the officer” as grammatically appropriate and in a manner that does not change the legal meaning of any provision of the Charter. Gendered language will be preserved if legally required due to the specific gendered intent of the provision.

- (a) The gender neutral pronoun includes the feminine and masculine genders.
- (b) “They/them/their” shall indicate a singular individual, unless the context indicates the contrary. In most cases, the singular number includes the plural and the plural number includes the singular.

Section 10. Article VII, Section 28 (c) of the Charter of the City of Berkeley is amended as follows:

(c) Except as otherwise provided in this Charter, Tto exercise control over all departments, divisions and bureaus of the City Government and over all the appointive officers and employees thereof.

Section 11. Article XVI, Section 113 of the Charter of the City of Berkeley is amended as follows:

**Section 113. Office of the City Attorney and Conduct of legal proceedings.**

The City Attorney shall be an officer of the City of Berkeley, appointed by a vote of five members of the Council, serving at the will of the Council for an indefinite period, and removed only by a vote of five members of the Council, and shall receive such salary as may be fixed by the Council. Upon presentation of a proposed budget by the City Attorney, the Council shall provide funds sufficient to carry out the responsibilities of the office of City Attorney and for the City Attorney's department (subject to available resources), which shall be under the administrative control of the City Attorney.

Except in the case of **the Berkeley Housing Authority, and in the case of** the Board of Education, Rent Stabilization Board and any other boards whose members are elective officers pursuant to this Charter, and in addition to duties and powers provided elsewhere in this Charter, the City Attorney shall prosecute all violations of the Charter and ordinances of the City; shall, subject to the general direction of the Council, prosecute and defend for the City and all boards, officers and employees in their official capacity, all proceedings before judicial and quasi-judicial tribunals; shall not compromise, settle or dismiss any action for or against the City **except as authorized by an ordinance or resolution adopted by the Council,** and shall not commence any action, without permission of the Council; shall be the legal advisor of and attorney and counsel for the City and for all officers and boards thereof, in all matters relating to their official duties; and shall draft proposed City ordinances and amendments thereto. **The City Attorney shall have the authority to enter into contracts to prosecute or defend any action or proceeding or when necessary to advise the Council, any board or commission, the City Manager, or any division, department, or bureau of the City Government.**

~~The City Attorney shall prosecute, in behalf of the people, all criminal cases arising from violations of the provisions of this Charter and the ordinances of the City, and shall attend to all suits and proceedings in which the City may be legally interested; provided, the Council shall have control of all litigation of the City and may employ other attorneys to take charge of any litigation or to assist the City Attorney therein.~~