



Office of the City Manager

REVISED AGENDA MATERIAL

Meeting Date: June 30, 2020

Item Number: 38

Item Description: **Placing Charter Amendment Measure on the November 3, 2020 Ballot to Repeal the Residency Requirement for Sworn Members of the Berkeley Fire Department**

Supplemental/Revision Submitted By: **David White, Deputy City Manager**
Mark Numainville, City Clerk

Item 38 on the agenda is a resolution to place a measure on the ballot to remove the outdated residency requirement for firefighters from the City Charter. Since that item originally appeared on the Council agenda on June 16, 2020, a new issue has arisen regarding the need for additional amendments to the City Charter.

The state of California recently passed a law, Senate Bill 225, which extends the right to serve on any appointed board or commission to non-citizens. The current Charter provisions require that a member of the Redistricting Commission be a registered voter in Berkeley and have voted in the past two elections. Since a person must be a U.S. Citizen to register to vote, this requirement is contrary to the new state law. As a result, the City Attorney has advised that the City not enforce the voter registration and voting history requirements for any applicant when considering applications for participation in the Redistricting Commission. Please see the attached memo from the City Attorney for additional analysis. Due to the citizenship requirement change, the measure also amends the Charter to allow for a change in the redistricting ordinance based on the Charter amendment.

In addition, the Council had previously directed staff to forgo the Charter amendments related to gender neutral language in order to reduce the length of the ballot and potential elections costs borne by the City. However, since the need for the firefighter and redistricting amendments are urgent for the 2020 ballot, adding the gender neutral amendments at this time will save the city the cost of placing the gender neutral measure on the ballot in 2022. In the City Charter, there are currently 77 instances of gendered language – “his or her” (40), “he or she” (26), “him or her” (7), “himself or herself” (2), “workman” (1), and “chairman” (1).

The City may place a Charter amendment on the ballot that addresses more than one subject. The single subject rule, which requires that components of an initiative cannot relate to more than one subject, does not apply to Charter amendments placed on the ballot by the City Council. In contrast, the single subject rule does apply to Charter amendments and other measures placed on the ballot through the citizens' initiative petition process. This was affirmed by the courts in *Hernandez v. County of Los Angeles* in 2008 (167 Cal.App.4th 12, 22-23). The case explicitly states that "Charter cities are also able to group multiple technical amendments into one ballot measure."

This supplemental provides the Council with a revised resolution to place a measure on the ballot for an administrative cleanup Charter Amendment for all three subjects – firefighter residency, Redistricting Commission qualifications, and gender neutral language. **If Council approves of this direction, staff will submit the resolution for the Consent Calendar on July 14, 2020.**

Attachments:

- 1: City Attorney Opinion on Voter Registration Requirements for City Redistricting Commission
- 2: Proposed Resolution Placing a Charter Amendment on the Ballot

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.



Office of the City Attorney

June 16, 2020

To: Honorable Mayor, Members of the City Council, and City Manager

From: Farimah Faiz Brown, City Attorney
Samuel Harvey, Deputy City Attorney

Re: **Voter Registration Requirements for City Redistricting Commission**

The City Attorney has determined that the requirements in the City Charter that a person be a registered voter and have participated in the last two City elections in order to serve on the City's Redistricting Commission are unenforceable because they are preempted by state law.

The City Charter provides that in order to be eligible to serve on the City's Redistricting Commission, a person must be a registered voter in the City of Berkeley and must have voted in the last two City general elections. (City Charter § 9.5(b)(1), (3).) The City Attorney has determined that these requirements are unenforceable because they are preempted by state law governing the eligibility of all persons regardless of citizenship or immigration status to serve on appointed boards and commissions.

Specifically, California Government Code section 1020 was amended in 2019 to provide that "a person, regardless of citizenship or immigration status, is eligible to hold an appointed civil office if the person is 18 years of age and a resident of the state." Because a person must be a citizen of the United States in order to be a registered voter, the voter registration requirement in Charter section 9.5 effectively functions as a citizenship requirement. (See Cal. Elec. Code § 321.) Such a requirement is impermissible under Government Code section 1020.

While the manner and method of appointing city officers such as members of the Redistricting Commission is a "municipal affair" in which a charter city such as Berkeley has plenary authority to act, California courts have determined that the legal treatment of immigrants is a matter of statewide concern in which state law will preempt provisions of local law in the event of a conflict. (Cal. Const., art. XI, § 5(b); *City of Huntington Beach v. Becerra* (2020) 44 Cal.App.5th 243, 275.) As a result, the City Attorney has advised

that the City not enforce the voter registration and voting history requirements for any applicant when considering applications for participation in the Redistricting Commission.

This determination is consistent with the values of the City of Berkeley as a community that welcomes immigrants, refugees and those in exile, and encourages participation in local governance by all residents regardless of national origin or immigration status. It also enhances the City's goals as a Sanctuary City committed to supporting our undocumented community members.

CC: City Clerk

RESOLUTION NO. -N.S.

SUBMITTING TO THE BERKELEY ELECTORATE 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 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:

CITY OF BERKELEY CHARTER AMENDMENT	
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, allow for amendments to the redistricting ordinance due to changes in the Charter, and remove gender-specific language 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

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 a 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 residentsvoters 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 Independent Citizens 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.