



Office of the City Manager

CONSENT CALENDAR
March 30, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Mark Numainville, City Clerk
 Subject: Police Accountability Board – Ordinance Amendment for Leaves of Absence and Alternate Commissioner; Amending BMC Chapter 3.02

RECOMMENDATION

Adopt first reading of an Ordinance amending Berkeley Municipal Code Section 3.02.030 to provide for leaves of absence for members of the Police Accountability Board and Berkeley Municipal Code Section 3.02.035 to provide for a designated council-approved alternate to serve when a regular member is on a leave of absence.

FISCAL IMPACTS OF RECOMMENDATION

A direct cost to the General Fund \$800 to pay the stipend to the alternate commissioner for the time spent on the required 40 hours of training.

CURRENT SITUATION AND ITS EFFECTS

Measure II was adopted on November 3, 2020 by the voters of Berkeley to create a new Police Accountability Board (hereafter “Board”). The members of the Board are approved by vote of the full Council. The Charter amendment also provided for termination for lack of attendance, leaves of absence, and alternate commissioners pursuant to Berkeley Municipal Code Section 3.02.020, Section 3.02.030, and Section 3.02.035 respectively.

Leaves of absence are an important tool for commissioners to be able to miss a meeting due to illness, unavoidable travel, or other significant conflicting obligations without the absence counting against their attendance record. For commissions appointed by the Council as a whole, Section 3.02.030 requires that the leave of absence be granted by the full Council. This requires an item to be placed on the Council agenda at least four weeks prior to the date of absence (or much longer depending on Council recess periods). This process makes it very difficult to obtain a leave of absence and may lead to commissioners being terminated for attendance due to unforeseen circumstances.

The current process for alternate commissioners involves the Mayor and each Councilmember having up to five alternates that can serve on certain designated commissions. The alternate process provides an efficient method to fill a vacancy due

to a leave of absence without requiring the temporary commissioner to take the oath of office and file a Form 700 for every instance of service as an alternate on a commission. This process is complicated by the Charter requirement that all appointees to the Board be approved by the full Council. The same long lead times and onerous requirement of submitting a council item for the leave of absence would apply to designating an alternate commissioner to serve.

In order to remedy these issues and maintain the integrity of the Charter requirements for approval by the full Council for any member serving on the Board, staff is proposing code amendments to create specific provisions enabling leaves of absence to be granted without approval of the full Council and the use of a single alternate commissioner who will be pre-approved by the full council to serve when another Board member is on a leave of absence. Should City Council adopt the proposed Ordinance, at the time that City Council appoints the initial nine (9) commissioners to the Board, City Council will also be asked to approve an alternate commissioner. This alternate will be required to undergo the same 40-hour training requirement as the regular Board members.

BACKGROUND

The Berkeley Municipal Code provides for leaves of absence for city commissioners and for the use of alternate commissioners on certain commissions. There are additional layers of complexity for boards and commissions that are appointed by the Council as a whole due to the requirement that the leave be granted by the entity that made the appointment.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable effects on sustainability or the environment associated with the recommendation in this report.

RATIONALE FOR RECOMMENDATION

These amendments will allow the Board to have greater continuity in its membership by reducing the number of members that could be terminated for attendance due to the difficulty of obtaining leaves of absence in advance of board meetings. In addition, vacancies on a commission reduce the effectiveness of the body to deliberate and conduct business. Finally, the work of the Board will be enhanced by an alternate Board member who will receive the extensive training provided to the regular Board members.

ALTERNATIVE ACTIONS CONSIDERED

The Council may wish to not adopt the proposed Ordinance and adhere to the current wording of the Berkeley Municipal Code that requires all leaves of absence to be granted by submitting an agenda item to be approved by the full Council for each leave of absence requested by a board member. The Council may also wish to make changes to the proposed Ordinance such as designating who may nominate an alternate commissioner for City Council approval.

CONTACT PERSON

Mark Numainville, City Clerk, (510) 981-6900

Dave White, Deputy City Manager, (510) 981-7000

Attachments:

1: Ordinance

ORDINANCE NO. -N.S.

LEAVES OF ABSENCE AND ALTERNATE COMMISSIONER FOR THE POLICE ACCOUNTABILITY BOARD; AMENDING BERKELEY MUNICIPAL CODE CHAPTER 3.02

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 3.02.030 is amended to read as follows:

3.02.030 Leaves of absence.

The following circumstances shall not count as absences for the purposes of Section 3.02.020:

A. A member of a board, commission or committee may be granted a leave of absence not to exceed three months by the appointing Councilmember, the appointing Commission, or the Council, when the appointment is made by the Council as a whole, and a temporary vacancy shall thereupon exist for the period of such leave of absence. Notice of the leave of absence must be filed with the City Clerk prior to the absence.

1. During the period of such temporary vacancy, the appointing Councilmember, the appointing Commission, or the Council, when the appointment is made by the Council as a whole, may fill such vacancy by a temporary appointment to said commission; provided, however, that the period of such temporary appointment shall not exceed the period of the temporary vacancy. At the expiration of a leave of absence so granted, the member shall automatically resume full membership on the board, commission or committee.

2. Alternatively, the appointing Councilmember or Mayor may select one of their Alternate Commissioners to serve temporarily as provided for in Section 3.02.030.A.1 when a leave of absence is granted for one of their appointees.

B. Commissioners may request that an absence be excused due to a conflict between the date of a scheduled commission meeting on which the commissioner sits and a religious or cultural holiday. Such a request shall be made in writing on a form provided by the City and submitted to the secretary prior to the meeting for which the commissioner's absence is to be excused. The request shall not be subject to the approval of the commission but shall be accepted upon request. The secretary shall then excuse that absence and exclude it from the attendance report sent semi-annually to the City Clerk.

The definition of a religious or cultural holiday shall be left to the individual commissioner. However, the following list may be considered illustrative of the religious and cultural holidays for which a commissioner may seek an excused absence: Al Hijrah New Year, Ash Wednesday, Chinese New Year, Diwali, Easter Sunday, Eid Al Fitr, Eid Al Adha,

Good Friday, Hanukkah, Holi, Kwanzaa, Palm Sunday, Passover, Rosh Hashanah, St. Patrick's Day and Yom Kippur.

C. Members of the Police Accountability Board may be granted a leave of absence upon the filing of a notice for leave of absence with the City Clerk by the nominating Councilmember or the Mayor for their nominee. All other conditions and regulations for leaves of absence in this Code and adopted by resolution, that are not inconsistent with the City Charter, shall apply.

Section 2. That Berkeley Municipal Code Section 3.02.035 is amended to read as follows:

3.02.035 Additional provisions pertaining to Alternate Commissioners.

A. Each Councilmember and the Mayor may select up to five individuals to serve as their Alternate Commissioners. Alternate Commissioners shall be qualified and appointed as provided for in the Municipal Code and supplemental regulations adopted by resolution.

B. Alternate Commissioners shall be eligible to serve in such capacity only when a vacancy on a designated commission is the result of an approved leave of absence and the Councilmember or Mayor has delivered written notification to the City Clerk Department for temporary appointment of the selected Alternate Commissioner.

C. A Councilmember or the Mayor may, but is not required to, appoint an Alternate Commissioner to fill a temporary vacancy.

D. Appointment as an Alternate Commissioner does not prevent a Councilmember or the Mayor from appointing that Alternate Commissioner to sit as a Commissioner on any commission as provided for in Article 2 of Chapter 2.04.

E. All regulations and requirements of the BMC that apply to a Commissioner as defined in 3.02.010.A. also apply to Alternate Commissioners except Section 3.02.040.

F. Councilmembers or the Mayor may dismiss an Alternate Commissioner without appointing a replacement provided that the Alternate Commissioner has served the term minimum described in Section 2.04.075. Dismissal of an Alternate Commissioner must be submitted by the appointing Councilmember in writing to the City Clerk Department.

G. The Police Accountability Board shall have one alternate commissioner, approved by the full council by majority vote, and subject to all membership, service, and training requirements of the City Charter for regular members of the Board. All other conditions and regulations for alternate commissioners in this Code and adopted by resolution, that are not inconsistent with the City Charter, shall apply.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.