



Office of the City Manager

CONSENT CALENDAR

February 13, 2024

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Mark Numainville, City Clerk
Subject: Amendments to the Regulations for Alternate Commissioners

RECOMMENDATION

Adopt a resolution removing the now dissolved Police Review Commission from the list of designated commissions on which Alternate Commissioners may serve; expanding the list of designated commissions by adding the following five commissions: Community Health Commission, Environment and Climate Commission, Parks, Recreation, and Waterfront Commission, Transportation and Infrastructure Commission, and Zero Waste Commission; adding a new requirement for temporary appointments made to any quasi-judicial commissions to two business days prior to the meeting; and rescinding Resolution No. 67,205-N.S.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

In 2015, Council amended Berkeley Municipal Code Chapter 3.02 to allow each Councilmember and the Mayor to appoint a pool of five Alternate Commissioners to serve on designated commissions when their regular appointee is on an approved leave of absence. Section 3.02.035 provides that the designated commissions on which alternate commissioners may serve is determined by Council resolution. The purpose of Alternate Commissioners is to facilitate the filling of commission seats by reducing the amount of forms and paperwork required for these temporary appointments.

Per Resolution No. 67,205–N.S., the designated commissions on which Alternate Commissioners may serve are the Housing Advisory Commission, Landmarks Preservation Commission, Planning Commission, Police Review Commission, Sugar-Sweetened Beverage Product Panel of Experts, and the Zoning Adjustments Board. With the sunset of the Police Review Commission, it is necessary to remove that commission from the list.

Staff conducted a review of the Alternate Commissioner program to determine if any other commissions should be added or removed from the list. A review of the number of approved leaves of absence for the year 2022 and year 2023 indicates an increase in leave of absence requests. The following five commissions were at or near the top of the list for the number of approved leaves of absence.

Community Health Commission
Environment and Climate Commission
Parks, Recreation, and Waterfront Commission
Transportation and Infrastructure Commission
Zero Waste Commission

Adding the five commissions listed above to the list of commissions for alternate commissioners will further increase efficiencies for Councilmembers, commissioners, and the City Clerk Department in the filling of commission seats when there are absences.

Furthermore, for the quasi-judicial commissions on the list, there was a need to allow for more time for staff to review potential conflicts of interest for alternate commissioners. For these commissions, it is important to review any potential conflicts that can affect due process requirements in their proceedings. Conflicts are fact specific and require careful consideration before making a determination. To ensure proper review of any potential conflicts of interest, the amended resolution requires the temporary appointment of an Alternate Commissioner to be made at least two business days prior to the meeting for quasi-judicial commissions.

BACKGROUND

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 BMC Section 3.02.040 (term maximum).

For any commission with specific requirements for membership, the Alternate Commissioner must meet the same special category requirements in order to serve. Alternate Commissioners are subject to the December 1 term minimum.

Alternate Commissioners must complete the Oath of Office and file a Form 700 at the time of their appointment as an Alternate Commissioner and not for each temporary appointment to one of the designated Commissions. The appointment of an Alternate Commissioner to serve as a temporary appointee must be filed by the appointing Councilmember or Mayor with the City Clerk prior to the meeting at which the Alternate Commissioner is to serve. For meetings held after business hours, the temporary appointment must be received by the City Clerk before 5:00 p.m. on the day of the commission meeting in order to be effective for that meeting.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects, climate impacts, or sustainability opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

The Police Review Commission was dissolved with the establishment of the Police Accountability Board. This amendment removes the dissolved commission. The increase in leave of absence requests from commissioners over the past two years indicates a need to help facilitate filling of commission seats when there are absences, and this amendment expands the list of designated commissions on which Alternate Commissioners may serve.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

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

Attachments:

1: Resolution

RESOLUTION NO. XX,XXX–N.S.

SPECIFYING THE COMMISSIONS TO WHICH AN ALTERNATE COMMISSIONER MAY BE APPOINTED AND SPECIFYING THE APPLICABILITY OF CERTAIN REGULATIONS REGARDING ALTERNATE COMMISSIONERS

WHEREAS, the Berkeley Municipal Code provides for the use of Alternate Commissioners to serve as a temporary appointee on specified commissions; and

WHEREAS, Berkeley Municipal Code Section 3.02.010.B. states that the commissions to which Alternate Commissioners may be appointed shall be set by resolution; and

WHEREAS, it is necessary to establish the applicability of certain City policies with regards to Alternate Commissioners.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Alternate Commissioners may be appointed to the following Commissions: Zoning Adjustments Board, Planning Commission, Housing Advisory Commission, Landmarks Preservation Commission, , Sugar-Sweetened Beverage Panel of Experts, Community Health Commission, Environment and Climate Commission, Parks, Recreation and Waterfront, Zero Waste Commission, and Transportation and Infrastructure Commission
BE IT FURTHER RESOLVED that Alternate Commissioners must adhere to all regulations contained in the Commissioners' Manual as adopted by resolution, except as provided herein and in the Municipal Code.

BE IT FURTHER RESOLVED that Alternate Commissioners may participate as members of the public at any commission meeting provided that they are not currently serving as an Alternate Commissioner or appointed to serve as a Commissioner on another commission, in which case the regulations contained in the Commissioners' Manual would apply.

BE IT FURTHER RESOLVED that Alternate Commissioners may serve on more than one quasi-judicial commission, provided that they adhere to all Conflict of Interest, Due Process, and all other applicable laws, rules, and regulations. Alternate Commissioners are prohibited from voting on the same project as members of both the Zoning Adjustments Board and the Landmarks Preservation Commission.

BE IT FURTHER RESOLVED that Alternate Commissioners shall be required to take the Oath of Office only at the time of their appointment as an Alternate Commissioner and not for each temporary appointment to one of the Commissions listed in this resolution.

BE IT FURTHER RESOLVED that an individual may be designated as an Alternate Commissioner by the Mayor and any number of Councilmembers concurrently, but may not serve on a single commission for more than one appointing elected official concurrently.

BE IT FURTHER RESOLVED that the dismissal of an Alternate Commissioner is deemed effective the date it is received by the City Clerk unless a later date is specified.

BE IT FURTHER RESOLVED that the appointment of an Alternate Commissioner to serve as a temporary appointee must be filed by the appointing Councilmember or Mayor with the City Clerk prior to the meeting at which the Alternate Commissioner is to serve. For meetings held after business hours, the temporary appointment must be received by the City Clerk before 5pm on the day of the commission meeting in order to be effective for that meeting.

BE IT FURTHER RESOLVED that for quasi-judicial commissions, a temporary appointment of an Alternate Commissioner must be made at least two business days prior to the meeting to ensure adequate opportunity for proper review of any potential conflicts of interest.

BE IT FURTHER RESOLVED that Resolution No. 67,205-N.S. is hereby rescinded.