



**INDEPENDENT REDISTRICTING COMMISSION  
SPECIAL MEETING**

**Wednesday, March 17, 2021  
6:00 PM**

**Commission Members:**

DISTRICT 1 – JOSE LOPEZ  
DISTRICT 2 – JESSE SUSSELL  
DISTRICT 3 – LISA M. TRAN  
DISTRICT 4 – CURTIS W. HANSON  
AT-LARGE – DELORES COOPER  
AT-LARGE – CARLY MICHELE ALEJOS  
AT-LARGE – SHERRY SMITH

DISTRICT 5 – WINSTON RHODES  
DISTRICT 6 – ELISABETH WATSON  
DISTRICT 7 – SAMUEL C. TAPLIN  
DISTRICT 8 – ANDREW FOX  
AT-LARGE – SIMELIA ROGERS  
AT-LARGE – RONALD K. CHOY

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE**

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the Independent Redistricting Commission will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL <https://us02web.zoom.us/j/81934137884>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen.

To join by phone: Dial **1-669-900-9128 or 1-877-853-5257 (Toll Free)** and Enter Meeting ID: **819 3413 7884**. If you wish to comment during the public comment portion of the agenda, press \*9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Independent Redistricting Commission by 5:00 p.m. the Friday before the Commission meeting will be distributed to the members of the Commission in advance of the meeting and retained as part of the official record. City offices are currently closed and cannot accept written communications in person.

# AGENDA

**Roll Call**

**Election of Chair and Vice-Chair**

**Public Comment on Non-Agenda Matters**

## **Minutes for Approval**

*Draft minutes for the Commission's consideration and approval.*

### **1. Minutes - February 24, 2021**

## **Commission Action Items**

*The public may comment on each item listed on the agenda for action as the item is taken up.*

- 2. Selection of District 6 Alternate Commissioner by Random Draw**  
**From: Independent Redistricting Commission**  
**Recommendation:** Conduct a random draw to fill the vacancy in the position of District 6 Alternate Commissioner pursuant to the selection process outlined in Charter Section 9.5 and Berkeley Municipal Code Chapter 2.10.  
Contact: Mark Numainville, Commission Secretary, (510) 981-6900
- 3. Update from Commission Staff on Redistricting Process**  
**From: Independent Redistricting Commission**  
Contact: Mark Numainville, Commission Secretary, (510) 981-6900
- 4. Discussion of Commission Bylaws and Meeting Schedule**  
**From: Independent Redistricting Commission**  
Contact: Mark Numainville, Commission Secretary, (510) 981-6900
- 5. Brown Act, Conflict of Interest, and Parliamentary Procedure Training**  
**From: Independent Redistricting Commission**  
**Recommendation:** Receive staff presentations on the Brown Act, Conflict of Interest, and Parliamentary Procedure.  
Contact: Mark Numainville, Commission Secretary, (510) 981-6900

## **Items for Future Agendas**

- **Discussion of items to be added to future agendas**

## **Adjournment**

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*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.*

*Any writings or documents provided to a majority of the Independent Redistricting Commission regarding any item on this agenda are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA and are available upon request by contacting the City Clerk Department at (510) 981-6908 or [redistricting@cityofberkeley.info](mailto:redistricting@cityofberkeley.info).*

*Written communications addressed to the Independent Redistricting Commission and submitted to the City Clerk Department will be distributed to the Commission prior to the meeting.*

*Communications to the Independent Redistricting Commission are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the Independent Redistricting Commission, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service to the City Clerk Department at 2180 Milvia Street. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk Department for further information.*

**COMMUNICATION ACCESS INFORMATION:**

If you need ASL or Spanish translation services, please contact the City Clerk's Office at (510) 981-6908 or [redistricting@cityofberkeley.info](mailto:redistricting@cityofberkeley.info) at least three business days in advance of the meeting.



To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.

~~~~~  
I hereby certify that the agenda for this meeting of the Independent Redistricting Commission was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on March 11, 2021.

A handwritten signature in black ink that reads "Mark Numainville".

Mark Numainville, City Clerk

**Communications**

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**INDEPENDENT REDISTRICTING COMMISSION  
SPECIAL MEETING MINUTES (DRAFT)**

**Wednesday, February 24, 2021  
6:00 PM**

Commission Members:

- |                                 |                               |
|---------------------------------|-------------------------------|
| DISTRICT 1 – JOSE LOPEZ         | DISTRICT 5 – WINSTON RHODES   |
| DISTRICT 2 – JESSE SUSSELL      | DISTRICT 6 – ELISABETH WATSON |
| DISTRICT 3 – LISA M. TRAN       | DISTRICT 7 – SAMUEL C. TAPLIN |
| DISTRICT 4 – CURTIS W. HANSON   | DISTRICT 8 – ANDREW FOX       |
| AT-LARGE – DELORES COOPER       | AT-LARGE – SIMELIA ROGERS     |
| AT-LARGE – CARLY MICHELE ALEJOS | AT-LARGE – VACANT             |
| AT-LARGE – SHERRY SMITH         |                               |

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**Roll Call:** 6:02 p.m.

**Present:** Fox, Hanson, Lopez, Rhodes, Sussell, Tran, Watson

**Absent:** Taplin

Commissioner Taplin present at 6:08 p.m.

## **Minutes for Approval**

*Draft minutes for the Commission's consideration and approval.*

### **1. Minutes - February 10, 2021**

**Action:** M/S/C (Rhodes/Watson) to approve the minutes of 2/10/21.

**Vote:** Ayes – Fox, Hanson, Lopez, Rhodes, Sussell, Tran, Watson; Noes – None; Abstain – None; Absent – Taplin.

## **Commission Action Items**

*The public may comment on each item listed on the agenda for action as the item is taken up.*

## Commission Action Items

### 2. Selection of One At-Large Independent Redistricting Commission Member and Five Alternate At-Large Commissioners

**From:** Mark Numainville, Commission Secretary

**Recommendation:** Review the information regarding ranking of applicants and nomination of candidates for the one at-large commissioner and five at-large alternates, and appoint the at-large member and alternates for the Independent Redistricting Commission pursuant to Charter Section 9.5 and Berkeley Municipal Code Chapter 2.10.

**Financial Implications:** None

Contact: Mark Numainville, Commission Secretary, (510) 981-6900

**Action:** 2 speakers. M/S/C (Rhodes/Hanson) to appoint Ronald Choy as an At-Large Commissioner on the Independent Redistricting Commission.

**Vote:** Ayes – Fox, Hanson, Rhodes, Sussell, Watson; Noes – Taplin; Abstain – Lopez, Tran.

**Action:** M/S/C (Rhodes/Taplin) to appoint Lupe Gallegos-Diaz as an Alternate At-Large Commissioner on the Independent Redistricting Commission.

**Vote:** All Ayes.

**Action:** M/S/C (Rhodes/Taplin) to appoint Sarah L. Price as an Alternate At-Large Commissioner on the Independent Redistricting Commission.

**Vote:** All Ayes.

**Action:** M/S/Failed (Rhodes/Taplin) to appoint Bethany Andres-Beck as an Alternate At-Large Commissioner on the Independent Redistricting Commission.

**Vote:** Ayes – Fox, Hanson, Rhodes, Sussell; Noes – None; Abstain – Lopez, Taplin, Tran, Watson.

**Action:** M/S/C (Rhodes/Taplin) to appoint Cindy Rosenthal as an Alternate At-Large Commissioner on the Independent Redistricting Commission.

**Vote:** Ayes – Fox, Hanson, Rhodes, Sussell, Taplin, Watson; Noes – None; Abstain – Lopez, Tran.

**Action:** M/S/Failed (Rhodes/Taplin) to appoint Vetri Velan as an Alternate At-Large Commissioner on the Independent Redistricting Commission.

**Vote:** Ayes – Rhodes, Sussell, Taplin, Watson; Noes – None; Abstain – Lopez, Tran.

**Action:** M/S/C (Taplin/Rhodes) to appoint Bethany Andres-Beck and Brandon Yung as Alternate At-Large Commissioners on the Independent Redistricting Commission.

**Vote:** Ayes – Fox, Hanson, Rhodes, Sussell, Taplin, Tran, Watson; Noes – Lopez; Abstain – None.

## Commission Action Items

A random draw was conducted to determine the order of the alternates to serve in place of At-Large Commissioners. The results of the draw are the ordered list as follows: 1) Cindy Rosenthal; 2) Lupe Gallegos-Diaz; 3) Sarah L. Price; 4) Brandon Yung; 5) Bethany Andres-Beck.

## Items for Future Agendas

- Request for a population density map
- Request for discussion on the effect of delayed release of Census data on the redistricting process
- Request for data and mapping showing new housing units added since 2010
- Next meeting tentatively scheduled for Wednesday, March 17, 2021 at 6:00 p.m.

## Adjournment

**Action:** M/S/C (Fox/Rhodes) to adjourn the meeting.

**Vote:** All Ayes.

Adjourned at 7:58 p.m.

I hereby certify that the foregoing is a true and correct record of the Independent Redistricting Commission meeting held on February 24, 2021.

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Mark Numainville  
City Clerk

## Communications

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Independent Redistricting Commission

Date: March 17, 2021  
To: Independent Redistricting Commission  
From: Mark Numainville, City Clerk  
Subject: Selection of New District 6 Alternate Commissioner

### RECOMMENDATION

Conduct a random draw to fill the vacancy in the position of District 6 Alternate Commissioner pursuant to the selection process outlined in Charter Section 9.5 and Berkeley Municipal Code Chapter 2.10.

### CURRENT SITUATION

On March 3, 2021 it was determined that District 6 Alternate Commissioner Fred Dodsworth has declined his appointment by virtue of his failure to take the Oath of Office and failure to file an assuming office Form 700 Statement of Economic Interests within 30 days of appointment. Mr. Dodsworth received several notifications and reminders, both verbally and in writing, prior to the determination being finalized.

City Charter Section 9.5(b)(6)(ii) provides that by-district alternates are chosen by random draw. A new random draw of the eligible applicants from District 6 will be conducted to fill the District 6 Alternate position. Due to the absence of any disqualifying provision in the Charter or BMC regarding these circumstances, Mr. Dodsworth will be eligible to be selected in the new random draw.

### BACKGROUND

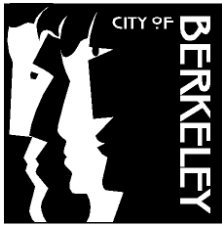
Mr. Dodsworth was notified of the determination on March 5, 2021. The determination letter, which includes the statutory and regulatory references for the action taken, is included for reference in Attachment 1.

### CONTACT PERSON

Mark Numainville, Commission Secretary, (510) 981-6900

### Attachments:

- 1: Determination Letter
- 2: City Charter Section 9.5
- 3: Berkeley Municipal Code Chapter 2.10



City Clerk Department

March 5, 2021

**SENT VIA EMAIL AND U.S. MAIL**

Fred Dodsworth

Berkeley, CA 94709

Dear Mr. Dodsworth:

I regret to inform you that due to failure to take the Oath of Office and file an Assuming Office Statement of Economic Interests (Form 700) by the deadline of February 16, 2021, your position as the District 6 Alternate Commissioner on the Independent Redistricting Commission has been forfeit as outlined in this letter.

**Notification of Requirements**

On January 14, 2021, you were notified by my office through email and mail of your appointment to the Independent Redistricting Commission as the District 6 Alternate Commissioner. You were informed of the requirement to complete certain onboarding tasks related to this appointment within thirty days, including taking the Oath of Office and filing an Assuming Office Statement of Economic Interests (Form 700), no later than February 16, 2021. My office emailed reminders to your attention on February 1, 2021 and February 8, 2021, and spoke to you by phone. To date, our records indicate that you have not filed the Form 700 or taken the Oath of Office.

**Oath of Office Requirement**

All City officers are required to take the Oath of Office before entering into their duties, including appointees to the Independent Redistricting Commission:

*“Every officer of the City, including the City Manager, before entering upon the duties of their respective offices, shall take the oath of office as provided for in the Constitution of this State, and shall file the same with the City Clerk.”<sup>1</sup>*

*“All commissioners and alternate commissioners shall swear or affirm the oath for public officials prescribed by the California Constitution.”<sup>2</sup>*

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<sup>1</sup> Charter Article V, Sec. 18

<sup>2</sup> Berkeley Municipal Code § 2.10.050.I

Further, Independent Redistricting Commissioners are expressly required to follow the provisions of the Commissioners' Manual:

*"The Commission shall operate under the provisions of the Commissioners' Manual, as adopted by resolution of the City Council, except when superseded by the City Charter or the provisions of this Chapter."*<sup>3</sup>

The Commissioners' Manual mandates that commissioners must complete the Oath within thirty days of appointment or be subject to automatic termination:

*"Failure to take the Oath of Office with 30 days of the appointment date is cause for automatic termination."*<sup>4</sup>

### Form 700 Requirement

Similarly, City officials that make or participate in making decisions that may foreseeably have a material effect on any financial interest shall file a Statement of Economic Interests (Form 700) within thirty days of assuming office.<sup>5,6</sup> City policy mandates that if the Form 700 is not filed within thirty days, the commissioner's term shall automatically expire:

*"The importance of complying with the requirements of being a commissioner cannot be emphasized enough. Failure to recognize these requirements will result in automatic termination. The following are reasons why commissioners are automatically terminated. [...] The non-filing of Conflict of Interest disclosure statements."*<sup>7</sup>

State law further confirms that alternate commissioners have the same filing requirements as regular commissioners:

*"Every person who holds an office specified in Government Code sections 87200 or 87302, subdivision (a), as an alternate or as a designee, shall be required to disclose his or her economic interests in the same manner as any other person holding the office."*<sup>8</sup>

Because you have not taken the Oath of Office and have not attended any meetings as a voting member of the commission, you are deemed not to have accepted the appointment and are not subject to further Form 700 filing obligations.<sup>9</sup>

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<sup>3</sup> Berkeley Municipal Code § 2.10.060.A

<sup>4</sup> Resolution No. 69,063-N.S. (Commissioners' Manual, p. 15)

<sup>5</sup> Fair Political Practices Commission Form 700 – Statement of Economic Interests

<sup>6</sup> Fair Political Practices Commission Regulation § 18734

<sup>7</sup> Resolution No. 69,063-N.S. (Commissioners' Manual, p. 21)

<sup>8</sup> Fair Political Practices Commission Regulation § 18722

<sup>9</sup> Resolution No. 69,152-N.S. (Conflict of Interest Code)

Finding of Forfeiture

For reasons outlined herein, you are deemed to have forfeit the position of District 6 Alternate Commissioner on the Independent Redistricting Commission. I am obligated to uphold the requirements of state and local law to ensure the redistricting process is conducted with integrity, fairness, and without personal or political considerations. Therefore, the deadlines cannot be extended and the requirements cannot be waived.

If you believe any of the information contained in this letter is incorrect, please contact me at [redistricting@cityofberkeley.info](mailto:redistricting@cityofberkeley.info) or (510) 981-6908. The City appreciates your interest in the Independent Redistricting Commission and we encourage your ongoing participation in Berkeley's redistricting process.

Sincerely,



Mark Numainville  
City Clerk

# CHARTER



CITY OF BERKELEY  
CALIFORNIA

This material is available in alternative formats upon request. Alternative formats include audio-format, braille, large print, electronic text, etc. Please contact the Disability Services Specialist and allow 7-10 days for production of the material in an alternative format.

Disability Services Specialist

Email: [ada@cityofberkeley.info](mailto:ada@cityofberkeley.info)

Phone: 1-510-981-6418

TTY: 1-510-981-6347

# CHARTER of the CITY OF BERKELEY CALIFORNIA

PREPARED AND PROPOSED BY  
THE BOARD OF FREEHOLDERS

Elected November 21, 1908, in Pursuance of the Provisions  
of Section 8, Article XI of the Constitution of the  
State of California

Ratified by the qualified electors of the Town of Berkeley  
at a Special Municipal Election held on January 30, 1909.  
Subsequently presented to the Legislature  
of the State of California and  
thereafter approved.

In effect July 1, 1909

Amended in 1913, 1917, 1921, 1923, 1927, 1933, 1939,  
1941, 1943, 1945, 1946, 1947, 1949, 1951, 1953,  
1955, 1957, 1959, 1963, 1965, 1969, 1971,  
1972, 1973, 1974, 1975, 1977, 1982,  
1984, 1986, 1988, 1994, 1996, 1998,  
2002, 2004, 2008, 2012, 2014, 2016, and 2020


**(Revised to November 3, 2020)**

Prepared by City Clerk Department  
2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900





**CHARTER OF THE CITY OF BERKELEY**  
**Sections 8 to 9, Article V**



**ARTICLE V**  
**ELECTIVE OFFICERS**

**Section 8. The elective officers.**

The elective officers of the City shall be a Mayor, an Auditor, eight (8) Councilmembers, five (5) School Directors and nine (9) Rent Board Commissioners.

The Council shall consist of the Mayor and eight (8) Councilmembers, each of whom, including the Mayor, shall have the right to vote on all questions coming before the Council.

The Board of Education shall consist of five (5) School Directors, each of whom shall have the right to vote on all questions coming before the Board; provided, however, that the Mayor shall serve as a School Director with the right to vote on all questions coming before the Board for the four (4) year term commencing July 1, 1951.

**Section 9. Election and Districts.**


(a) The Mayor, Auditor and School Directors shall be elected at the general municipal election on a general ticket from the City at large.

(b) The Councilmembers shall be elected at the general municipal election by districts. The Councilmembers shall be recalled by districts. Any person appointed to fill a vacancy on the City Council shall be a citizen of the United States and a qualified elector in the State of California and of the City of Berkeley as required in Article V, Section 10 of the City Charter, and must reside in the district in which they run for election.

(c) No later than April 1st of the second year following the year in which each decennial federal census is taken, commencing with the 2020 census, unless a later deadline is established by Section 9.5(d)(1), the City shall be divided into eight Council districts as set forth in Section 9.5 and any implementing legislation. Any such redistricting shall become effective as of the next general election of Councilmembers immediately following the effective date of the ordinance adopted pursuant to Section 9.5(d).

(d) Each Councilmember shall be elected by the electors within a Council district, must have resided in the District in which they are elected for a period of not less than thirty days immediately preceding the date they file a declaration of candidacy for the office of Councilmember, must continue to reside therein during their incumbency, and shall be removed from office upon ceasing to be such resident, except as set forth in Section 9.5(g)(6).

**CHARTER OF THE CITY OF BERKELEY**  
**Sections 9 to 9.5, Article V**



(e) The candidate receiving the highest number of votes for the offices, respectively, of Mayor, Auditor and Councilmembers of the City shall be elected to such offices, provided that such candidate receives at least 40% of the votes cast for each such office. In the event that no candidate for Mayor, Auditor and Councilmember for one or more Council offices receives at least 40% of the votes cast for that office, then there shall be a runoff election between the two candidates receiving the most votes, which runoff election shall be held on the first Tuesday after the first Monday in February of the odd numbered year following the initial election. No other issues shall appear on the ballot of any runoff election. The successful candidate in any runoff election shall assume office on March 1, after the election results have been declared by the Council. If the provisions of Article III, Section 5, Paragraph 12 related to instant runoff voting are operative, the vote threshold requirements in this section shall have no application to municipal elections.

(f) Should any provision of this section be held invalid, the remainder of this section shall not be affected thereby, and such word, phrase, sentence, part, section, subsection, or other portion shall be severable, and the remaining provisions of this section shall remain in full force and effect. The voters hereby declares that they would have passed this section and each subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more, subsections, sentences, clauses or phrases had been declared invalid.


**Section 9.5. Independent Redistricting Commission**

The purposes of this Section are to: 1) establish a redistricting process that is open and transparent and allows public comment on the drawing of district boundaries; 2) ensure that City Council district boundaries are drawn according to the redistricting criteria set forth in this Charter and applicable State and Federal laws; and 3) ensure that the redistricting process is conducted with integrity, fairness, and without personal or political considerations. In order to accomplish these purposes, an Independent Redistricting Commission (Commission) is hereby created.

(a) Duties and authority of Commission and City Council.

(1) The Independent Redistricting Commission shall be solely responsible for drawing City Council district boundaries in accordance with state and federal law and this Charter, and shall make adjustments as appropriate, taking into consideration public comment at public meetings and public hearings. The City Council shall have no role in developing or adopting a redistricting plan, and its sole responsibilities in redistricting shall be to: adopt an ordinance establishing procedures to implement this Section; adopt a redistricting ordinance as set forth in subdivision (d)(3); submit a final redistricting plan to the voters as set forth in subdivision (d)(4); submit a redistricting ordinance that is the subject of a referendum to the voters as set forth in subdivision (d)(5); and to adopt the redistricting plan determined by a special master as set forth in subdivision (d)(4).

**CHARTER OF THE CITY OF BERKELEY**  
**Section 9.5, Article V**



(2) The City Council, as part of the adoption of the City Budget, shall allocate sufficient funds to support the work of the Independent Redistricting Commission, including funds necessary for community outreach, costs for city staff time associated with supporting the work of the Independent Redistricting Commission, and the hiring of any necessary consultants or outside counsel.

(3) The City Clerk or their designee shall serve as Secretary to the Commission.

(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.

(b) Appointment of Commission.

(1) Membership. The Commission shall consist of thirteen members, each of whom is a resident of the City of Berkeley. The application and selection process set forth below and by ordinance is intended to produce an Independent Redistricting Commission that is independent from legislative and political influence, and reasonably representative of the City's population.

(2) Term. Members of the Independent Redistricting Commission shall be appointed following each decennial federal census as set forth below. The term of office of each member of the Commission shall expire upon the effectiveness of a redistricting plan for that decennial federal census period.


(3) Qualifications and eligibility. All Berkeley residents who are 18 years of age or older at the time their application is submitted, are eligible for membership on the Independent Redistricting Commission, subject to the following limitations.

(i) The following individuals are prohibited from serving on the 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;

**CHARTER OF THE CITY OF BERKELEY**  
**Section 9.5, Article V**



(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.

(ii) If an applicant currently serves on a City of Berkeley board or commission whose members are appointed by the Mayor, a City Councilmember, or the full City Council, they may serve on the Independent Redistricting Commission if selected, provided they resign from the board or commission and they agree not to serve on another City of Berkeley board or commission during their term of office on the Independent Redistricting Commission.

(iii) If an applicant has made a disclosable monetary or non-monetary contribution to a candidate for Mayor or Councilmember, they shall be permitted to serve on the Independent Redistricting Commission if selected, under the condition that they disclose under penalty of perjury all monetary and non-monetary contributions made within the four years prior to the date of application to a candidate for Mayor or Councilmember in the City of Berkeley.

(iv) No person, within two years after the termination of their service on the Commission, will be eligible for employment as a paid staff member for the Mayor or any Councilmember or to serve on a City of Berkeley board or commission.

**CHARTER OF THE CITY OF BERKELEY**  
**Section 9.5, Article V**



(4) Outreach. The City shall widely publicize the fact that an Independent Redistricting Commission will be appointed during the following year, the date by which applications for appointment to the Commission must be received, and such other information as will adequately inform potentially interested residents of the Commission. The City shall conduct outreach throughout the City of Berkeley in order to solicit a large pool of applicants and applicant diversity by race, ethnicity, gender, and geography.

(5) Application process. The City Clerk shall initiate and advertise a 30-day nomination period for appointment to the Independent Redistricting Commission. The nomination process shall be open to Berkeley residents 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.


(6) Selection process.

(i) The City Clerk shall screen all applications submitted to ensure that each applicant satisfies the eligibility criteria of subsection (b)(3)(i). Procedures to implement the nomination and screening process that are not specified in this Section will be specified in the implementing ordinance adopted by Council.

(ii) At a time and place open to the public, and subject to at least ten days public notice, the City Clerk shall select the initial eight members of the Independent Redistricting Commission. The City Clerk shall randomly select one person from each of the eight council districts. The first person chosen from each pool shall be appointed to the Independent Redistricting Commission. The City Clerk shall then randomly select one additional individual from each of the eight council districts to serve as an alternate for the individual who has been appointed from that district. To implement this paragraph, the City Clerk shall determine a randomized method that meets professional standards and best achieves a random selection.

(iii) The Independent Redistricting Commission, consisting of the initial eight (8) members, shall then convene within ten days for the purpose of selecting the remaining five members and five alternates from the pool of eligible applicants. In appointing the remaining (“at-large”) five members, the Independent Redistricting Commission shall attempt to achieve community representation by taking into consideration geographic diversity, race, age and gender. At-large alternates shall be appointed as voting members as the at-large commissioners leave office for any reason. The order in which the alternates shall be seated on the Commission as voting members shall be established by a random method at the time they are selected. All appointments under this paragraph shall be at a noticed meeting of the Independent Redistricting Commission open to the public.

**CHARTER OF THE CITY OF BERKELEY**  
**Section 9.5, Article V**



(c) Commission procedures.

(1) The Independent Redistricting Commission shall establish and implement an open process for public input and Commission deliberation that shall be promoted through a thorough outreach program to solicit broad public participation in the redistricting process. All Independent Redistricting Commission meetings shall be open to the public unless necessary to convene in closed session under California Government Code sections 54950 et seq. Members of the public shall have the opportunity to provide written and oral comments to the Independent Redistricting Commission. The Commission's process must be designed to provide the widest public access reasonably possible to draft redistricting maps and to provide ample opportunity for the public to observe and participate in the redistricting process.

(2) The City Manager shall produce redistricting plans and maps based on specific direction from the Commission. The Commission shall also accept and consider maps that are submitted by the public.


(d) Commission redistricting proceedings.

(1) The Independent Redistricting Commission shall adopt City Council district boundaries no later than February 1st of the second year after the year in which each decennial federal census is taken, or nine months after final adjustments are made to the census data, whichever is later. The boundaries shall be effective until the adoption of new district boundaries following the next decennial federal census. The City Council may not rescind, supersede or revise the district boundaries adopted by the Independent Redistricting Commission.

(2) Decisions by the Independent Redistricting Commission to adopt a redistricting plan shall be by seven votes of the Commission.

(3) Concurrently with its adoption of a redistricting plan, the Commission shall issue a report that explains its decisions in achieving compliance with the criteria listed in this Section and shall include definitions of the terms and standards used in drawing the final City Council districts map. The redistricting plan adopted by the Commission shall be submitted to the City Council at its next regular or special meeting consistent with Berkeley Municipal Code Chapter 2.06, and the City Council shall at that meeting adopt a redistricting ordinance that implements the redistricting plan without change.

**CHARTER OF THE CITY OF BERKELEY**  
**Section 9.5, Article V**



(4) Impasse procedure. If the Commission is unable to achieve seven affirmative votes to adopt a redistricting plan, then the Commission shall submit to the City Council the map which received the most votes of the Commission to be placed on the ballot. In the event that redistricting plan is rejected by the voters, the Commission shall have 30 days to adopt a new redistricting plan by seven affirmative votes. If the Commission, after rejection of the map by the voters, cannot adopt a final redistricting plan by seven affirmative votes, then the Commission shall request that the City Clerk recommend a list of at least three special masters to develop a redistricting plan. The Commission shall consider the recommendations of the City Clerk and select a special master, by majority vote, to develop a redistricting plan. The City Council shall adopt by ordinance the redistricting plan determined by the special master.

(5) A redistricting ordinance adopted by the City Council shall be subject to referendum in the same manner that an ordinance is subject to referendum pursuant to state law and Article XIV of the City Charter. The date of final adoption of the ordinance by the City Council shall be deemed the date of final passage for the purposes of Section 93 of the Charter. The procedures of Section 93 shall apply to a referendum of a redistricting ordinance, except that if a referendum petition is signed by the requisite number of qualified electors the City Council shall submit the ordinance to the voters at the next General Municipal Election.

(e) Removal of Commissioners.


(1) Commissioners should apply the law in a manner that is impartial and reinforces public confidence and integrity in the redistricting process.

(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 (b)(3), a Commissioner may be removed by a two-thirds vote of the Independent Redistricting Commission, after having been served written notice and provided with an opportunity to respond.

(3) Any vacancy, whether created by removal, resignation, or absence pursuant to Berkeley Municipal Code Section 3.02.020 or its successor, shall be filled by the alternate for that Commission seat selected at the time of the original selection. If the alternate is unable to serve, the Independent Redistricting Commission shall fill the vacancy by selecting an applicant from the original pool of applicants by a two-thirds vote at a noticed meeting open to the public. If the seat to be filled is one representing a specific City Council district, the Independent Redistricting Commission shall appoint an individual who resides in that City Council district.

(4) No disqualification of a commissioner shall have any effect on the validity of any action by the Commission or any redistricting map it may adopt.

**CHARTER OF THE CITY OF BERKELEY**  
**Section 9.5, Article V**



(f) Criteria for redistricting.

(1) The Commission shall adjust the boundaries of City Council districts in a manner that complies with the Constitution and statutes of the United States and the State of California, in order that the eight City Council districts shall be as nearly equal in population as may be according to the most recent decennial federal census, except where deviation is required to comply with the federal Voting Rights Act.

(2) In establishing and modifying district boundaries, the Independent Redistricting Commission shall take into consideration topography, geography, cohesiveness, contiguity, integrity and compactness of territory of the districts, as well as existing communities of interest as defined below, and shall utilize easily understood district boundaries such as major traffic arteries and geographic boundaries to the extent they are consistent with communities of interest. The geographic integrity of a neighborhood or community of interest shall be respected to the extent possible without violating State or Federal law or the requirements of this Section. For purposes of this subsection “communities of interest” shall mean the following: A community of interest is a contiguous population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Such shared interests include but are not limited to those common to areas in which the people share similar living standards, use the same transportation facilities, have similar work opportunities, or have access to the same media of communication relevant to the election process, as well as neighborhoods, students, organized student housing, shared age, and racial demographics. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.

(3) Districts shall not be drawn for the purpose of favoring or discriminating against an incumbent, political candidate, or political party.


(4) The Independent Redistricting Commission may consider existing district boundaries as a basis for developing new district boundaries. Should the Commission deviate substantially in its redistricting plan from the previous district boundaries in order to reflect population growth, protect communities of interest or better comply with the redistricting criteria in the Charter, it shall issue a report explaining its reasons for doing so.

(5) The Independent Redistricting Commission shall not consider the residence of sitting Councilmembers.

(6) If the Independent Redistricting Commission adopts a redistricting plan that removes the residence of a sitting Councilmember from their then-current district, that Councilmember shall continue to serve on the City Council until the expiration of their term.



**CHARTER OF THE CITY OF BERKELEY**  
**Sections 9.5 to 11, Article V**



(g) Severability.

Should any provision of this Section be held invalid, the remainder of this Section shall not be affected thereby, and such word, phrase, sentence, part, section, subsection, or other portion shall be severable, and the remaining provisions of this Section shall remain in full force and effect. The voters hereby declare that they would have passed this Section and each subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more, subsections, sentences, clauses or phrases had been declared invalid.

**Section 10. Eligibility of Mayor, Auditor, Councilmember, and School Director.**

To be eligible for the office of Mayor, Auditor, Councilmember, or School Director, a person must, at the time of filing nomination papers for the office, be a citizen of the United States and a qualified elector of the State of California and of the City of Berkeley. Any person who has served as a voting member of the Independent Redistricting Commission shall be ineligible to file nomination papers for the office of Council member in their district of residence or Mayor in the next occurring general municipal election in which said office appears on the ballot after their service on the Commission terminates under Sections 9.5(b)(2) or 9.5(e).

**Section 11. (repealed)**



**Chapter 2.10  
CITIZENS REDISTRICTING COMMISSION**

## Sections:

- [2.10.010](#) Purpose.
- [2.10.020](#) Definitions.
- [2.10.030](#) Commission Composition.
- [2.10.040](#) Duties of the City Clerk.
- [2.10.050](#) Application and Selection of Commissioners.
- [2.10.060](#) Commission procedures.
- [2.10.070](#) Removal of Commissioners and Alternate Commissioners.
- [2.10.080](#) Selection of Special Master.
- [2.10.090](#) Compensation.
- [2.10.100](#) Severability.

**2.10.010 Purpose.**

The purpose of this Chapter is to implement Article V, Section 9.5 of the Charter, which provides for the decennial establishment of a Citizens Redistricting Commission in order to ensure an open and transparent redistricting process that allows public comment on the drawing of district boundaries and is conducted with integrity, fairness, and without personal or political considerations. (Ord. 7699-NS § 1 (part), 2020)

**2.10.020 Definitions.**

- A. "Commission" means the Citizens Redistricting Commission.
- B. "Immediate Family" means a spouse, domestic partner, cohabitant, child, stepchild, grandchild, parent, stepparent, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, great grandparent, brother, sister, half-brother, half-sister, stepsibling, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, or first cousin (that is, a child of an aunt or uncle).
- C. "Special Master" means an individual with the requisite expertise and qualification on the subject of redistricting that is appointed by the commission to create a council district map pursuant to the impasse procedures of the City Charter. (Ord. 7699-NS § 1 (part), 2020)

**2.10.030 Commission Composition.**

- A. The Commission shall consist of eight (8) District Commissioners (one (1) for each Council district) and five (5) At-Large Commissioners.
- B. There shall be eight (8) Alternate District Commissioners and five (5) alternate At-Large Commissioners. (Ord. 7699-NS § 1 (part), 2020)

**2.10.040 Duties of the City Clerk.**

- A. Beginning no later than September 1st of the year in which the decennial federal census is taken, the City Clerk shall conduct public outreach as specified in Charter Section 9.5(b)(4).
- B. No later than February 1st of the year after the decennial federal census is taken, the City Clerk shall initiate the nomination process as specified in Charter Section 9.5(b)(5).
- C. The City Clerk shall develop and recommend a budget for the Commission sufficient to carry out the requirements of the City Charter and this Chapter.
- D. The City Clerk or City Clerk's designee shall serve as Secretary to the Citizens Redistricting Commission.
- E. At each meeting or public hearing of the Commission, the City Clerk shall make available for public viewing copies of each Commissioner's application to serve on the Commission as well as copies of all political, financial or other disclosures required of each Commissioner by Section 9.5 of the Charter or any other provision of City or state law, including but not limited to each Commissioner's Statement of Economic Interests and any disclosures under Charter Section 9.5(b)(3)(iii). (Ord. 7699-NS § 1 (part), 2020)

**2.10.050 Application and Selection of Commissioners.**

- A. All applicants shall submit their application on a form provided by the City Clerk, which shall include a declaration under penalty of perjury that the applicant meets the eligibility criteria set forth in Charter Section 9.5 and this Chapter, has made all required disclosures, and that the statements they are making are true and correct.
- B. The Commission application shall include questions asking if an applicant falls into one or more of the prohibited categories set forth in Charter Section 9.5(b)(3)(i).
  - 1. If an applicant discloses that they fall into any of the prohibited categories set forth in Charter Section 9.5(b)(3)(i), the applicant shall be removed from the applicant pool and shall not be considered for appointment.
  - 2. If it is determined at any point during the selection process that an applicant falls into one or more of the prohibited categories as set forth in Charter Section 9.5(b)(3)(i) then that applicant shall be disqualified.
  - 3. If, after being selected and appointed to the Commission, it is determined that a Commissioner falls into one of the prohibited categories set forth in Charter Section 9.5(b)(3)(i), the Commissioner shall be immediately removed from the Commission, as provided for in Charter Section 9.5(e) and this Chapter.
- C. All applicants shall affirm that, if selected, they shall comply with all requirements of the Charter and this Chapter applicable to members of the Commission.
- D. Applicants shall file a Statement of Economic Interests (Form 700), provide a written statement of

qualifications not longer than three hundred (300) words expressing why they believe they are qualified to serve on the Commission, and consent to a background check if appointed. Promptly after reviewing the background check to determine eligibility, the City Clerk shall either return it to the applicant or destroy it.

E. To the extent permitted by law, all application forms, materials and disclosures shall be kept confidential, and shall not be released to the public until all thirteen (13) Commissioners have been appointed.

F. After closure of the 30-day nomination period provided for in Charter Section 9.5(b)(5), the City Clerk shall remove from the applicant pool any applicants who do not satisfy the eligibility criteria set forth in Charter Section 9.5(b)(3), and shall divide the remaining applicants into separate pools, one for each then-existing City Council district in which the applicants reside. If there is an insufficient number of applicants in the pool of eligible applicants to fill a district seat or an alternate seat, the Commission may request, by a majority vote, that the City Clerk conduct a new, accelerated nomination and selection process to add additional applicants to the pool of eligible applicants.

G. The selection process for District Commissioners and At-Large Commissioners shall be conducted in accordance with Section 9.5(b)(6) of the City Charter and this Chapter.

H. When selecting the five (5) At-Large Commissioners, if there is an insufficient number of applicants in the remaining pool of eligible applicants to fill five (5) at-large seats and five (5) alternate at-large seats, the Commission may request, by a majority vote, that the City Clerk conduct a new, accelerated nomination and selection process to add additional applicants to the remaining pool of eligible applicants.

1. Once the pool of eligible applicants has a sufficient number of applicants to fill five (5) at-large seats and five (5) alternate at-large seats, the Commission shall, by a majority vote, select five (5) additional individuals from the remaining pool to serve as At-Large Commissioners and five (5) more individuals to serve as alternate At-Large Commissioners.

I. All commissioners and alternate commissioners shall swear or affirm the oath for public officials prescribed by the California Constitution. (Ord. 7699-NS § 1 (part), 2020)

#### **2.10.060 Commission procedures.**

A. The Commission shall operate under the provisions of the Commissioners' Manual, as adopted by resolution of the City Council, except when superseded by the City Charter or the provisions of this Chapter.

B. After selection of the five (5) At-Large Commissioners pursuant to Charter Section 9.5(b)(6)(iii), the Commission shall elect one (1) of its members to serve as Chair and one (1) to serve as the Vice-Chair. The term of the Chair and Vice-Chair is the term of their service on the Commission as defined in Charter Section 9.5(b)(2), unless the Chair or Vice-Chair resign the position or is removed from the position by a two-thirds (2/3) vote of the Commission. The Commissioner selected by the body to fill a vacancy in the position of Chair or Vice-Chair shall serve the remainder of the term.

- C. Once all commissioners and alternate commissioners have completed training related to their service on the Commission, the Commission shall convene for the purpose of drawing City Council district boundaries.
- D. For the purpose of selecting the At-Large Commissioners and At-Large Alternates, a quorum of the eight (8) District Commissioners is always five (5), and five (5) affirmative votes are always needed to take action unless otherwise specified by statute.
- E. A quorum of the full thirteen (13) member Commission is always seven (7), and seven (7) affirmative votes are always needed to take action unless otherwise specified by statute.
- F. Commissioners may make a request for a Leave of Absence from a Commission meeting, or for a period of time not to exceed three (3) months, by submitting a written request to the City Clerk by 5:00pm on the business day prior to the Commission meeting. The temporary vacancy will be filled as specified in Charter Section 9.5(e)(3).
- G. The Commission shall comply with all relevant provisions of the Open Government Ordinance (Berkeley Municipal Code Chapter 2.06).
- H. The Commission shall hold at least three (3) public hearings, each at a different location, to solicit public input on redistricting priorities and allow for submission of redistricting proposals by members of the public and public review of and input on any map proposed to be adopted by the Commission. The Commission shall display draft redistricting maps for public comment in a manner designed to achieve the widest public access reasonably possible and shall provide ample opportunity for public input.
- I. Commissioners are strictly prohibited from communicating with or initiating or receiving communications about redistricting matters from anyone outside of a public meeting or hearing; however, communications outside of a meeting between Commissioners, staff, legal counsel, and consultants retained by the City, that are otherwise permitted by the Brown Act (California Government Code Section 54950 et seq.) or its successor, are not prohibited. The receipt of written communications (whether through paper or electronic format) from the public submitted at a public meeting of the Commission or submitted prior to a Citizens Redistricting Commission meeting to the Secretary and made part of the public record are not prohibited. Any communication received by a Commissioner inconsistent with this subsection shall be promptly disclosed to the Secretary for the public record. Failure to disclose received communications or a Commissioner's response to such communications may be considered gross misconduct and grounds for removal from the Commission.
- J. Alternate commissioners may attend Commission meetings, other than closed session meetings under the Brown Act, and may give public comment to the Commission. Unless appointed to serve on the Commission, Alternate Commissioners may not vote in Commission meetings or hearings.
- K. Upon the expiration of thirty (30) days after the Council's final approval by ordinance of the Commission's redistricting plan, the City Clerk shall submit the new district boundaries to the Alameda County Registrar of

Voters for implementation starting with the next General Municipal Election. (Ord. 7699-NS § 1 (part), 2020)

#### **2.10.070 Removal of Commissioners and Alternate Commissioners.**

If a Commissioner or Alternate Commissioner is eligible to be removed pursuant to Charter Section 9.5(e), the Commissioner or Alternate Commissioner shall be provided written notice. The vote to remove the Commissioner or Alternate Commissioner shall appear on the next Commission agenda for which no posting or publication deadline has passed, occurring not more than thirty (30) days from the date the notice was mailed. The Commissioner or Alternate Commissioner may provide a written response or may provide a verbal response at the meeting of the Commission where the vote for removal will occur. The Commissioner or Alternate Commissioner may be removed by a two-thirds (2/3) vote of the Commission. A Commissioner or Alternate Commissioner subject to removal may vote on their own removal. The decision of the Commission is final and may not be appealed. (Ord. 7699-NS § 1 (part), 2020)

#### **2.10.080 Selection of Special Master.**

In the event of an impasse in which the City Clerk is required to recommend, and the Commission is required to select, a Special Master pursuant to Charter Section 9.5(d)(4), the City Clerk and Commission shall consider retired judges, professors with knowledge about redistricting and reapportionment law, experts with experience advising government agencies on redistricting, and other persons with appropriate knowledge, expertise and experience. The Commission must select a Special Master within thirty (30) days of the City Clerk presenting their recommendations. (Ord. 7699-NS § 1 (part), 2020)

#### **2.10.090 Compensation.**

A. Voting members of the Commission shall be compensated at a rate of one hundred dollars (\$100) per meeting for attendance at a regular meeting of the full Commission to compensate for the time the Commissioner is engaged in Commission business.

B. The rate of compensation for Commissions seated after each of the subsequent federal decennial censuses will be calculated based on the increase in the Consumer Price Index over the compensation provided for in paragraph (A) of this section.

C. Members of the Commission who meet eligibility requirements may also receive reimbursement for expenses for child care, dependent care, or disabled support services in the same manner as members of City boards and commissions. (Ord. 7699-NS § 1 (part), 2020)

#### **2.10.100 Severability.**

Should any provision of this Chapter be held invalid, the remainder of this Chapter shall not be affected thereby, and such word, phrase, sentence, part, section, subsection, or other portion shall be severable, and the remaining provisions of this Chapter shall remain in full force and effect. The voters hereby declare that they would have passed this Chapter and each subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more subsections, sentences, clauses, or phrases had been declared invalid, and that each

subsection, sentence, clause, phrase, word, or other portion is therefore explicitly severable, part-by-part, phrase-by-phrase, and word-by-word, and that if any portion is determined by a court of competent jurisdiction to be unlawful, unenforceable, or otherwise void, voidable, or invalid, that the least amount of language possible shall be severed from the Chapter. (Ord. 7699-NS § 1 (part), 2020)



# Update on Redistricting Process

Getting Started  
and  
Next Steps

# Commissioner Training

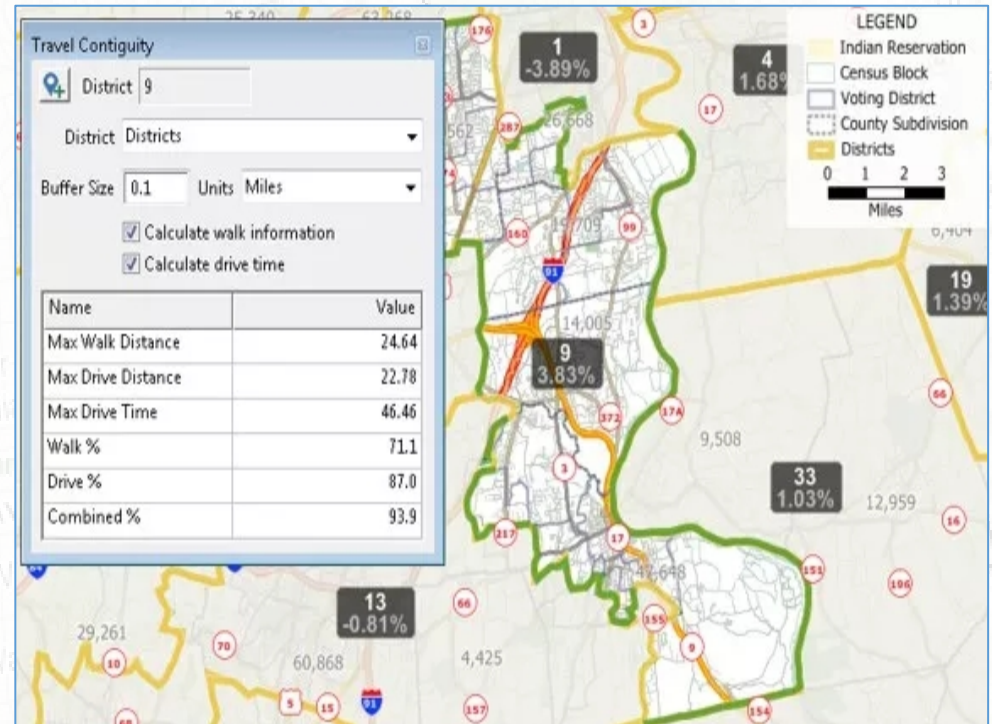
- Begin tonight with meeting procedures, discussion of bylaws, conflict of interest, Brown Act, and review of important guidelines in the Commissioners' manual.
- A consultant will present redistricting laws, best practices, and guidelines – two sessions in April.
- City staff will present Charter requirements and Commission requirements in Municipal Code at a session in May.

# Public Input

- Public Hearings – 4 required
  - At least one before Census Data is released
  - At least two after data is released
  - Present draft maps at a hearing
  - Vary time, day, and locations
- Community Workshops
  - Communities of interest
    - Public invited to write/draw neighborhoods and communities of interest
  - Demo of Maptitude Software
  - Discussion of Maps

# Mapping Software - Maptitude

- Powerful mapping tool that let's you create maps using your own data
- Module allows public submissions of maps
- Public viewing of maps



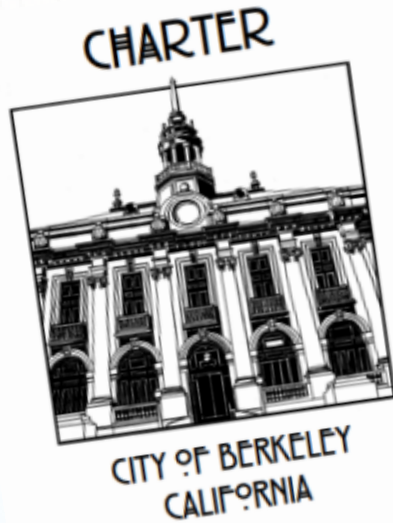
# Census Data

- Based on the latest update, we anticipate receiving the adjusted census data in late October
- Charter deadline for adopted district boundaries is February 1, 2022, or 9 months after final adjustments to census data
- Census release date has an impact on the 2022 election and candidates for office
  - Impact of later deadline on candidate filing
  - Review of options with consultant and Attorney's Office



# Bylaws

- Rules to help guide committee activity
- Supplements existing rules:



Chapter 2.10  
CITIZENS REDISTRICTING COMMISSION

- 010 Purpose.
- 020 Definitions.
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- Severability.

purpose.

The purpose of this Chapter is to implement Article V, Section 9.5 of the Charter, and to establish a Citizens Redistricting Commission in order to ensure a fair redistricting process that allows public comment on the drawing of districts with integrity, fairness, and without personal or political considerations. (2020)

Definitions.

"Commission" means the Citizens Redistricting Commission.

"Family" means a spouse, domestic partner, cohabitant, child, stepchild, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandchild, or sister, half-brother, half-sister, stepchild, brother-in-law, sister-in-law, or first cousin (that is, a child of an aunt or uncle).

"Qualified individual" means an individual with the requisite expertise and qualifications that is appointed by the commission to create a council district.



CITY OF BERKELEY  
COMMISSIONERS' MANUAL  
2019 EDITION

BACKGROUND INFORMATION  
RULES AND PROCEDURES

ADOPTED AND OFFICIALLY ADOPTED BY RESOLUTION NO. 67-053-R13. (2019)

## Existing Rules: Charter Article V, Section 9.5

- Commission duties
- Role of City Council
- Funding
- Secretary
- Membership
- Timeline
- Redistricting process (generally)



## Existing Rules: BMC Chapter 2.10

- Duties of the City Clerk
- Application process
- Chairperson / Vice-Chairperson
- Quorum
- Leave of Absence requests
- Redistricting process (generally)
- Limited communications
- Removal of commissioners
- Compensation

# Existing Rules: Commissioners' Manual

- Public participation
- Membership (oath, termination, resignations)
- Accommodations
- Stipend
- Duties of officers
- Subcommittees
- Coordinating with Council, staff, and others

# Existing Rules: Commissioners' Manual (Cont')

- Meeting requirements
- Motions and voting
- Commission conduct
- Administrative procedures
- Meeting minutes
- Commission reports to Council
- Conflict of interest guidelines

## Possible areas of consideration

- Decorum guidelines
- Meeting procedures
- Rules for public comment
- Process for submitting agenda items

Review bylaws from other commissions:



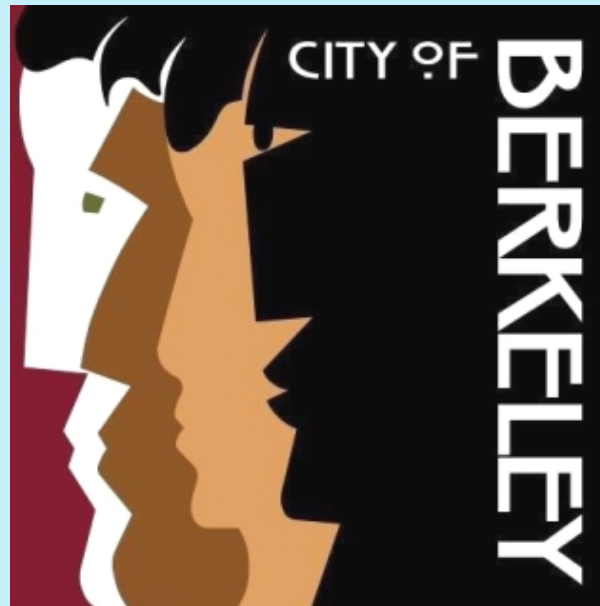
# Bylaws Discussion

- What are your suggestions for the IRC?
- What have you seen work well in other committees or groups?
- Process for drafting bylaws:
  - Staff prepares for review?
  - IRC subcommittee prepares for review?

# Meeting Schedule

- Upcoming meetings:
  - Thursday, April 1<sup>st</sup>
  - Thursday, April 15<sup>th</sup>
  - Wednesday, May 5<sup>th</sup>
  - Wednesday, May 19<sup>th</sup>
- Long-term scheduling (6 months out)
- Variety in days/times/locations required
- Saturday workshops/hearings

# COMMUNICATING ABOUT REDISTRICTING & THE BROWN ACT



City of Berkeley  
Independent Redistricting Commission

## IRC-SPECIFIC RULES

- ▶ Communications outside of public meetings are prohibited:
  - “Commissioners are strictly prohibited from communicating with or initiating or receiving communications about redistricting matters from anyone outside of a public meeting or hearing.” (BMC § 2.10.060.I.)
  
- ▶ Exceptions – Communications with:
  - ▶ Other IRC Commissioners
  - ▶ City staff
  - ▶ Legal Counsel
  - ▶ Consultants retained by the City

**\*\* But only if permitted under the Brown Act\*\***



# IRC-SPECIFIC RULES

## Written Communications:

- ▶ The public can submit written communications to the Secretary for inclusion in the public record
- ▶ Written public communications submitted directly to a commissioner must be promptly disclosed to the Secretary for inclusion in the public record along with any response from the Commissioner
  - ▶ Note: Communicating about redistricting with the public is prohibited. However, a simple non-substantive response is permitted (E.g., “Thank you for your message. Consistent with Commission rules, I have sent your communication to the Commission secretary for inclusion in the public record.”)

\*\* Failure to disclose received communications or a Commissioner’s response to such communications may be considered gross misconduct and grounds for removal from the Commission. (BMC § 2.10.060.I.)\*\*

# THE BROWN ACT - OPEN AND PUBLIC



Ralph M. Brown

Photo courtesy The Modesto Bee

“The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.” California Government Code §54950.

# HISTORY OF THE BROWN ACT



- ▶ In 1952 SF Chronicle exposed secret meetings conducted by local governments.
- ▶ Example: San Jose City Council left chambers to settle a matter “in private” - “just being practical.”
- ▶ League of California Cities drafted a new open meeting law which was sponsored by Assemblymember Ralph M. Brown and signed by Gov. Earl Warren in 1953.

## BASICS OF THE ACT

- ▶ Purpose: To ensure the Public's business is done in public.
- ▶ All Meetings of legislative bodies:
  - ▶ Open to the public
  - ▶ Adequately noticed
  - ▶ Stick to agenda
  - ▶ Allow the public to speak on agenda items (before action is taken) and on any non-agenda item within the jurisdiction of the legislative body.

# WHO IS COVERED BY THE BROWN ACT?

- ▶ All “legislative bodies” of the City are covered by the Brown Act:
  - ▶ City Council
  - ▶ Council Committees
  - ▶ Commissions and boards
  - ▶ “Includes just about every type of decision-making body”

# KEY QUESTION: WHAT IS A MEETING?

- ▶ A meeting occurs whenever a **quorum** of members of a legislative body gather to discuss **business within their jurisdiction**.
- ▶ Quorum = a majority of the members of the legislative body
- ▶ Any gathering of a majority of the legislative body can become a “meeting”
  - ▶ Social gatherings
  - ▶ Meetings of other legislative bodies
  - ▶ Retreats, forums, workshops
- ▶ Serial meetings . . .

# SERIAL MEETINGS

- ▶ One of the most challenging aspects of the Brown Act
- ▶ Serial meeting: when the majority of a legislative body uses a series of communications, either directly or through intermediaries, to “discuss, deliberate, or take action on any item within the subject matter jurisdiction of the legislative body.”
- ▶ Serial meetings deprive the public of the right to observe and participate in legislative decision-making.

# TYPES OF SERIAL MEETINGS

## Daisy chain meeting

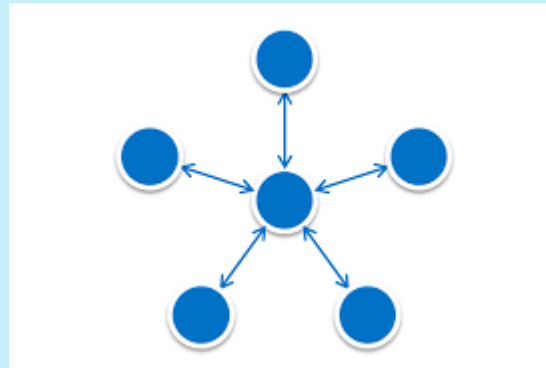


- ▶ **Example:** Councilmember A calls Councilmember B to talk about a City issue. Councilmember B then calls Councilmember C who calls Councilmember D etc., until a quorum of Council has discussed, deliberated or taken action on the issue.



# TYPES OF SERIAL MEETINGS

## Hub and spoke meeting



- ▶ **Example 1:** Councilmember A calls B and discusses a City issue to get his or her opinion. Councilmember A then separately calls Councilmembers B, then C, etc., telling each what the other has said. Eventually a quorum of the Council has discussed, deliberated or taken action on the issue.
- ▶ **Example 2:** A city employee or officer (e.g., commission secretary or department head) who is not a member of the legislative body serves as the “hub.” When briefing legislative body members, staff should take care not to disclose other members’ views or positions.

# SERIAL MEETINGS (CONT.)

- ▶ Technology:
  - ▶ Emails, texts, and various forms of online communication can turn into a “meeting” under the Brown Act.
  - ▶ “Reply All” button should be used thoughtfully. Staff should use Bcc when emailing members of a legislative body.
  - ▶ Social Media:
    - ▶ Serial meetings can occur through tweeting, liking, and commenting on blogs, posts and forums.
    - ▶ AB 992 (2020): Officials can communicate with the public through social media but cannot engage with content of their fellow members (e.g., commenting, sharing, “liking”)
- ▶ Contact the City Attorney’s office with questions or concerns

## MEETINGS EXCEPTIONS

Several exceptions to the definition of “meeting”

- ▶ Individual contacts – A member of a legislative body can meet with any other person, including another member of the legislative body.
  - ▶ But be careful of serial meetings
- ▶ Attending a conference or “open and public” meeting hosted by a private person or organization, but must not talk about City business outside of the scheduled program.
- ▶ Social or ceremonial gathering provided a majority does not discuss matters within their jurisdiction.
- ▶ Open meeting of another body – provided a majority does not discuss among themselves, other than as part of the scheduled meeting, matters within their jurisdiction.

## CLOSED SESSION

- ▶ Legislative bodies can meet in closed session for certain matters:
  - ▶ Existing or anticipated litigation
  - ▶ Personnel matters or negotiations with bargaining units
  - ▶ Real property negotiations
- ▶ Closed session items still must be briefly described on the posted agenda, which must identify the exemption for each item

# ENFORCEMENT

- ▶ Demand to cure or correct
- ▶ Complaints to OGC
- ▶ Lawsuits
- ▶ Criminal

# CONFLICTS OF INTEREST

Independent Redistricting Commission

# CONFLICTS OF INTEREST

- ▶ The core principles of conflict of interest law:
  - ▶ Public officials may not use their offices for personal financial gain
  - ▶ Holding public office does not entitle one to personal “advantages or perks”
  - ▶ Transparency promotes public trust and confidence
  - ▶ Merit-based decision-making based on fair processes produce the best results for the public.

# SOURCES OF CONFLICT OF INTEREST LAW

- ▶ California Political Reform Act
- ▶ California Government Code Section 1090  
(conflicts in government contracts)
- ▶ Local conflict provisions
- ▶ Common law conflicts



# POLITICAL REFORM ACT

- ▶ The California Political Reform Act prohibits conflicts of interest for state and local officials and employees:
  - ▶ “No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.” (Cal. Gov. Code sec. 87100.)
  - ▶ An official is barred from participating in a governmental decision which will have a “reasonably foreseeable material financial effect” on the official’s financial interests. (2 Cal. Code. Regs. Sec. 18700.)
- ▶ In other words:
  - ▶ You are barred from participating in a governmental decision if it is foreseeable that the decision will have a financial impact on your personal finances or other financial interests.

# POLITICAL REFORM ACT

- ▶ What types of interests can create a conflict?
  - ▶ Business entities
    - ▶ In which you have an investment of \$2,000 or more or for which you are a director, officer, partner, trustee, employee or manager
  - ▶ Real property
    - ▶ Real property in which you have an interest of \$2,000 or more
  - ▶ Sources of income
    - ▶ Individual or entity from whom you have received \$500 in the past 12 months.
    - ▶ Includes community property interest in a spouse's income
  - ▶ Sources of gifts
    - ▶ Sources of gifts aggregating \$500 or more in the past 12 months
  - ▶ Personal finances
    - ▶ Expenses, income, assets and liabilities, including those of immediate family members

# POLITICAL REFORM ACT

## “Foreseeable material financial effect”

- ▶ You are disqualified from a governmental decision if the effect on your financial interest is foreseeable and significant enough to be “material.”
- ▶ Generally, if the financial interest (e.g., the business entity) is explicitly involved in the governmental decision, the effect is foreseeable and material.
  - ▶ Example: you own a plot of land for which the City is considering approval of a development.
- ▶ Where the interest is not “explicitly involved,” a complex set of statutes and regulations govern whether a financial effect is “foreseeable and material.”
  - ▶ Example: You own a plot of land two blocks down the street from where the City is considering approval of a development.
- ▶ “Public Generally” analysis - The official may participate in the decision if the effect on their financial interest is indistinguishable from the effect on the public generally
  - ▶ Example: a new law applying to all residential properties in the City

# CONFLICTS IN PUBLIC CONTRACTS (SECTION 1090)

- ▶ California Government Code section 1090 prohibits City officers and employees from having a financial interest in any contract made by them in their official capacity.
  - ▶ Example: Standby Officer holds stock in a medical supply company the City is considering contracting with to address its emergency preparedness needs.
- ▶ If an official has a conflict, their agency cannot enter into the contract even if the official recuses themselves. If the Council has a conflict, every person or agency under its jurisdiction does as well.
  - ▶ If a staff member has a conflict, they must recuse themselves

# SECTION 1090

- ▶ “Making a contract” includes more than just voting or approving. Can include discussions and planning etc.
- ▶ Any contract made in violation of section 1090 is voidable
- ▶ Can carry harsh penalties, including criminal prosecution
- ▶ A 1090 conflict can exist in addition to a Political Reform Act conflict.

# LOCAL CONFLICT OF INTEREST LAWS

- ▶ The City of Berkeley has specific conflict of interest laws which apply to certain officers or employees.
  - ▶ E.g. Some commissioners and board members have specific conflict rules prohibiting certain activities or requiring recusal in specific instances. (e.g., Rent Stabilization Board, Fair Campaign Practices Commission)
- ▶ Berkeley's Conflict of Interest Code outlines the types of financial disclosures required of each City officer and employee.
- ▶ Under Berkeley's Conflict of Interest Code, interests in non-profit entities can trigger a conflict.

# COMMON LAW CONFLICTS OF INTEREST

- ▶ Even where an official or employee does not have a conflict of interest under the Political Reform Act, Section 1090, or City law, a court may find that a conflict exists.
- ▶ The “common law” conflicts may be based purely on non-financial (i.e., “personal”) interests and can even be based on the mere “appearance of impropriety.”
- ▶ “A public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal and diligence and primarily for the benefit of the public.” (*Noble v. City of Palo Alto* (1928) 89 Cal. App. 47, 51.)

# THE RIGHT TO AN UNBIASED DECISIONMAKER

- ▶ A person or entity appearing before a City body has a due process right to a fair and unbiased decisionmaker.
  - ▶ Applies when the City body is acting in a quasi-judicial or adjudicatory capacity (e.g., approval of a development application)
- ▶ An official is barred from participating if they are biased in favor or against the party, has a personal interest in the decision, or has prejudged the matter.



# RECUSAL

- ▶ Generally, officials who determine that they have a conflict of interest must recuse themselves from the governmental decision.
  - ▶ This usually entails leaving the room and refraining from any discussion of the matter with other members of the governmental body.
- ▶ Certain disclosure and public notification procedures may apply as well.
- ▶ For 1090 conflicts, recusal may be insufficient and the agency may be barred with contracting with the party posing the conflict.

# ENFORCEMENT AND PENALTIES

- ▶ Enforcement actions against violators of the conflict rules can take several forms depending on the type and severity of the violation.
- ▶ The California Fair Political Practices Commission (FPPC) can initiate investigations and levy fines for violations.
- ▶ Civil actions can be brought by the local District Attorney, City Attorney or by City residents.
- ▶ The City can take disciplinary measures against City employees.
- ▶ Government decisions made in violation of the conflict rules can be voided.
- ▶ A knowing or willful violation can result in criminal prosecution.

# DISCLOSURE OF FINANCIAL INTERESTS (FORM 700)

- ▶ Every City official or employee who makes or influences governmental decisions is required to file a “Statement of Economic Interests” (Form 700) with the City Clerk
- ▶ Provides information to the public about the official’s financial interests
- ▶ Serves to remind officials of their potential conflicts of interest
- ▶ Generally, Form 700s are filed when the official takes office, annually thereafter, and upon leaving office
- ▶ The information required for each official’s Form 700 can vary based on the official’s position
- ▶ Filed by Standby Officer when nomination form submitted.

# WHO FILES A FORM 700?

- ▶ California Government Code Section 87200 filers:
  - ▶ Mayor
  - ▶ City Councilmembers
  - ▶ City Manager
  - ▶ City Attorney
  - ▶ City Treasurer
  - ▶ CAOs
  - ▶ Planning Commissioners
  - ▶ Officials who manage investment
- ▶ City Conflict of Interest Code filers
  - ▶ For employees not listed in Section 87200.
  - ▶ The amount of information required is tailored to reflect the specific types of governmental decisions in which each employee is involved.