




Office of the City Manager

CONSENT CALENDAR
November 27, 2012

To: Honorable Mayor and Members of the City Council
From:  Christine Daniel, City Manager
Submitted by: Jane Micallef, Director, Health, Housing & Community Services
Subject: Amendment to Mental Health Commission Enabling Legislation

RECOMMENDATION

Adopt a Resolution amending the Mental Health Commission Enabling Legislation and rescinding Resolution No. 57,078–N.S.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The Berkeley Mental Health Commission consists of seventeen members of which two members are residents of the City of Albany. Under State law, the commission is required to have a specific composition with no less than 50% of the seats filled with consumers or their families. Chronic commission vacancies create challenges to adhere to this mandate. A reduction in the number of commission seats will alleviate this problem. Additionally, the current commission enabling resolution does not provide an opportunity for the City of Albany to be involved in the recommendation or selection of Albany representatives to the Commission, nor does it reflect the current selection process.

BACKGROUND

In 1993, Council adopted Resolution No. 57,078-N.S. amending the original resolution that created the Mental Health Advisory Board. The amendment was made in order to address the new State requirements for mental health consumer and family participation.

On July 21, 2008, the City of Albany expressed its interest in being involved in the appointment process of Albany residents to the Mental Health Commission in their Resolution No. 08-50. Staff is currently using a process that incorporates the concerns raised in the Albany resolution; however, these practices are not reflected in the current enabling resolution.

The Mental Health Commission reviewed and commented on the staff's proposed amendment to the enabling resolution on March 22, 2012. The Commission recommended seven changes and initially staff incorporated all of the changes.

However, staff later concluded that a commission size of fifteen was larger than needed and that a thirteen person commission is closer in alignment with the Fair Representation Ordinance, more accurately reflects the number of seats the Commission historically is able to fill, and facilitates the Commission's ability to conform to State law mandates regarding its composition.

The Commission reviewed the draft amendments again on May 24, 2012 and on June 28, 2012 and requested additional changes.

At its June 28, 2012 meeting, the Mental Health Commission passed the following motion:

M/S/C (Stanley, Black) The Mental Health Commission recommends approval of the [Enabling Resolution Amendment] with the following changes:

- 1) Language in Section 7(3) [Powers and Duties of Commission] be changed from "Advise" to "Consult with";
- 2) The exact language from WIC 5604 be incorporated into Section 7(2) [Powers and Duties of Commission];
- 3) 15 members is an adequate number of commissioners; and
- 4) The Mental Health Commission will send its own report to Council to accompany the staff report.

Ayes: Arreguin, Black, Davis, Heda, Kealoha-Blake, Lewis, Marasovic, Nemirow, Posey, Stanley, Virkstis; Noes: None; Abstentions: None; Absent: None.

After the June meeting, staff learned that the State no longer requires the City to enter into a performance contract. According to the State, although the City of Berkeley had Performance Contracts in the past, , the State has decided to no longer require a Performance Contract with the City of Berkeley. The State has eliminated the City Performance Contract because (1) the authoritative Welfare and Institutions Code section is specific to "counties" not cities, and 2) the City of Berkeley works with Alameda County via a contractual relationship with its own terms and Alameda has a Performance Contract with the State Department of Mental Health.

Since reviewing agreements pursuant to the Performance Contract is one of the duties listed in Welfare & Institutions Code (WIC) §5604.2 and in the proposed Enabling Resolution, the Mental Health Commission again reviewed the language under its Duties and Responsibilities. At its September 27, 2012 meeting, the Mental Health Commission understood that they have no role in reviewing a Performance Contract if the State no longer requires the City to enter into one but wanted to preserve this power and duty if the State should change its position in the future. The Commission adopted the following motion which staff is amendable to:

M/S/C (Marasovic, Stanley) The Mental Health Commission will add the language "if_ submission of a performance contract is required by the State" to #2 in the Duties and Responsibilities listed in its Council Report.

Ayes: Arreguin, Black, Davis, Heda, Kealoha-Blake, Marasovic, Nemirow, Posey, Stanley, Virkstis; Noes: None; Abstentions: None; Absent: Lewis.

Welfare & Institutions Code (WIC) §5604.2 mandates mental health jurisdictions to have an oversight board and establishes its roles and responsibilities. The attached resolution reflects the will of the Commission to use the exact language from WIC §5604.2 to describe the “Powers and Duties of Commission”, with the exception of: 1) modifying the terms “County” and “board” to “City and “commission” respectively to reflect terms in use by the City of Berkeley, and; 2) references the Commission’s authority under WIC 5604.5 to develop bylaws, subject to approval by City Council, that may include the authority to create an executive committee.

The Commission recommends that the duty to “advise the governing body and the local mental health director as to any aspect of the local mental health program” be modified from “advise” to “consult with”. However, staff did not incorporate this recommendation because the Commission’s reasoning to request this change was to be consistent with the duties articulated under WIC §5604.2 and the code section uses the verb “advise”. Finally, while staff initially accepted the Commission’s recommendation to have fifteen members, upon further reflection we changed our position because the Commission has never been able to fill all fifteen seats which undermines its ability to conform to the regulations to have a specific board composition with no less than 50% of the seats filled with consumers or their families.

RATIONALE FOR RECOMMENDATION

These changes will update the Mental Health Commission enabling resolution so that it is in alignment with Albany’s 2008 resolution, the Fair Representation Ordinance and the California Welfare and Institutions Code §5604.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered reducing size of the Commission to eleven members but found that in implementing this change would result in the removal of seated Commissioners. Additionally, an eleven member commission would be difficult administratively to ensure the composition required by State law.

Staff also considered reducing the size of the Commission to fifteen members but noted that over its history, the Commission has not had fifteen seated Commissioners at one time.

CONTACT PERSON

Carol Patterson, Mental Health Commission Secretary, HH&CS (510) 981-5217

Attachments:

1: Resolution

Exhibit A: Albany Resolution 08-50

2: Berkeley Resolution 57-078-N.S.

3: Berkeley Resolution 57-078-N.S. showing proposed changes

RESOLUTION NO. ##### -N.S.

ESTABLISHING THE MENTAL HEALTH COMMISSION, PROVIDING FOR MEMBERSHIP AND APPOINTMENT PROCEDURES THEREOF, AND DEFINING THE POWERS AND DUTIES OF SAID COMMISSION, AND RESCINDING RESOLUTION NO. 57,078–N.S. AND ALL RESOLUTIONS AMENDATORY THEREOF

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

Section 1. CREATION OF MENTAL HEALTH COMMISSION.

Pursuant to the provisions of Section 5604 of the Welfare and Institutions Code of the State of California, a Mental Health Commission of the City of Berkeley is hereby established.

Section 2. MEMBERSHIP OF THE COMMISSION.

The Commission shall be composed of thirteen (13) members, appointed by the City Council of Berkeley, except as set forth in Section 2(1). The membership shall conform to the following:

- (1) One (1) member of the Commission shall be the Mayor of the City of Berkeley. The City Council of the City of Berkeley may designate a person of its choice to serve instead of the Mayor as a member of the Commission.
- (2) Two (2) members of the Commission shall be residents of the City of Albany. The remaining members shall be residents of the City of Berkeley. At least one (1) of the two (2) Albany members shall be representative of the Special Public Interest, as defined below. .
- (3) Members of the Commission shall be persons representative of the public interest in mental health as follows:
 - a. Special Public Interest: Not less than seven (7) of the members representing the Public Interest shall be designated as Special Public Interest and shall be persons or the parents, spouses, siblings, or adult children of persons who are receiving or have received mental health services.
 - (i) At least three (3) of the members representing the special public interest shall be persons who are receiving or have received mental health services.
 - (ii) At least three (3) of the members representing the special public interest shall be the parents, spouses, sibling, or adult children of persons who are receiving or have received mental health services.

- b. General Public Interest: The remaining five (5) members shall be designated as General Public Interest and shall be persons representing a broad range of disciplines, professions, and fields of knowledge.
- (4) No member of the Commission or his or her spouse shall be a full-time or part-time City employee of a City mental health service, a full-time or part-time County employee of a County mental health service, or an employee of the State Department of Mental Health, an employee of or a paid member of the governing body of a mental health contract agency.

Section 3. TERMS OF OFFICE OF MEMBERS.

The term of each member of the Commission shall be for three (3) years. Appointments shall be equitably staggered so that approximately one-third of the appointments expire each year.

If, prior to the expiration of a term of service on this Commission, a member ceases to retain the status which qualified the person for appointment on the Commission, the person's membership on the Commission shall terminate and there shall be a vacancy on the Commission.

Section 4. APPOINTMENT PROCESS FOR MENTAL HEALTH COMMISSION MEMBERS.

Whenever a vacancy occurs on the Mental Health Commission, the following steps shall be taken:

- (1) The Berkeley City Clerk will announce the existence of the vacancy on the City of Berkeley website. When the vacancy is a seat previously held by an Albany resident, the Secretary will forward the announcement in a timely manner to the Albany City Clerk.
- (2) The Mental Health Commission shall publicize the vacancy and solicit applications for appointment. The announcement shall be distributed based on the priorities established by state and municipal law and priorities set by the Mental Health Commission. Depending on the specific category to be filled, announcements may also be sent to special interest organizations.
- (3) *Albany Applicants only:* Applications from Albany residents for either of the two Albany seats shall be forwarded to the Albany City Clerk.
 - a. The Albany City Council will review the Albany applicants and make recommendations for appointment to the Commission.

- b. The Albany City Council is responsible for communicating its recommendations in a timely manner to the Berkeley City Clerk for submission to the Commission Secretary.
 - c. While the Commission makes the recommendation to the Berkeley City Council for Commission appointments, the Albany City Council's recommendations have priority in the selection process.
- (4) *(All applicants)* When an application is submitted, the Secretary will first review the application for eligibility pursuant to the criteria stated in this Resolution. The Secretary will then distribute applications from qualified applicants to the Commissioners and place them in the Communications (SB 343) binder for public viewing prior to the next Mental Health Commission meeting. Applicants are encouraged to attend Commission meetings prior to appointment so that they may become familiar with the work of the Commission.
- (5) The Commission shall conduct interviews of qualified applicants. After the interview, the Commission shall decide whether to recommend the applicant to City Council for appointment. If the Commission decides to recommend the appointment, the Secretary will send a Consent Item to Council on behalf of the Commission.

Section 5. VACANCIES AND REMOVALS

Vacancies on the Commission, from whatever cause, except temporary vacancies as hereinafter provided, shall be filled by appointment by the City Council for the unexpired term or for a full term. The Council shall, at the time of appointment, designate the category such an appointee shall occupy pursuant to Section 2: Membership of the Commission. The Commission member's designation may be changed only by action of the City Council. Any member of the Commission may be removed from the Commission prior to expiration of his or her term by a six-ninths (6/9) vote of the City Council.

Section 6. TEMPORARY VACANCIES

A member of the Commission may be granted a leave of absence by the City Council pursuant to Berkeley Municipal Code Section 3.02.030. A Commission member seeking a leave of absence must submit a request in writing to the Secretary. A request for a leave of absence will then be submitted on the Commission member's behalf to the City Council for consideration. If approved by the City Council, a temporary vacancy shall thereupon exist for the period of such leave of absence.

During the period of such temporary vacancy, the Council 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 said Commission to the end of his or her appointed term.

Section 7. POWERS AND DUTIES OF COMMISSION

The Commission shall:

- (1) Review and evaluate the community's mental health needs, services, facilities, and special problems.
- (2) Review any City agreements entered into pursuant to WIC §5650, if submission of a performance contract is required by the State.
- (3) Advise the governing body and the local mental health director as to any aspect of the local mental health program.
- (4) Review and approve the procedures used to ensure citizen and professional involvement at all stages of the planning process.
- (5) Submit an annual report to the governing body on the needs and performance of the City's mental health system.
- (6) Review and make recommendations on applicants for the appointment of a local director of mental health services. The commission shall be included in the selection process prior to the vote of the governing body.
- (7) Review and comment on the City's performance outcome data and communicate its findings to the State Mental Health Planning Council.
- (8) Pursuant to WIC 5604.2(a)(8), the City Council may transfer additional duties or authority to the Commission.
- (9) Develop By-Laws, in accordance with WIC §5604.5 and approved by City Council, including, at the discretion of the Commission, the creation of an Executive Subcommittee.

Section 8. MINORITY COMPOSITION OF COMMISSION

The composition of the Commission shall reflect the minority population found in the City. If under representation exists, a statement shall be included in the mental health performance contract, if submission of a performance contract is required by the State, as to the ways equitable representation will be achieved and a timetable for achieving equitable representation.

BET IT FURTHER RESOLVED that Resolution No. 57,078-N.S. is hereby rescinded.

Exhibit A: Albany Resolution 08-50

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2 **NOW THEREFORE, BE IT RESOLVED** that the City Council of Albany does hereby
3 request the following with regard to the appointment procedure to the Berkeley Mental
4 Health Commission:

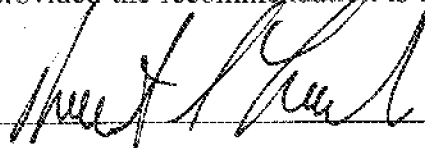
5 1) That the Secretary of the Commission will notify the Albany City Clerk in a timely
6 way of existing or anticipated vacancies of Albany seats on the Mental Health
7 Commission and the category of the vacancy; and

8 2) That the City Clerk's Office will simultaneously direct applications from Albany
9 residents to the Berkeley/Albany Mental Health Commission Secretary for consideration
10 by the Mental Health Commission and to the City of Albany City Clerk's Office for
11 consideration by the Albany City Council; and

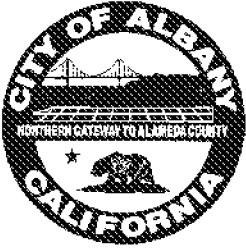
12 3) That the Albany City Council review applications and select the recommended
13 applicants for appointment to the Commission; and

14 4) That the Albany City Council be responsible for transmitting its recommended
15 appointments to the City of Berkeley's City Clerk in a timely manner; and

16 5) That the Albany City Council recommended appointments have priority in
17 recommendations to the Berkeley City Council regarding appointments to the
18 Berkeley/Albany Mental Health Commission provided the recommendation is consistent
19 with Mental Health Commission requirements.

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Robert S. Lieber, Mayor



City of Albany

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FAX (510) 528-8914

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Childcare Program
PH. (510) 524-0135
- Senior Center
PH. (510) 524-9122
FAX (510) 524-8940
- Teen Center
PH. (510) 525-0576

RESOLUTION NO. 08-50

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF ALBANY,

this 21st day of July, 2008, by the following votes:

AYES: Council Members Atkinson, Javandel, Okawachi, Nile & Mayor Lieben

NOES: None

ABSENT: None

WITNESS MY HAND AND THE SEAL OF THE CITY OF ALBANY, this 23rd

day of July, 2008.


JACQUELINE L. BUCHOLZ, CMC
CITY CLERK

The City of Albany is dedicated to maintaining its small town ambience, responding to the needs of the community, and providing a safe, healthy environment now and in the future.



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