



Office of the City Manager

ACTION CALENDAR

June 3, 2014

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: Placing a Recall Charter Amendment Measure on the November 4, 2014 Ballot

RECOMMENDATION

1. Adopt a Resolution submitting an Amendment to Article IV of the City Charter regarding the recall of elective officers to a vote of the electors at the November 4, 2014 General Municipal Election.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

FISCAL IMPACTS OF RECOMMENDATION

The table below shows the year-by-year costs for elections since 2006. The costs for 2010 and 2012 do not include the costs associated with Ranked Choice Voting as those costs are candidate-specific and not impacted by the number of measures placed on the ballot.

The dramatic cost increase in 2012 is primarily due to the need for an additional ballot card for Berkeley voters as a result of the high number of measures placed on the ballot.

	Election				
	Nov. 2006	Nov. 2008	June 2010	Nov. 2010	Nov. 2012
<b>Total Cost</b>	\$272,581	\$224,576	\$191,732	\$164,816	\$367,884
<b>No. of Measures</b>	6	7	1	3	10
<b>No. of Candidates</b>	23	25	0	31	26

CURRENT SITUATION AND ITS EFFECTS

At the February 11, 2014 City Council meeting, a proposed amendment to the City Charter's recall provisions was presented to the City Council. The Council directed the City Manager to return with draft ballot measure language for the November 4, 2014 general election. If adopted, the attached resolution will request that the Registrar of Voters place the matter on the ballot for consideration by Berkeley voters.

BACKGROUND

Many of the provisions in the Charter related to elections, and especially the Recall process, pre-date the switch to consolidated elections in November of even-numbered years. Should a successful Recall effort be mounted, the outdated provisions in Article IV related to the calling of the election would likely preclude the City from consolidating the recall election with a regularly scheduled election and may result in the Registrar of Voters declining to provide election services to the City. Either of these outcomes could cost the City upwards of \$300,000 in elections costs.

In addition, other provisions are proposed to be revised to reflect recent judicial rulings, to clarify the process for petitioners, and to incorporate some provisions of the state Elections Code related to Recalls.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

The City Clerk is presenting this action in accordance with the direction given by the City Council at the February 11, 2014 meeting.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Mark Numainville, City Clerk, 981-6900

Attachments:

1: Resolution

Exhibit A: Text of Charter Amendment

RESOLUTION NO. -N.S.

SUBMITTING TO THE BERKELEY ELECTORATE AN AMENDMENT TO THE RECALL PROVISIONS IN ARTICLE IV OF THE BERKELEY CITY CHARTER ON THE NOVEMBER 4, 2014 BALLOT

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 4, 2014 General Municipal Election, a measure to amend Article IV of the Berkeley Charter related to the recall of elective officers; and

WHEREAS, in accordance with the provisions of Section 10002 and 10403 of the Elections Code of the State of California, the Alameda County Board of Supervisors is requested to consolidate the City of Berkeley General Municipal Election with the Statewide General Election to be held November 4, 2014; and

WHEREAS, the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services to include all necessary services related to official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, polling places, poll workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the conduct of the consolidated election; and

WHEREAS, the Council desires to submit this measure to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that the full text of the measure shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above enumerated measure requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that Pursuant to Elections Code Section 9285 (b), the City Council hereby adopts the provisions of Elections Code Section 9285 (a) providing for the filing of rebuttal arguments for city ballot measures.

BE IT FURTHER RESOLVED that said proposed referendum measure shall appear and be printed upon the ballots to be used at said election as follows:

<b>CITY OF BERKELEY CHARTER AMENDMENT</b>	
Shall the Charter of the City of Berkeley be amended to conform the provisions for the recall of elective officers to recent judicial rulings and the state Elections Code with respect to counting of votes, signature threshold, petition circulators, and signature verification, and adjust the deadlines for calling recall elections to allow for consolidation with statewide elections?  <u>Financial Implications:</u> Potential cost savings from increased likelihood of election consolidation.	YES
	NO

BE IT FURTHER RESOLVED that the text of the charter amendment be shown as Exhibit A, attached hereto and made a part hereof.

Exhibits

A: Text of Charter Amendment

## ARTICLE IV RECALL OF ELECTIVE OFFICERS

### Section 7. Recall.

#### (1) Persons subject to recall.

Every incumbent of an elective office, whether elected by popular vote or appointed to fill a vacancy, is subject to recall by the voters of the City. The procedure for recall shall be as provided in this Section 7.

#### (2) Commencement of recall proceedings.

Recall proceedings may be commenced by the service, filing and publication of a notice of intention to circulate a recall petition pursuant to subdivision (6) of this Section 7. Proceedings may not be commenced against the holder of an office unless, at the time of commencement, the holder has held office for at least six months and no recall petition has been filed against such holder within the preceding six months. Recall proceedings may not be commenced if the office holder's term of office ends in six months or less.

#### (3) Recall petition.

A petition demanding the recall of the officer sought to be recalled shall be filed with the City Clerk. The petition shall be signed by not less than 25 percent of the registered electors of the City eligible to vote for said officer ~~on the day the petition is filed with the City Clerk.~~ as indicated by the most recent Report of Registration by the county elections official to the Secretary of State.

#### (4) ~~Repealed. Occurrence of vacancy after filing petition.~~

~~If a vacancy occurs in an office after a recall petition has been filed, the election shall nevertheless proceed as provided in this Section 7, except as provided in subdivision (20) hereof.~~

**(5) Recall of more than one officer.**

One election is sufficient for the recall of one or more officers, but a separate petition is necessary to propose the recall of each officer.

**(6) Notice of intention to circulate petition; statement.**

~~No signature may be affixed to the petition until~~ The proponents shall have served, filed and published a notice of intention to circulate a recall petition. Said notice shall contain the name of the officer sought to be recalled and the title of his or her office, a statement in not more than 500 words of the grounds on which the recall is sought, and the name and address of at least one proponent. The notice of intention shall be served, personally or by certified mail, on the officer sought to be recalled, and a copy thereof with a certificate of the time and manner of service shall be filed with the City Clerk.

**(7) Answer to statement of proponents.**

Within seven days after the filing of the notice of intention, the officer sought to be recalled may file with the City Clerk an answer in not more than 500 words to the statement of the proponents, and, if an answer is filed, shall serve a copy thereof, personally or by certified mail, on one of the proponents named in the notice of intention. The statement and answer are intended solely for the information of the voters and no insufficiency in the form or substance thereof shall affect the validity of the election or proceedings.

**(8) Publication of notice, statement and answer.**

The notice, statement and answer, if any, shall be published by the proponents at least once in a newspaper of general circulation published in the City, or, if there be no such newspaper, then in a newspaper published in the County and of

general circulation within the City. The provision of Section 68 of this Charter indicating that posting shall be sufficient publication of any matter required by the Charter to be published shall not be applicable to the publication requirement of this Subdivision (8) of Section 7.

**(9) Circulation of petition.**

Seven days after ~~the filing an affidavit of publication of the notice, statement and answer, if any, with the City Clerk, statement and answer, if any,~~ the recall petition may be circulated and signed. The petition shall bear a copy of the notice of intention, statement and answer, if any. If the officer has not answered, the petition shall so state. Signatures shall be secured and the petition filed within ~~75~~ 90 days from the filing of the ~~notice of intention~~ affidavit of publication.

**(10) Signatures.**

The signatures appended to the petition need not all be appended to one paper but may be in sections. Each signer shall print his or her name, add to his or her signature, the date of his or her signing and list his or her residence, giving street and number. If no street or number exists, then a designation of the place of residence shall be given which will enable the location to be readily ascertained. The petition, when filed, must have designated therein the name or number of the respective precinct in which each of the signers resides.

**(11) Affidavit of Circulator.**

Each section of the petition shall have attached to it an affidavit made by the circulator of the petition. ~~by a voter of the City.~~ The affidavit shall be sworn to under penalty of perjury before an officer competent to administer oaths and shall conform to the requirements of the state Elections Code Sections 104 and 9022 or their successors. ~~state that the affiant solicited signatures to that particular~~

~~section and saw written the signatures appearing thereon. The affidavit shall also state that according to the best information and belief of the affiant:~~

~~(a) Each signature is the genuine signature of the person whose name it purports to be.~~

~~(b) The signer is a qualified voter of the City.~~

Any section of a petition may include a number of attached sheets.

**(12) Clerk's examination of petition; ~~supplemental petition.~~**

In order to be acceptable for filing, the petition must on its face purport to have appended to it signatures of voters in the required number. Within 30 ~~15~~ business days from the date ~~of filing~~ the petition is filed, the Clerk shall examine and from the records of registration ascertain whether or not the petition is signed by the requisite number of voters. He or she shall attach to the petition his or her certificate showing the result of his or her examination. ~~If the Clerk's certificate shows the petition is insufficient, a supplemental petition, in form a duplicate of the original petition, may be filed within 15 days of the date of the certificate of insufficiency.~~

**(13) Insufficient petition.**

~~The Clerk shall, within 15 days after the supplemental petition is filed, examine it, and i~~ If his or her the certificate of the City Clerk shows that the petition is still insufficient, no action shall be taken thereon. The petition shall remain on file as a public record pursuant to Elections Code Section 11226 as it may be amended from time to time, and the failure to secure sufficient names shall not prejudice the filing later of an entirely new petition to the same effect.



**(14) Submission to Council; order for election.**

If the petition, ~~together with supplementary petitions, if any,~~ is sufficient, the Clerk shall submit certification of petition's sufficiency ~~to the Council without delay.~~ The Council shall at once order a special election to be held, not less than 100~~60~~ nor more than 180 ~~75~~ days after the date of the order, to determine whether the voters will recall the officer sought to be recalled. If a regular municipal election, a previously called special municipal election, or any statewide election is to be held within this time period ~~occur not more than 90 nor less than 60 days from the date of the order,~~ the Council may order the special-recall election to be held on the day of the regular that election.

**(15) Nominations.**

(a) The provisions of Section 6 1/2 of Article III of the Charter shall be applicable in recall proceedings and elections.

~~(b), and~~ (b) The officer sought to be recalled as well as the candidate or candidates nominated to succeed him or her may file the candidate's statement provided for in Section 6 1/2 of Article III of the Charter ~~therein~~. The candidate's statement of the officer sought to be recalled shall be filed not later than the last day upon which nomination papers may be filed.

(c) The City Council shall set the nomination period by resolution. Said filing period shall end no later than the 88th day prior to the election.

**(15.5) Sample ballot.**

The Clerk shall cause to have mailed to each voter, at least 10 days prior to the election, a sample ballot and a separate printed copy of the statement of the proponents and of the answer, if any, of the officer sought to be recalled. If the recall of more than one officer is sought, the statement and answer for each shall

be printed together and shall be clearly distinguished from those of any other officer.

**(16) Form of recall question.**

There shall be printed on the recall ballot, as to each officer whose recall is to be voted on, the following question: "Shall (name of person) be recalled from the office of (title of the office)?" Following which question shall be the words "yes" and "no" on separate lines, with a voting square at the right of each, in which the voter shall indicate in the manner prescribed his or her vote for or against the recall.

**(17) Ballot; nominees; counting votes.**

On the recall ballots, under each question, there shall be printed the names of those persons who have been nominated, in the manner provided by this Charter for nominations at municipal elections, as candidates to succeed the incumbent if he or she is recalled from office by the recall election. ~~No vote cast shall be counted for any candidate for the office unless the voter also voted on the question of the recall of the person sought to be recalled from that office.~~ The name of the person against whom the petition is filed shall not appear on the ballot as a candidate for the office. Voting procedure shall be in accordance with Article III, Section 5, Paragraph 12 and Article V, Section 9 of the City Charter.

**(18) Canvass of votes.**

The City Council shall meet at its usual place of meeting on the first Tuesday after the completion of the canvass of votes cast ~~election to canvass the returns~~ and to declare the results as in a regular election. If a majority of those voting at the election voted in favor of the recall of any incumbent from office, the incumbent shall be deemed removed from office upon the qualification of his successor.

If all of the members of the City Council or Board of Education are recalled, and no candidates are elected to succeed them, the recall shall fail and the incumbents shall remain in office.

If all or part of the members of the City Council or Board of Education are recalled, and not enough candidates are elected to provide a quorum, the appointment of persons to bring the membership up to a quorum shall be by the remaining members of the City Council or Board of Education, as the case may be, after which the quorum shall fill the remaining vacancies by appointments. If there are any unfilled vacancies remaining ~~30-60~~ days after the recall election completion of the canvass of votes cast, and more than ~~75-180~~ days will elapse before the next general municipal election will be held, the City Council shall immediately cause an election to be held to fill the vacancies.

A person appointed to office under this section shall hold office for the remainder of the unexpired term of the recalled officer whose position he or she is appointed to fill.

**(19) Declaration of election of candidate; failure to qualify; filling vacancy.**

If the vote recalls the officer, the candidate who has received the highest number of votes for the office shall be declared elected for the unexpired term of the former incumbent. If the person who received the highest number of votes fails to qualify within 10 days after the declaration of his or her election, the office shall become vacant and shall be filled according to law.

**(20) Vacancy in office after recall petition is filed. ~~Death or resignation of officer sought to be recalled.~~**

~~If the officer sought to be recalled dies more than 40 days prior to the election, the period for filing nomination papers to succeed the officer shall be extended to the 25th day prior to the election.~~

(1) If a vacancy occurs in the office sought to be recalled and more than one candidate has been nominated for the office, then the election shall be held as a special election to fill the vacancy and the recall question shall not appear on the ballot.

~~(2) If a vacancy occurs in the office sought to be recalled~~ resigns prior to the election, and at the close of the period for filing nomination papers only one person has been nominated for the office or no person has been nominated for the office, an election shall not be held. In such case the City Council or Board of Education, as the case may be, shall appoint to the office the person nominated, or, if no person has been nominated, shall appoint any qualified person.

**(21) Disqualification from office.**

A person who has been recalled, or who has resigned from office while recall proceedings were pending against him or her, shall not be a candidate for nor appointed to such office within one year after his or her resignation or recall.

**(22) Further regulations.**

The City Council may, by resolution, make such further regulations as may be necessary to carry out the provisions of this Section.

~~**(23) Withdrawal of candidate.**~~

~~Candidates nominated to succeed the incumbent if he or she is recalled from office by the recall election may withdraw from candidacy no later than the date the City Council may provide by resolution.~~