

Office of the City Manager

ACTION CALENDAR
June 24, 2014

To: Honorable Mayor and Members of the City Council
From:  Christine Daniel, City Manager
Submitted by: Mark Numainville, City Clerk
Subject: Initiative Petition – Advisory Initiative Measure Supporting Passage of Local and Federal Laws Allowing Workers to Request to Work Part-Time

RECOMMENDATION

- 1) Take action on the initiative petition to:
 - a) Adopt the provisions of the measure without alteration.
 - OR-
 - b) Adopt a Resolution submitting the measure, without alteration, to a vote of the people 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
Total Cost	\$272,581	\$224,576	\$191,732	\$164,816	\$367,884
No. of Measures	6	7	1	3	10
No. of Candidates	23	25	0	31	26

CURRENT SITUATION AND ITS EFFECTS

An initiative petition to adopt "Advisory Initiative Measure Supporting Passage of Local and Federal Laws Allowing Workers to Request to Work Part-Time" was filed with the City Clerk on May 2, 2014. The proponents of this petition submitted 4,486 prima facie signatures.

Under Berkeley City Charter Article XIII, a successful initiative petition must include valid signatures of at least 5% (2,638) or 10% (5,275) of the votes for all candidates for Mayor in November 2012 (52,750).

The Alameda County Registrar of Voters verified the signatures by conducting a random sampling of 500 signatures in accordance with State Elections Code §9215. This statistical sampling found 397 valid signatures, which is 131% of the number of signatures needed to declare the petition sufficient. Therefore, the petition was certified by the Registrar of Voters as being sufficient on May 16, 2014.

Additionally, with respect to who can author arguments for measures placed on the ballot by petition, Elections Code Section 9282(a) provides that "...the legislative body may submit an argument against the ordinance." The City Council may authorize the Council as a whole, or members of the Council, to submit an argument against the initiative ordinance.

BACKGROUND

Pursuant to the City Charter, Article XIII §92, once a petition has been found to have a sufficient amount of signatures, the City Council must consider whether to a) Adopt said ordinance without alteration within twenty days after the attachment of the City Clerk's certificate of sufficiency to the accompanying petition (subject to a referendary vote, under the provision of Article XIV of this Charter); or b) Submit the ordinance to the voters of the City of Berkeley at the next general election.

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 City Charter and the Elections Code.

ALTERNATIVE ACTIONS CONSIDERED

The alternative actions are listed in the Recommendation section of the report.

CONTACT PERSON

Mark Numainville, City Clerk, 981-6900

Attachments:

1. Resolution
Exhibit A: Full Text of Measure
2. City Clerk's Certificate of Petition

RESOLUTION NO. -N.S.

SUBMITTING TO THE BERKELEY ELECTORATE AN ADVISORY INITIATIVE MEASURE SUPPORTING PASSAGE OF LOCAL AND FEDERAL LAWS ALLOWING WORKERS TO REQUEST TO WORK PART-TIME

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 4, 2014 General Municipal Election, an advisory initiative measure supporting passage of local and federal laws allowing workers to request to work part-time; 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 initiative measure shall appear and be printed upon the ballots to be used at said election as follows:

CITY OF BERKELEY ADVISORY INITIATIVE MEASURE	
Shall the People of the City of Berkeley advise the City Council to adopt an ordinance based on proposed federal legislation and the San Francisco Family Friendly Workplace Ordinance giving employees in Berkeley the right to request to work part-time, and send letters to the state and federal elected officials, requesting the state and federal governments to give government employees the right to have shorter work hours, if doing so would not cause operational problems?	YES
	NO

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

Exhibits

A: Text of Ordinance

Section 1: Title

This initiative shall be known and may be cited as "The Berkeley Flexible Work Time Initiative of 2014." *[Note: This may be changed depending on the title provided by the city attorney.]*

Section 2: Findings and Declarations

The people of Berkeley find and declare as follows:

2.1: Most Americans do not have a practical option of working part-time.

2.1.a: Most part-time jobs pay less per hour than full-time jobs and have no benefits. Economist Juliet Schor has estimated that, if the average male worker leaves his full-time job and gets a part-time job that cuts his hours by 50 percent, he will cut his earnings by 80 percent because of the lower pay and benefits for part-time workers.

2.1.b: To work in most occupations, you have no choice but to take a full-time job.

2.2: Giving people the option of working part-time would have important social and environmental benefits.

2.2a: **Work-Family Balance:** Choice of work hours would help parents to balance the demands of work and family. Our standard 40-hour week dates back to the Fair Labor Standards Act of 1938, a time when the typical American family had a father who worked full-time and a mother who stayed at home with the children. Today, most American families with children have no stay-at-home parent. The labor standards of the 1930s do not give our families the flexibility they need to balance work and family obligations.

2.2.b: **Employment:** Choice of work hours would reduce unemployment, as employers hired more people to replace workers who cut their hours from full-time to part-time. In the Netherlands, they say that increased part-time work was the main cause of the "Dutch employment miracle" of the 1990s, when unemployment fell from 13% in the mid-1980s to 6.7% in 1996, the lowest level in western Europe. If we let the United States federal government's civilian employees choose their work hours, and if they chose to work as much as the average German employee, this change alone would create almost one-half million jobs.

2.2.c: **Environment:** Choice of work hours would reduce our impact on the environment, because people who choose to work less, earn less, and spend less would also pollute less. If Americans worked as few hours as western Europeans, it would lower our energy consumption and greenhouse gas emissions by 20%, according to a study by the Center for Economic and Policy Research.

2.2.d: **Quality of life:** Choice of work hours would increase people's satisfaction with their lives, because people would choose to work shorter hours only if they thought this would improve their lives.

2.3: Other nations have successfully adopted policies that allow workers to choose part-time work, and similar laws have recently been adopted in the United States.

2.3.a: Workers are allowed to choose part-time work by the Netherlands' Working Hours Adjustment Act (2000) and by Germany's Part-Time and Fixed Term Contract Act (2001). Both these laws allow workers who have had a job for a specified amount of time (six months or one year) to request a change to part-time work, and they require the employer to grant the request unless the employer can show that there are operational reasons that prevent this position from being part-time.

2.3.b: Care-givers, such as people with children under 6 years old, are given the right to request part-time work by the United Kingdom's Flexible Working Act (2002). Employers cannot penalize or discriminate against employees who request shorter hours, and employers are required to respond to the employee's request, though there are no sanctions if the employer refuses the request.

2.3c: Vermont's H99 An Act Relating to Equal Pay, which was passed in 2013, gives employees the right same to request as the United Kingdom but applies to all employees, not just care givers.

2.3d: San Francisco's Family Friendly Workplace Ordinance, which was passed in 2013, applies only to care givers, gives employees the right to request part time work, requires employees to respond to the request, but allows the employer to refuse the request for any bona fide business reason and does not allow any appeal if the employer refuses the request.

2.4: An economy can be successful with large numbers of part-time worker. In 2010, 48.5% of Dutch workers were part-time, and this country has an efficient economy with high productivity per worker hour.

Section 3: Provisions

3.1: We advise the city of Berkeley to pass a right-to-request law that applies to employees in Berkeley.

3.1a: The provisions of Berkeley's right-to-request law should be based on the provisions of the Working Families Flexibility Act, first introduced in Congress in 2007 as Senate Bill S. 2419, and on the Family Friendly Workplace Ordinance, passed by San Francisco in 2013. It should apply to all employees, not only to care givers.

3.1b: The city should fine-tune the ordinance based on the comments the city receives from the public. For example, the city should exempt small businesses from the requirements of the law, and should also modify the law in any other ways that are useful to accommodate the needs of Berkeley's employers and employees.

3.2: Within 90 days of passage of this measure, the city of Berkeley shall write letters to the Governor, Senate and Assembly of the state of California and to the President, Senate, and

House of Representatives the United States, calling on them to take action to allow more choice of work hours.

3.2a: This letter shall call on the federal and state government to implement policies giving government employees the right to request shorter work hours, and to grant these requests if they would not cause operational problems

3.2b: This letter shall also call on the federal government to pass the Working Families Flexibility Act, first introduced in Congress in 2007 as S. 2419, and shall call on the state government to pass a law with similar provisions. The Working Families Flexibility Act gives employees the right to request shorter hours and more flexible work arrangements.

3.2c: Section 4 contains the text of the letter that the city shall send.

Section 4: Text of the Letter

The city of Berkeley shall send the following letter to California's Governor, Senate and Assembly and to the United States' President, Senate, and House of Representatives:

To <insert the name of the addressee>

The voters of the city of Berkeley, California, have passed a ballot initiative that made the following findings:

<insert the text of sections 2.1 through 2.4, without the section numbers >

In light of these facts, we urge you to pass a law with the provisions of the Working Families Flexibility Act, first introduced in Congress in 2007 as S. 2419. This law gives employees the right to request flexible hours. It prevents employers from penalizing or discriminating against employees who request shorter hours, and it requires employers to respond to the request, but it does not impose any sanctions on employers who refuse the request. To avoid burdening small businesses, we recommend that small businesses should be exempted from this law.

(We do not support another bill with the same name, H.R. 1406, the Working Families Flexibility Act introduced in the House of Representatives in 2013, which would not provide any right to request flexible hours or working conditions and which would deny employees with flexible schedules the right to time-and-a-half pay for overtime on weeks when they do work more than 40 hours.)

We also urge you to adopt a policy giving government employees the right to request shorter hours, and to grant these requests when they would not create operational problems. We urge you to hire new employees to fill in for those who have cut their hours. This program could create large numbers of jobs for the small cost of rescheduling.

<signed by the city of Berkeley>

BERKELEY CITY CLERK CERTIFICATE OF PETITION

I, Mark Numainville, City Clerk of the City of Berkeley, California, hereby certify that:

An Initiative Petition entitled: **“ADVISORY INITIATIVE MEASURE SUPPORTING PASSAGE OF LOCAL AND FEDERAL LAWS ALLOWING WORKERS TO REQUEST TO WORK PART-TIME”** was filed with the Berkeley City Clerk on May 2, 2014 within the statutory time limit and forwarded to the office of the Alameda County Registrar of Voters for verification on May 6, 2014; and

The petition contained **4,533** unverified signatures; and

Pursuant to the Charter of the City of Berkeley, in order to be sufficient, the petition must have been signed by **2,638** qualified registered voters of the City of Berkeley, the number being equal to 5% of the total votes cast for all candidates for mayor in the last general municipal election; and

I have examined or caused to be examined, signatures on the petition pursuant to California Elections Code sections 9211 and 9115; and

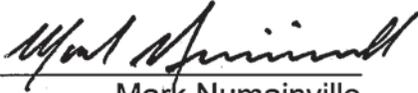
I have determined that the petition contained a valid signature rate of **131%** based on a random sample of the signatures; and

This number meets or exceeds the valid signature rate needed to qualify the initiative; therefore

The petition is found to be sufficient to require the City Council of the City of Berkeley to take appropriate action specified under the Berkeley Charter.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 6th day of June, 2014.




Mark Numainville
City Clerk
City of Berkeley