To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Mark Numainville, City Clerk
Subject: Referral Response: Berkeley Municipal Code Section 2.04.145 Amendment Related to Commissioners

RECOMMENDATION
Adopt first reading of an Ordinance amending Berkeley Municipal Code Chapter 2.04.145 to modify the requirements for affirming the residency status of City commissioners.

FISCAL IMPACTS OF RECOMMENDATION
No direct fiscal impact. Reduction in staff time associated with notification, processing and administration will provide additional staff resources for other baseline tasks and special projects.

CURRENT SITUATION AND ITS EFFECTS
This report responds to a Short Term referral that originally appeared on the agenda of the May 30, 2017 Council meeting and was sponsored by Councilmember Worthington.

The City Council approved a recommendation “That the City of Berkeley amend the Affidavit of Residency form by combining it with the appointment form into one document, and allowing applicants to submit the document electronically instead of in person. In addition, establish a six month residency reminder notification email from the City Clerk.” Staff in the City Clerk Department developed the proposed ordinance in consultation with the City Attorney’s Office that incorporates the principal points and purposes of the referral.

The attached ordinance amends the Municipal Code to change the requirement for the affidavit of residency from an annual hard copy filing to an affidavit completed at appointment with semi-annual reminders from the City Clerk regarding residency requirements and address verification. The semi-annual notices may be completed through electronic means.

This amendment will retain the requirement for the affidavit at the time of appointment, and the semi-annual address verification notices from the City Clerk will increase the
contact that the City Clerk has with each commissioner and lead to better record keeping of commissioner addresses (and residency).

BACKGROUND
The requirement for an affidavit of residency was created in 2009 in response to a high-profile case of an elected official residing outside Berkeley. Under the law, commissioners are required to submit a hard copy affidavit when they are appointed and annually thereafter. However, unlike elected officials, the Municipal Code allows for commissioners to live outside Berkeley for up to six months at a time as long as they have the intention to return. The six month rule has been in effect since 1982. In addition, some commissioners are exempted from the residency requirement by their commission’s enabling legislation. Due to the complexity of the residency rules and the multitude of forms a commissioner must complete, the annual affidavit has resulted in many commissioners being terminated for not filing the form, but has not been an effective tool for residency enforcement.

ENVIRONMENTAL SUSTAINABILITY
Modifying the affidavit to be combined with the Appointment Form, changing the structure of the ongoing certification, and providing for an electronic process will reduce paper usage significantly.

RATIONALE FOR RECOMMENDATION
The referral from the City Council has been studied by staff and this ordinance amendment and resolution reflect the will of the Council.

ALTERNATIVE ACTIONS CONSIDERED
None.

CONTACT PERSON
Mark Numainville, City Clerk, 981-6900

Attachments:
1: Ordinance
2: Original Referral
ORDINANCE NO. –N.S.

AMENDING SECTION 2.04.145 (AFFIDAVIT OF RESIDENCY) OF THE BERKELEY MUNICIPAL CODE

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

Section 1. That Section 2.04.145 of the Berkeley Municipal Code is hereby amended as follows:

2.04.145 Affidavit of Residency.

A. Every commissioner, except those exempted from the residency requirement pursuant to Section 2.04.140, shall execute an Affidavit of Residency, signed under penalty of perjury, prior to their appointment. Said affidavit must be filed with the City Clerk at the same time as their appointment form is filed with the City Clerk. No commissioner shall be appointed, nor may he or she serve on a commission if an Affidavit of Residency has not been filed with the appointment form.

B. On a semi-annual basis, the City Clerk shall send notification to every active commissioner advising of the residency requirement in Section 2.04.140 and requesting address confirmation. The notice and confirmation may be in paper or electronic form. Every commissioner serving on a commission shall file an original Affidavit of Residency annually no later than April 1st of each year. An annual Affidavit need not be filed if the commissioner filed an Affidavit pursuant to (A) on or after January 1st but before April 1st.

C. Any commissioner found to be in violation of the residency requirements in Section 2.04.140 shall be automatically terminated from the commission. If a commissioner fails to file the annual Affidavit of Residency by April 1st, the City Clerk shall send a notice of non-filing to the commissioner and the appointing Councilmember. If the Affidavit of Residency for a duly noticed commissioner has not been filed by May 1st, he or she shall be automatically terminated from the commission.
To: Honorable Mayor and Members of the City Council  
From: Councilmember Kriss Worthington  
Subject: Amend the required Affidavits of Residency form by combining it with the appointment form into one document, and eliminate the requirement to manually submit form in favor of electronic submission for Commissioners.

RECOMMENDATION  
That the City of Berkeley amend the Affidavit of Residency form by combining it with the appointment form into one document, and allowing applicants to submit the document electronically instead of in person. In addition, establish a six month residency reminder notification email from the City Clerk to eliminate the requirement for Commissioners to submit Affidavits of Residency when they are appointed and annually thereafter, in pursuit of saving time and money for the City of Berkeley.

BACKGROUND  
This revised Council item represents a compromise by retaining the Affidavit of Residency, but combining it with the appointment form. The City of Berkeley currently requires all Commissioners to submit a signed Affidavit of Residency before they can be officially appointed, and annually thereafter. If they fail to submit a physical copy of their Affidavit of Residency in person to the Civic Center within 30 days of their appointment as Commissioner (and the annual anniversaries of their appointment that follow thereafter), they are disqualified from holding their position and their appointment rescinded. Many Commissioners have had problems with this requirement, as it can be difficult for someone to take time out of their work day to visit the Civic Center simply to turn in a form, especially on an annual basis. Due to the challenging nature of this requirement, many Commissioners fail to meet this requirement every year and are disqualified from their position; once they do fill the form out, they are reinstated as Commissioners. This creates unnecessary work and expense for the City of Berkeley.

The Affidavits of Residency ultimately accomplish very little in establishing the legitimacy of Commissioners, but create an inordinate amount of paperwork and processing work for the City staff. This bureaucratic red tape is unnecessary and should be eliminated as the City aims to make its processes more efficient. It also needlessly hinders Commissioners from serving their community and upholding their position on the Commission Boards. This will also allow for the elimination of paper waste and is an eco-friendly pursuit.

FINANCIAL IMPLICATIONS  
This will decrease the cost of printing and the time required for processing paperwork for the City of Berkeley.

ENVIRONMENTAL SUSTAINABILITY  
Eliminates paper waste and consistent with Berkeley’s environmental sustainability goals.

CONTACT PERSON  
Councilmember Kriss Worthington 510-981-7170

ATTACHMENT:  
1. Revised appointment form
APPLICATION FOR APPOINTMENT TO BERKELEY
BOARDS AND COMMISSIONS

NAME: ___________________________________  EMAIL: _________________________________

PRIMARY RESIDENCE:
______________________________________________  Street  City
__________________________________________________________________________

Zip

OCCUPATION/PROFESSION:
______________________________________________________________________________

HOME PHONE: _______________________________  BUSINESS PHONE: _______________________

I have been a resident of Berkeley since: _________________

I am interested in being considered for appointment to the following Berkeley board(s)/commission(s):

Name of board/commission:
______________________________________________________________________________

Name of board/commission:
______________________________________________________________________________

List any qualifications (work experience, education, attributes and training) which you feel would provide
positive input to the work of the commission and the reason why you are interested in being appointed:
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

____________________________________________________

Please use another sheet of paper, if necessary.

The following individuals are qualified to comment on my capabilities:

NAME            ADDRESS           PHONE NO.
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

PLEASE COMPLETE THE ADDITIONAL INFORMATION ON THE REVERSE SIDE OF THIS
APPLICATION
AFFIDAVIT OF RESIDENCY FOR BERKELEY COMMISSIONERS

I, _________________________________________________, declare as follows:

My primary residence is ________________________________________________________________
(street address, or if none, a description of where you live, e.g. cross-streets)

Berkeley, California. I am currently a resident of the City of Berkeley. I hereby affirm my residency status
on the date of my application.

Signature of Applicant: ________________________________________________ Date:

DEMOGRAPHIC STUDY

Please indicate gender: □ Male □ Female

Please indicate whether you are currently a student: □ Yes □ No

Please indicate the racial/ethnic identity which you most closely identify with below
(response optional – please check only one category):

□ WHITE (Not of Hispanic origin.): All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.

□ BLACK (Not of Hispanic origin.): All persons having origins in any of the Black racial groups of Africa.

□ HISPANIC: All persons of Mexican, Puerto Rican, Cuban, Central American, South American, or other Spanish culture or origin, regardless of race.

□ ASIAN / PACIFIC ISLANDER: All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, and Samoa.

□ AMERICAN INDIAN / ALASKAN NATIVE: All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition. Please identify the tribe which you are affiliated with.

□ OTHER / BI-RACIAL: Persons who do not identify with any of the above categories or who have mixed or unknown racial/ethnic origins.

APPOINTMENT FORM – BOARDS AND COMMISSIONS
(For Mayor and Council use only)

Check appropriate box: □ New Appointment □ Reappointment □ Temporary Appt.
Temporary Appt.: From (date) _________________ to (date) _________________

Please send mail to: □ Home □ Business

Please indicate the name of the board/commission to which you are appointing this individual:
Board/Commission Name: ________________________________________________

***Please indicate the SPECIAL CATEGORY being fulfilled, if appointment is to ANY of the
following boards or commissions: Elmwood Advisory Board, Loan Administration Board, Human
Welfare & Community Action Commission, West Berkeley Project Area Commission, Downtown
Berkeley BID Advisory Board, Solano Avenue BID Advisory Board.
Special Category:

______________________________________________

Signature: ___________________________ Date:
______________________________ Mayor/Councilmember

For Mayor/Councilmember and City Use Only:

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<th>Interview Date</th>
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