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ACTION CALENDAR

July 24, 2018

To: Honorable Mayor and Members of the City Council
From: Councilmember Kriss Worthington
Subject: Adopt an Ordinance to amend BMC Chapter 3.80 allow [Mayor and City Council employees Staff](#) serve as a Commissioner

RECOMMENDATION:

Adopt revisions to Chapter 3.80 in Berkeley Municipal Code (BMC) concerning Membership On Boards And Commissions to allow [Mayor and City Council employees City Staff](#) to serve as a Commissioner by repealing section 3.80.030.

BACKGROUND:

Berkeley Municipal Code was last amended February 23, 2016 and the Commissioner's Manual was last updated on June 12, 2018. The manual was designed to address the service of Commissioners, Commission procedures, and the conduct of meetings.

[City staffs and e](#)Employees who work in Mayor and City Council offices should not be prohibited from serving and participating in the City Commission.

The prohibition on [Mayor and City Council e](#)city-affiliated employees being appointed as commissioners is ineffective. As stated on the item 3.64.020B, the board or commission is already engaged in formal or informal discussion about work or business for the city as they have deemed to perform advisory function for the city. Consequently, all commissioners must take the oath of office and recuse themselves if any conflicts of interest present themselves. Thus, [Mayor and City Council employees e](#)city-staff should be allowed to be commissioners since simply working for the city is not necessarily a conflict of interest and, under standard protocol, they must recuse themselves if any conflicts of interest arise.

FINANCIAL IMPLICATIONS: Minimal.

ENVIRONMENTAL IMPLICATIONS: No impact.

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ORDINANCE NO. #,###-N.S.

TO REPEAL THE BERKELEY MUNICIPAL CODE CHAPTER 3.80.030 TO ALLOW MAYOR AND CITY COUNCIL EMPLOYEES FROM SERVING AND PARTICIPATING IN THE CITY BOARD AND COMMISSION

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

Section 1. That the Chapter 3.80 of the Berkeley Municipal Code is hereby amended to read as follows:

Chapter 3.80

ABROGATING COMMON LAW DOCTRINE OF INCOMPATIBLE PUBLIC OFFICES WITH RESPECT TO MEMBERSHIP ON TWO OR MORE CITY BOARDS OR COMMISSIONS

Sections:

3.80.010 Findings.

3.80.020 Abrogation of common law doctrine of incompatible public offices.

Section 3.80.010 Findings.

The City Council finds that the mere fact that a City commissioner is a member of two or more City boards or commissions with some overlapping responsibilities does not preclude the commissioner from adequately discharging his or her responsibilities. (Ord. 6876-NS § 1 (part), 2005)

Section 3.80.020 Abrogation of common law doctrine of incompatible public offices.

A. The common law doctrine of incompatible public offices is hereby abrogated with respect to membership on two or more City boards or commissions. For purposes of this chapter, a City board or commission shall include any board or commission which is either elected or to which appointments are made by the City Council. The Berkeley Housing Authority Board shall be deemed a City commission for purposes of this chapter.

B. Nothing in this chapter shall be read to preclude the City Council from enacting any other ordinance to limit the number of commissions that any individual may serve on. (Ord. 6876-NS § 1 (part), 2005)