

AMENDMENTS TO ARTICLE V OF THE BERKELEY CITY CHARTER TO ESTABLISH A CITIZENS REDISTRICTING COMMISSION

The People of the City of Berkeley hereby amend Sections 9 and 10 of the Charter of the City of Berkeley, and add a new Section 9.5, to read as follows:

Section 1. Section 9 of Article V of the Charter of the City of Berkeley is amended to read as follows:

Section 9. Election and Districts.

- (a) The Mayor, Auditor and School Directors shall be elected at the general municipal election on a general ticket from the City at large.
- (b) The Councilmembers shall be elected at the general municipal election by districts. The Councilmembers shall be recalled by districts. Any person appointed to fill a vacancy on the City Council shall be a citizen of the United States and a qualified elector in the State of California and of the City of Berkeley as required in Article V, Section 10 of the City Charter, and must reside in the district in which he or she runs for election.
- (c) No later than April 1st ~~December 31st~~ of the second ~~third~~ year following the year in which each decennial federal census is taken, commencing with the 2020 ~~2010~~ census, unless a later deadline is established by Section 9.5(d)(1), the City Council shall be by ordinance divided the City into eight Council districts as set forth in Section 9.5 and any implementing legislation. Any such redistricting shall become effective as of the next general election of Councilmembers immediately following the effective date of said the ordinance adopted pursuant to Section 9.5(d).
- (1) ~~In establishing and modifying district boundaries, the Council shall ensure that the districts continue to be as nearly equal in population as may be according to the census, taking into consideration topography, geography, cohesiveness, contiguity, integrity and compactness of territory of the districts, as well as existing communities of interest as defined in California Constitution Article XXI, section 2(d)(4), and shall utilize easily understood district boundaries such as major traffic arteries and geographic boundaries to the extent they are consistent with communities of interest.~~
- (2) ~~Notwithstanding the foregoing paragraph, no change in the boundary or location of any district by redistricting may result in the residences of two sitting Council members being located in the same district.~~
- (d) Each Councilmember shall be elected by the electors within a Council district, must have resided in the District in which he or she is elected for a period of not less than thirty days immediately preceding the date he or she files nomination papers for the office of Councilmember, must continue to reside therein during his or her incumbency, and shall be removed from office upon ceasing to be such resident, except as set forth in Section 9.5(g)(6).

(e) The candidate receiving the highest number of votes for the offices, respectively, of Mayor, Auditor and Councilmembers of the City shall be elected to such offices, provided that such candidate receives at least 40% of the votes cast for each such office. In the event that no candidate for Mayor, Auditor and Councilmember for one or more Council offices receives at least 40% of the votes cast for that office, then there shall be a runoff election between the two candidates receiving the most votes, which runoff election shall be held on the first Tuesday after the first Monday in February of the odd numbered year following the initial election. No other issues shall appear on the ballot of any runoff election. The successful candidate in any runoff election shall assume office on March 1, after the election results have been declared by the Council. If the provisions of Article III, Section 5, Paragraph 12 related to instant runoff voting are operative, the vote threshold requirements in this section shall have no application to municipal elections.

(f) Should any provision of this Section be held invalid, the remainder of this Section shall not be affected thereby, and such word, phrase, sentence, part, section, subsection, or other portion shall be severable, and the remaining provisions of this Section shall remain in full force and effect. The voters hereby declare that they would have passed this Section and each subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more, subsections, sentences, clauses or phrases had been declared invalid.

Section 2. Section 9.5 of Article V of the Charter of the City of Berkeley is added to read as follows:

Section 9.5 Citizens Redistricting Commission.

The purposes of this Section are to: (1) establish a redistricting process that is open and transparent and allows public comment on the drawing of district boundaries; 2) ensure that City Council district boundaries are drawn according to the redistricting criteria set forth in this Charter and applicable State and Federal laws; and 3) ensure that the redistricting process is conducted with integrity, fairness, and without personal or political considerations. In order to accomplish these purposes, a Citizens Redistricting Commission (Commission) is hereby created.

(a) Duties and authority of Commission and City Council.

(1) The Citizens Redistricting Commission shall be solely responsible for drawing City Council district boundaries in accordance with state and federal law and this Charter, and shall make adjustments as appropriate, taking into consideration public comment at public meetings and public hearings. The City Council shall have no role in developing or adopting a redistricting plan, and its sole responsibilities in redistricting shall be to: adopt an ordinance establishing procedures to implement this Section; adopt a redistricting ordinance as set forth in subdivision (d)(3); submit a final redistricting plan to the voters as set forth in subdivision (d)(4); submit a redistricting ordinance that is the subject of a referendum to the voters as set forth in subdivision

(d)(5); and to adopt the redistricting plan determined by a special master as set forth in subdivision (d)(4).

(2) The City Council, as part of the adoption of the City Budget, shall allocate sufficient funds to support the work of the Citizens Redistricting Commission, including funds necessary for community outreach, costs for city staff time associated with supporting the work of the Citizens Redistricting Commission, and the hiring of any necessary consultants or outside counsel.

(3) The City Clerk or his or her designee shall serve as Secretary to the Commission.

(4) The City Council, by a two-thirds vote, shall adopt an ordinance establishing procedures to implement this Charter section. An implementation ordinance cannot be modified by the Council for a period of five years after initial adoption, and without a two-thirds vote of the Council.

(b) Appointment of Commission.

(1) Membership. The Commission shall consist of thirteen members, each of whom is a registered voter in the City of Berkeley. The application and selection process set forth below and by ordinance is intended to produce a Citizens Redistricting Commission that is independent from legislative and political influence, and reasonably representative of the City's population.

(2) Term. Members of the Citizens Redistricting Commission shall be appointed following each decennial federal census as set forth below. The term of office of each member of the Commission shall expire upon the effectiveness of a redistricting plan for that decennial federal census period.

(3) Qualifications and eligibility. All registered Berkeley residents who have voted in the last two General Municipal elections, unless ineligible to do so by reason of age, are eligible for membership on the Citizens Redistricting Commission, subject to the following limitations.

(i) The following individuals are prohibited from serving on the Citizens Redistricting Commission:

(A) any individual who currently holds, has held, or who has been a qualified candidate for the office of Mayor or City Councilmember within the two years preceding the date of application;

(B) any other individual who holds or has held any City of Berkeley elective office identified in this Charter within the two years preceding the date of application;

(C) the immediate family of the Mayor or any Councilmember, as well as immediate family of staff to the Mayor or Councilmember;

(D) any employee of the City of Berkeley;

(E) any person performing paid services under a contract with the City of Berkeley, including employees of subcontractors;

(F) any individual who has served as an officer, paid staff, or paid consultant of a campaign committee of a candidate for Mayor or City Council within the two years preceding the date of the application;

(G) any individual who is currently, or within the two years preceding the date of application, has been a paid staff member or unpaid intern to the Mayor or any Councilmember;

(H) any individual ineligible to serve in public office under Government Code sections 1021, 1021.5, 1770, or the Constitution and laws of the State of California.

(ii) If an applicant currently serves on a City of Berkeley board or commission whose members are appointed by the Mayor, a City Councilmember, or the full City Council, he or she may serve on the Citizens Redistricting Commission if selected, provided he or she resigns from the board or commission and he or she agrees not to serve on another City of Berkeley board or commission during his or her term of office on the Citizens Redistricting Commission.

(iii) If an applicant has made a disclosable monetary or non-monetary contribution to a candidate for Mayor or Councilmember, he or she shall be permitted to serve on the Citizens Redistricting Commission if selected, under the condition that he or she discloses under penalty of perjury all monetary and non-monetary contributions made within the four years prior to the date of application to a candidate for Mayor or Councilmember in the City of Berkeley.

(iv) No person, within two years after the termination of his or her service on the Commission, will be eligible for employment as a paid staff member for the Mayor or any Councilmember or to serve on a City of Berkeley board or commission.

(4) Outreach. The City shall widely publicize the fact that a Citizens Redistricting Commission will be appointed during the following year, the date by which applications for appointment to the Commission must be received, and such other information as will adequately inform potentially interested residents of the Commission. The City shall conduct outreach throughout the City of Berkeley in order to solicit a large pool of applicants and applicant diversity by race, ethnicity, gender, and geography.

(5) Application process. The City Clerk shall initiate and advertise a 30-day nomination period for appointment to the Citizens Redistricting Commission. The nomination process shall be open to all registered Berkeley voters, and be conducted in a manner that promotes a diverse and qualified applicant pool.

(6) Selection process.

(i) The City Clerk shall screen all applications submitted to ensure that each applicant satisfies the eligibility criteria of subsection (b)(3)(i). Procedures to implement the nomination and screening process that are not specified in this Section will be specified in the implementing ordinance adopted by Council.

(ii) At a time and place open to the public, and subject to at least ten days public notice, the City Clerk shall select the initial eight members of the Citizens Redistricting Commission. The City Clerk shall randomly select one person from each of the eight council districts. The first person chosen from each pool shall be appointed to the Citizens Redistricting Commission. The City Clerk shall then randomly select one additional individual from each of the eight council districts to serve as an alternate for the individual who has been appointed from that district. To implement this paragraph, the City Clerk shall determine a randomized method that meets professional standards and best achieves a random selection.

(iii) The Citizens Redistricting Commission, consisting of the initial eight (8) members, shall then convene within ten days for the purpose of selecting the remaining five members and five alternates from the pool of eligible applicants. In appointing the remaining (“at-large”) five members, the Citizens Redistricting Commission shall attempt to achieve community representation by taking into consideration geographic diversity, race, age and gender. At-large alternates shall be appointed as voting members as the at-large commissioners leave office for any reason. The order in which the alternates shall be seated on the Commission as voting members shall be established by a random method at the time they are selected. All appointments under this paragraph shall be at a noticed meeting of the Citizens Redistricting Commission open to the public.

(c) Commission procedures.

(1) The Citizens Redistricting Commission shall establish and implement an open process for public input and Commission deliberation that shall be promoted through a thorough outreach program to solicit broad public participation in the redistricting process. All Citizens Redistricting Commission meetings shall be open to the public unless necessary to convene in closed session under California Government Code sections 54950 *et seq.* Members of the public shall have the opportunity to provide written and oral comments to the Citizens Redistricting Commission. The Commission’s process must be designed to provide the widest public access reasonably possible to draft redistricting maps and to provide ample opportunity for the public to observe and participate in the redistricting process.

(2) The City Manager shall produce redistricting plans and maps based on specific direction from the Commission. The Commission shall also accept and consider maps that are submitted by the public.

(d) Commission redistricting proceedings.

(1) The Citizens Redistricting Commission shall adopt City Council district boundaries no later than February 1st of the second year after the year in which each decennial federal census is taken, or nine months after final adjustments are made to the census data, whichever is later. The boundaries shall be effective until the adoption of new district boundaries following the next decennial federal census. The City Council may not rescind, supersede or revise the district boundaries adopted by the Citizens Redistricting Commission.

(2) Decisions by the Citizens Redistricting Commission to adopt a redistricting plan shall be by seven votes of the Commission.

(3) Concurrently with its adoption of a redistricting plan, the Commission shall issue a report that explains its decisions in achieving compliance with the criteria listed in this Section and shall include definitions of the terms and standards used in drawing the final City Council districts map. The redistricting plan adopted by the Commission shall be submitted to the City Council at its next regular or special meeting consistent with Berkeley Municipal Code Chapter 2.06, and the City Council shall at that meeting adopt a redistricting ordinance that implements the redistricting plan without change.

(4) *Impasse procedure.* If the Commission is unable to achieve seven affirmative votes to adopt a redistricting plan, then the Commission shall submit to the

City Council the map which received the most votes of the Commission to be placed on the ballot. In the event that redistricting plan is rejected by the voters, the Commission shall have 30 days to adopt a new redistricting plan by seven affirmative votes. If the Commission, after rejection of the map by the voters, cannot adopt a final redistricting plan by seven affirmative votes, then the Commission shall request that the City Clerk recommend a list of at least three special masters to develop a redistricting plan. The Commission shall consider the recommendations of the City Clerk and select a special master, by majority vote, to develop a redistricting plan. The City Council shall adopt by ordinance the redistricting plan determined by the special master.

(5) A redistricting ordinance adopted by the City Council shall be subject to referendum in the same manner that an ordinance is subject to referendum pursuant to state law and Article XIV of the City Charter. The date of final adoption of the ordinance by the City Council shall be deemed the date of final passage for the purposes of Section 93 of the Charter. The procedures of Section 93 shall apply to a referendum of a redistricting ordinance, except that if a referendum petition is signed by the requisite number of qualified electors the City Council shall submit the ordinance to the voters at the next General Municipal Election.

(e) Removal of Commissioners.

(1) Commissioners should apply the law in a manner that is impartial and reinforces public confidence and integrity in the redistricting process.

(2) In the event of substantial neglect of duty, gross misconduct in office or inability to discharge the duties of office, or if it is determined that a commissioner is ineligible under subdivision (d)(3), a Commissioner may be removed by a two-thirds vote of the Citizens Redistricting Commission, after having been served written notice and provided with an opportunity to respond.

(3) Any vacancy, whether created by removal, resignation, or absence pursuant to Berkeley Municipal Code Section 3.02.020 or its successor, shall be filled by the alternate for that Commission seat selected at the time of the original selection. If the alternate is unable to serve, the Citizens Redistricting Commission shall fill the vacancy by selecting an applicant from the original pool of applicants by a two-thirds vote at a noticed meeting open to the public. If the seat to be filled is one representing a specific City Council district, the Citizens Redistricting Commission shall appoint an individual who resides in that City Council district.

(4) No disqualification of a commissioner shall have any effect on the validity of any action by the Commission or any redistricting map it may adopt.

(f) Criteria for redistricting.

(1) The Commission shall adjust the boundaries of City Council districts in a manner that complies with the Constitution and statutes of the United States and the State of California, in order that the eight City Council districts shall be as nearly equal in population as may be according to the most recent decennial federal census, except where deviation is required to comply with the federal Voting Rights Act.

(2) In establishing and modifying district boundaries, the Citizens Redistricting Commission shall take into consideration topography, geography, cohesiveness, contiguity, integrity and compactness of territory of the districts, as well as existing

communities of interest as defined below, and shall utilize easily understood district boundaries such as major traffic arteries and geographic boundaries to the extent they are consistent with communities of interest. The geographic integrity of a neighborhood or community of interest shall be respected to the extent possible without violating State or Federal law or the requirements of this Section. For purposes of this subsection “communities of interest” shall mean the following: A community of interest is a contiguous population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Such shared interests include but are not limited to those common to areas in which the people share similar living standards, use the same transportation facilities, have similar work opportunities, or have access to the same media of communication relevant to the election process, as well as neighborhoods, students, organized student housing, shared age, and racial demographics. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.

(3) Districts shall not be drawn for the purpose of favoring or discriminating against an incumbent, political candidate, or political party.

(4) The Citizens Redistricting Commission may consider existing district boundaries as a basis for developing new district boundaries. Should the Commission deviate substantially in its redistricting plan from the previous district boundaries in order to reflect population growth, protect communities of interest or better comply with the redistricting criteria in the Charter, it shall issue a report explaining its reasons for doing so.

(5) The Citizens Redistricting Commission shall not consider the residence of sitting Councilmembers.

(6) If the Citizens Redistricting Commission adopts a redistricting plan that removes the residence of a sitting Councilmember from his or her then-current district, that Councilmember shall continue to serve on the City Council until the expiration of his or her term.

(g) Severability.

Should any provision of this Section be held invalid, the remainder of this Section shall not be affected thereby, and such word, phrase, sentence, part, section, subsection, or other portion shall be severable, and the remaining provisions of this Section shall remain in full force and effect. The voters hereby declare that they would have passed this Section and each subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more, subsections, sentences, clauses or phrases had been declared invalid.

Section 3. Section 10 of Article V of the Charter of the City of Berkeley is amended to read as follows:

Section 10. Eligibility of Mayor, Auditor, Councilmember, and School Director.

To be eligible for the office of Mayor, Auditor, Councilmember, or School Director, a person must, at the time of filing nomination papers for the office, be a citizen of the United States and a qualified elector of the State of California and of the City of

Berkeley. Any person who has served as a voting member of the Citizens Redistricting Commission shall be ineligible to file nomination papers for the office of Council member in his or her district of residence or Mayor in the next occurring general municipal election in which said office appears on the ballot after his or her service on the Commission terminates under Sections 9.5(b)(2) or 9.5(e).