

FULL TEXT OF CHARTER AMENDMENT

AMENDMENT TO ARTICLE V, SECTION 9 OF THE BERKELEY CITY CHARTER TO ESTABLISH A CITIZENS REDISTRICTING COMMISSION

The People of the City of Berkeley hereby amend the following section of the Charter of the City of Berkeley 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 Councilmember appointed to fill a vacancy on the Council shall be a registered voter and reside in the district they will be appointed to represent.

(c) (1) Within 90 days following the publication of the decennial federal census in the year 2020 and every decennial federal census thereafter, the City Manager shall determine and report to the City Council on whether the existing districts continue to meet the requirements of federal and state law and the criteria for drawing district lines set in the Charter.

If it is determined by the City Manager that the districts are in compliance with all legal requirements, including the requirement that they be as nearly equal in population as may be, the current districts as drawn will be effective for the next decade. If it is determined that any of the districts are not in compliance, the City Clerk shall initiate an application process to establish a Citizens Redistricting Commission and randomly select eleven (11) registered Berkeley voters from a pool of applicants, based on the

criteria set forth in subsection (g), and the City Manager shall convene an Citizens Redistricting Commission.

The Commission shall be responsible for redrawing the district boundaries in accordance with the law and the criteria established in this Section, and shall make such adjustments as appropriate based on public input at public meetings, as well as three public hearings: one at the commencement of the process to receive community input on redistricting priorities and proposals; one after the release of the final draft map; and one public hearing prior to the adoption of a redistricting plan.

With the exception of redrawing boundaries following the 2014 General Municipal Election as required in subsection (c)(2), the Commission must adopt boundaries no later than December 31st of the third year in which each decennial federal census is taken. The Council may not revise the district boundaries adopted by the Commission.

(d) Immediately following the 2014 General Municipal Election, the Commission shall be appointed and convened for the purpose of drawing new district boundaries which shall be in place until new districts are established following the 2020 decennial federal census.

(e) **Purposes:** The Citizens Redistricting Commission should: 1) conduct an open and transparent process allowing full public consideration and comment on the drawing of district boundaries; 2) draw district boundaries according to the redistricting criteria specified in this Section; and 3) conduct themselves with integrity and fairness.

The selection process is designed to produce a Citizens Redistricting Commission that is independent from legislative and political influence, and reasonably representative of the City's population.

(f) The Citizens Redistricting Commission shall consist of eleven (11) members each of whom are registered voters in the City of Berkeley randomly chosen by a pool of applicants, and subject to the qualifications set forth in this Section. The term of office of each member of the Commission expires upon the adoption of district boundaries by the Commission, unless a referendum is successful in staying implementation of the district boundaries, in which case the Commission has 180 days from the date the referendum qualified to adopt a new redistricting plan, or may submit the referendum to the voters at

the next occurring statewide or general municipal election. If the voters reject the redistricting plan that is subject to the referendum, then the Commission will reconvene after the election and develop a new redistricting plan.

The final redistricting plan must be approved by six votes of the Commission. The Commission shall annually select of their members to serve as the chair and one to serve as vice chair.

Each commission member should apply the law in a manner that is impartial and reinforces public confidence and integrity in the redistricting process. A Commission member shall be ineligible to run or be appointed to the office of Councilmember for a period of 10 years from the date of their original appointment to the Commission.

(g) If the City Manager determines, pursuant to subsection (c), that the existing district boundaries are not in compliance with all legal requirements, including the requirement that they be as nearly equal in population as may be, the City Clerk shall initiate an application process open to all registered Berkeley voters, except for those that are prohibited from serving because they are in one of the prohibited categories in subsection (g) (1). The Council shall adopt by ordinance an application and outreach process for selecting members of the Commission.

(1) The following individuals are prohibited from applying to and being appointed to serve on the Citizens Redistricting Commission: the Mayor; members of the City Council; paid staff to the Mayor or members of the City Council; the immediate family of the Mayor, members of the City Council or staff to the City Council; any other elective officer in the City of Berkeley; any individual who has served as an treasurer, officer, volunteer, or paid consultant of a campaign committee of a candidate for or elected member of the Council, or made any reportable monetary or non-monetary contribution to any candidate for Mayor or City Council within the last 10 years. As used in this subdivision, a member of a person's "immediate family" is one with whom the person has a bona fide relationship established through blood or legal relation, including parents, children, siblings and in-laws. The application process shall include questions asking if the applicant falls into these prohibited categories, and the applicant shall sign their application under penalty of perjury certifying that the statements they are making are correct.

(2) The City Clerk shall, at a time and place open to the public and properly noticed, select applicants by random draw of the names of all of the applicants. Prior to the random draw, the names of applicants shall be separated into eight pools based on the Council District in which the applicant resides, except for applicants that have indicated that they are UC Berkeley students, who shall be in a separate ninth pool. The City Clerk shall select randomly one person from each of the nine pools. The first person chosen from each pool shall be appointed to the Commission. To select the remaining two seats, all remaining names in the pools shall be combined and the City Clerk shall randomly draw the first two names. The first two names selected shall be appointed to the Commission. During the random selection process, the City Clerk will check using a list developed of all applicants who fall into the prohibited categories in (g) (1) if they are prohibited from serving and if so disqualify them, and go on to randomly draw more names.

(h) (1) In the event of substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office, a member of the Commission may be removed by the City Manager with the concurrence of two-thirds of the members of the Commission after having been served written notice and provided with an opportunity for a response.

(2) Any vacancy, whether created by removal, resignation, or absence, in the 11 commission positions shall be filled within 30 days of the vacancy by the City Clerk, who shall randomly draw the names based on the original remaining pool of 22 applicants. If none of the remaining applicants are available for service, the City Clerk shall fill the vacancy by reviewing the original pool of applicants and selecting an appointee subject to the criteria set forth above.

(3) Commission members or staff supporting the commission may not communicate with or receive communications about redistricting matters from anyone outside of a public hearing. This paragraph does not prohibit communication between commission members, staff, legal counsel, and consultants retained by the commission that is otherwise permitted by the Brown Act (California Government Code Section 54950-54963) or its successor outside of a public meeting.

(4) The Commission shall comply with any relevant provisions of the Open Government Ordinance (Berkeley Municipal Code Chapter 2.06).

(5) The City Council as part of the approval of its biennial City Budget shall allocate necessary funds to support the work of the commission, including funds necessary for community outreach, costs for city staff time associated with supporting the work of the commission, and the hiring of any necessary consultants or outside counsel.

(6) The 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 Commission meetings shall be open to the public unless necessary to convene in closed session under the Brown Act. Members of the public shall have the opportunity to provide written and oral comments to the commission. The public input process should also include three public hearings: one at the commencement of the process to solicit public input on redistricting priorities and proposals; one after the release of the final draft map, and one final hearing prior to adoption of a redistricting plan. In addition, hearings shall be supplemented with other activities as appropriate to further increase opportunity for the public to observe and participate in the review process. The Commission shall display the maps for public comment in a manner designed to achieve the widest public access reasonably possible.

The Commission and staff shall have the sole authority to submit redistricting maps for consideration. The public is encouraged to submit proposed maps and ideas as communications to the Commission. Staff will develop maps based on Commission direction.

(i) (1) The Commission shall adjust the boundaries of the Council districts as authorized in this Section following the release of the decennial federal census, commencing with the 2020 census, as well as following the 2014 General Municipal Election as required in subsection (d), as provided and required in the Constitution and statutes of the State of California and in order that the eight Council districts shall continue to be as nearly equal in population as may be according to said census, except where deviation is required to comply with the federal Voting Rights Act or allowable by law. Any such redistricting shall become effective as of the next general election of Councilmembers immediately following the effective date of approval by the Commission.

~~(d) No later than December 31st of the third year following the year in which each decennial federal census is taken, commencing with the 2010 census, the Council shall by ordinance divide the City into eight Council districts. Any such redistricting shall become effective as of the next general election of Councilmembers immediately following the effective date of said ordinance.~~

(2) In establishing and modifying district boundaries, the ~~Council~~ Citizens Redistricting Commission 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 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 districts shall also comply with the federal Voting Rights Act (42 U.S.C. Sect. 1971 and following). The geographic integrity of the a neighborhood or community of interest shall be respected to the extent possible without violating State and Federal law or the requirements set forth in 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. Examples of such shared interests are those common to an urban area, a rural area, an industrial area, or an agricultural area, and 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, and shared age, race and socio-economic demographics. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.

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

The Commission should consider existing boundaries as a basis for developing new District boundaries. Should the Commission deviate from existing boundaries to allow for flexibility to reflect population growth, and to protect communities of interest or better comply with the redistricting criteria in the Charter, the Commission shall adopt a report explaining its reasons for deviating substantially from existing district boundaries.

~~(3) 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.~~

(3) The Commission in its deliberations may consider the residence of sitting Council members, but may remove the residence of a sitting Councilmember from their district if the maintenance of their residence in the district results in a significant population deviation, divides communities of interest or is inconsistent with the criteria set forth in this Section. The Commission shall issue a report Council explaining the reasons why it deemed it necessary to draw out the residence of a sitting member from their district.

Phase in period. If the boundaries adopted by the Commission remove the residence of a sitting Councilmember from their district, the Councilmember shall continue to serve on the City Council until the expiration of their term. However they will be required to reside in the new district in order to be eligible to run for another term.

(4) The Commission shall adopt a final map by resolution and upon approval shall submit the final map to the City Clerk and Alameda County Registrar of Voters for implementation starting in the next General Municipal Election. The Commission shall issue a report that explains the basis on which the Commission made 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 map.

(5) The final map shall be subject to referendum in the same manner that a statute is subject to referendum pursuant to state law and Article XIV of the City Charter. The date of submission of the final map to the City Clerk and Alameda County Registrar of Voters shall be deemed the enactment date for the purposes of referendum. If within 30 days after submission of the final map to the City Clerk and Alameda County Registrar of Voters, and a petition signed by registered voters of the City equal in number to at least ten percent of the entire vote cast for all candidates for Mayor in the last preceding general municipal election at which a Mayor was elected, protesting against the passage of the redistricting plan adopted by the Commission, the redistricting plan shall be suspended from going into operation and it shall be the duty of the Commission within 90 days to rescind the map adopted and develop and adopt a new redistricting plan subject to the requirements of this Section. If the Commission does not approve a final redistricting plan within 90 days of the certification of the referendum, then the Council shall place the referendum on the next occurring statewide or general municipal election.

(dj) 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 a declaration of candidacy 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 specified in subsection (i)(3) if the residence of a sitting Councilmember is removed from their district as part of the redistricting plan adopted by the Commission, the Councilmember shall continue to serve until the expiration of their term.

(k) 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.

(l) 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.