



Office of the City Manager

ACTION CALENDAR
April 23, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Mark Numainville, City Clerk
Farimah Brown, City Attorney

Subject: Referral Response: Updated Policy for Emergency Standby Officers for the Mayor and Councilmembers

RECOMMENDATION

Adopt a Resolution updating the selection process and criteria for the appointment of Standby Officers for the Mayor and each Councilmember to serve in the event the elected official is unavailable during an emergency, and rescinding Resolution No. 57,906-N.S.

POLICY COMMITTEE RECOMMENDATION

On March 11, 2019, the Agenda and Rules Committee adopted the following action: M/S/C (Arreguin/Wengraf) to send the item to the full Council with a Positive Recommendation. Vote: All Ayes.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The item originally appeared on the February 19, 2018 agenda. The City Council referred the item to the Agenda and Rules Committee for further analysis. On March 11, 2019 the committee voted to send to Council with edits to add a requirement for filing Form 700, revise the city government experience requirement, and revise the due date for nominations.

This report responds to a short term referral that originally appeared on the agenda of the September 13, 2018 Council meeting and was sponsored by Councilmember Wengraf, Mayor Arreguin, and Councilmember Hahn.

The referral requested that the City Manager consider the following suggestions for eligibility requirements and qualifications for Emergency Standby Officers and return to Council within 90 days with recommendations.

- Trainings in roles and responsibilities to serve as a standby officer possibly including: ethics and workplace harassment.

- City government experience
- Council District residency
- Require standby officers to meet the same qualifications, including restrictions on conflict of interest, as required in the City Charter for City Councilmembers.
- In addition, consider requiring Councilmembers to nominate three people in a single action.

The proposed policy in the attached resolution incorporates all of these suggestions except for the requirement for Council District residency. The requirement for district residency was not included as it would conflict with the state codes governing standby officers. The code allows for standby officers to be residents of another political subdivision. The reason for this is that a severe local emergency event that results in the unavailability of a Councilmember will have a higher likelihood of impacting the availability of a standby officer if that standby officer is from the same immediate area.

California Government Code Section 8639

The qualifications of each standby officer should be carefully investigated, and the governing body may request the Director of Emergency Services to aid in the investigation of any prospective appointee. No examination or investigation shall be made without the consent of the prospective appointee.

Consideration shall be given to places of residence and work, so that for each office for which standby officers are appointed there shall be the greatest probability of survivorship. Standby officers may be residents or officers of a political subdivision other than that to which they are appointed as standby officers.

The policy includes trainings in the same areas as trainings that Councilmembers receive: AB1234 (Ethics), Harassment prevention, Brown Act, Conflict of Interest, and roles and responsibilities in an emergency.

The policy also now requires that the standby officer be 18 years of age or older and a registered voter.

If the updated policy is adopted by the Council, the City Clerk Department, City Attorney's Office, and the Human Resources Department will coordinate to ensure that the eligibility criteria are met and that the background checks and trainings are completed.

Previously approved standby officers will be required to meet all training requirements of the updated policy.

BACKGROUND

On March 14, 1995, the Council adopted Resolution No. 57,906-N.S., designating a procedure for the selection of Standby Officers for City Councilmembers in the event of an emergency. This procedure is part of the City's emergency preparedness planning and ensures that in the case of a disaster or other catastrophic emergency causing the unavailability of one or more members of the Council (or Standby Officers where a Councilmember is unavailable), government can continue to function. Under state law, a Councilmember or Standby Officer is "unavailable" when he or she is "either killed, missing, or so seriously injured as to be unable to attend meetings and otherwise perform his [or her] duties." (Govt Code § 8636.)

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

This recommendation is in response to a referral from the City Council. Standby Officers are an essential part of any fully developed emergency plan in order maintain the continuity of government in an emergency.

CONTACT PERSON

Mark Numainville, City Clerk, 981-6900
Farimah Brown, City Attorney, 981-6998

Attachments:

1: Resolution

RESOLUTION NO. ~~##,###~~-N.S.

DESIGNATING PROCEDURE FOR SELECTION OF STANDBY OFFICERS FOR CITY COUNCILMEMBERS IN THE EVENT OF A DISASTER AND RESCINDING RESOLUTION NO. 57,906-N.S.

WHEREAS, the California Emergency Services Act, Government Code sections 8550, et seq., which sets out basic state procedures for declaration of emergency, includes a section "Preservation of Local Government," which provides various methods of insuring that in the case of a catastrophic emergency, in which it is possible that members of a governing body become unavailable, government can be reconstituted and continue until regular elections can be held; and

WHEREAS, the Act envisions reconstitution of the governing body through the predesignation of three standby officers for each Councilmember which may be appointed by the City Council, and who may substitute for the elected official if he or she were unavailable; and

WHEREAS, the Act provides some procedures but does not spell out the method of selection and ratification in all respects; and

WHEREAS, the Act further provides that the qualifications of each standby officer should be carefully investigated but does not mandate what the qualifications should be.

NOW THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that the following procedure for appointment of Standby officers is adopted:

1. No person who has been convicted of the crimes of bribery, malfeasance in office, violation of Government Code Section 1090 or the Political Reform Act shall be eligible to be a Standby Officer.

2. Each Councilmember shall identify three potential standby officers for that Councilmember, shall obtain written consent for each person being named, shall designate each proposed officer as No. 1, 2 or 3, and shall submit the name of each person to the City Manager by July 15, 2019.

3. The initial nomination of all three standby officers must be done in a single action.

4. The City Manager shall investigate the qualification of each proposed standby officer, and shall submit the names of those proposed standby officers as to whom the investigation verified their qualifications to the City Council.

5. The names of the proposed, investigated and approved standby officers shall be submitted to the City Council as a whole for final approval.

6. Standby officers must be 18 years of age or older and a registered voter, and complete the following trainings within six months of his or her approval by the City Council:

- a. Training in roles and responsibilities to serve as a standby officer.
- b. Training in Ethics as mandated by AB 1234
- c. Training in Conflict of Interest restrictions and disclosures
- d. Training in the requirements of the Brown Act
- e. Training in Workplace Harassment Prevention.

7. Standby officers must file Form 700 Statement of Economic Interest at the time they are nominated.

8. The Mayor and Councilmembers shall nominate persons with experience in city government and/or disaster preparedness.

BE IT FURTHER RESOLVED that Resolution No. 57,906-N.S. is hereby rescinded.

