



Office of the City Attorney

ACTION CALENDAR  
July 9, 2024

To: Honorable Mayor and Members of the City Council

From: Farimah Brown, City Attorney

Submitted by: Sam Harvey, Deputy City Attorney

Subject: Youth Voting in Berkeley School Board Elections; Ordinance providing for voting by persons aged 16 and 17 years old for office of School Director; Resolution providing for youth voting in November 2024 School Board elections.

RECOMMENDATION

Adopt an ordinance providing for youth voting by persons aged 16 and 17 years old for office of School Director pursuant to Article III, Section 5(3) of the City Charter; Adopt a Resolution calling for youth voting for the office of School Director in the November 2024 Election.

FISCAL IMPACT OF RECOMMENDATION

None. The City Charter requires that no City of Berkeley funds may be used to pay any costs related to youth voting.

CURRENT SITUATION AND ITS EFFECTS

Youth voting in Berkeley School Board elections is permitted under the City Charter. Article III, Section 5(3) of the Charter provides that the City Council may adopt an ordinance providing for voting by persons aged 16 and 17 years old who would otherwise be eligible to vote, for the office of School Director. The Charter further provides that no City funds may be used, directly or indirectly, to pay any cost related to youth voting.

The attached ordinance would allow for youth voting in Berkeley School Board elections, consistent with the City Charter, by creating Berkeley Municipal Code Chapter 2.15. The ordinance allows voting by persons aged 16 or 17 years old, who would otherwise be eligible to vote under state law. The ordinance further provides that no City funds may be used to cover any costs associated with youth voting. The City has entered into a memorandum of understanding with Alameda County, the City of Oakland, Oakland Unified School District, and Berkeley Unified School District

("BUSD"), which affirms that BUSD, and not the City of Berkeley, will be responsible for costs associated with youth voting in Berkeley. The City has also entered into an indemnification agreement with BUSD providing that BUSD will indemnify and defend the City in the event of a lawsuit related to youth voting, further ensuring that no City funds will be used for any matter related to youth voting.

The attached ordinance provides that youth voting would need to be authorized each election year by the City Council via a resolution adopted at least 88 days prior to each election. The attached resolution authorizes youth voting for School Director in the November 2024 election. The ordinance also provides that BUSD could adopt a resolution specifying that youth voting shall not be permitted in a given election year. The ordinance also clarifies that, in the event youth voting is not implemented at any time, for any reason, including but not limited to administrative, technical, or financial infeasibility, voting for School Director shall be conducted in accordance with standard election procedures.

#### BACKGROUND

In November 2016, Berkeley voters approved Measure Y1, which amended the City Charter to authorize the City Council to pass an ordinance allowing 16 and 17-year-olds to vote in School Board elections if certain conditions are met, including that no City funds may be used for any related cost, that equipment, software, systems, and procedures for voter registration and voting are technically ready for youth voting; and that youth voting will not result in additional election costs that will be paid directly or indirectly by the City of Berkeley. The Alameda County Registrar of Voters, which administers elections in Berkeley, has recently taken steps to make youth voting technically and administratively feasible, including contracting with a vendor to put in place necessary software, such that it will be feasible for the Registrar to administer youth voting for the November 2024 election.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

#### RATIONALE FOR RECOMMENDATION

The ordinance and resolution would implement Article III, Section 5(3) of the City Charter, allowing for youth voting in School Board elections in the November 2024 election, and providing for youth voting in subsequent elections subject to City Council resolution authorizing youth voting in each given election.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CONTACT PERSON

Samuel Harvey, Deputy City Attorney, City Attorney's Office (510) 981-6950

Attachments:  
1: Ordinance  
2: Resolution

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

ADDING CHAPTER 2.15 ELECTIONS – YOUTH VOTING

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

Section 1. That Berkeley Municipal Code Chapter 2.15 is hereby added:

**2.15.010 Definitions.**

**2.15.020 Findings.**

**2.15.030 Authorization.**

**2.15.040 Cost and Terms of Implementation.**

**2.15.050 Election Procedures if Youth Voting is Not Used.**

**2.15.060 Severability.**

**2.15.010 Definitions.**

“Youth Voting” means voting for the office of School Director by persons aged 16 or 17 years old who would otherwise be eligible to be voters under the California Elections Code.

“Youth Voter” means a person aged 16 or 17 who is registered to vote for the office of School Director.

**2.15.020 Findings.**

In 2016, Berkeley voters adopted Measure Y1, which amended the City Charter to enable the City Council to adopt an ordinance providing for voting for the office of School Director by persons ages 16 and 17 years old who otherwise meet the requirements for voting in California.

**2.15.030 Authorization.**

The City Council hereby authorizes the use of Youth Voting for the office of Berkeley School Director. Youth Voting shall be conducted and administered in accordance with City Charter Article III, Section 5.

**2.15.040 Cost and Terms of Implementation.**

A. In no event shall the City pay any of the direct or indirect costs for Youth Voting, nor shall City funds be used to replace or reimburse funds used for such purposes by any public agency or private entity.

B. The City may enter into agreements with the County of Alameda and/or other jurisdictions implementing Youth Voting setting forth the terms by which Youth Voting will be implemented, including by specifying the manner, method, or times in which Youth Voting may be conducted and such votes may be cast. The manner, method or time for Youth Voting need not be the same as for other persons voting in City elections.

C. The procedures developed by the California Secretary of State for pre-registration under state law shall be the exclusive means by which a person aged 16 or 17 may register to vote for Berkeley School Director. Any person aged 16 or 17 who is pre-registered to vote with the California Secretary of State and a resident of Berkeley will automatically be registered to vote for the office of Berkeley School Director.

D. Notwithstanding any other provision of the Charter or Berkeley Municipal Code, youth voting will only be permitted in a given election for Berkeley School Director if so authorized via a resolution passed by the City Council and filed with the Alameda County Registrar of Voters on or before 88 days prior to the election, or as otherwise filed as required by law. No such authorization shall be provided in a particular election if the Berkeley Unified School District Board of Education passes a resolution specifying that Youth Voting shall not be permitted in a given election.

E. Unless otherwise required by state or federal law, the Alameda County Registrar of Voters, in fulfilling a request from the City for election services consistent with the provisions of this chapter, may choose to release only deidentified Youth Voter information for the purposes of candidate campaigns under California Elections Code section 2194.

F. This Chapter shall apply only to the ability to cast a ballot in elections for Berkeley School Director. This chapter shall not authorize Youth Voters to qualify or be a candidate, including a write-in candidate, for the office of Berkeley School Director, pursuant to Article V, Section 10 of the Berkeley City Charter. This section shall not authorize Youth Voters to sign nominating petitions or qualifications statements for candidates pursuant to Article III, Section 6.1 of the Berkeley City Charter. Nothing in this Chapter shall alter the definition of "voters" or "qualified elector" as generally used in the Berkeley Charter or Berkeley Municipal Code.

G. A request for election services submitted to the Alameda County Registrar of Voters for the purposes of implementing this chapter may request that the Registrar provide public notice of the procedures for how Youth Voters may vote in elections for Berkeley School Director.

**2.15.050 Election Procedures if Youth Voting is Not Used.**

In the event that Youth Voting is not implemented or is suspended at any time, for any reason, including but not limited to administrative, technical, or financial infeasibility, the voting and election for School Director shall be conducted in accordance with standard election procedures as prescribed in the City Charter, Municipal Code, and state law.

**2.15.060 Severability.**

If any word, phrase, sentence, part, section, subsection, or other portion of this ordinance, or any application thereof in any circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not

having been declared void, unconstitutional or invalid, shall remain in full force and effect. The Council of the City of Berkeley hereby declare that they would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

RESOLUTION NO. –N.S.

RESOLUTION AUTHORIZING YOUTH VOTING FOR THE OFFICE OF SCHOOL DIRECTOR IN THE NOVEMBER 2024 ELECTION

WHEREAS, Article III, Section 5(3) of the Berkeley City Charter provides that the City Council may adopt an ordinance providing for voting by persons aged 16 and 17 years old who would otherwise be eligible to vote, for the office of School Director; and

WHEREAS, the Berkeley City Council has adopted an ordinance creating Berkeley Municipal Code (“BMC”) Chapter 2.15, allowing voting by persons aged 16 or 17 years old, who would otherwise be eligible to vote under state law, for the office of School Director; and

WHEREAS, BMC section 2.15.040.D provides that the City Council must authorize youth voting for the office of School Director for each election in which youth voting shall be permitted; and

WHEREAS, the City Council wishes for youth voting for the office of School Director to be implemented for the November 2024 election; and

WHEREAS, the Alameda County Registrar of Voters administers elections in the City of Berkeley.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that voting by persons aged 16 and 17 years old who would otherwise be eligible to vote for the office of School Director is hereby authorized for the November 2024 election.

BE IT FURTHER RESOLVED as follows:

1. The Registrar of Voters of Alameda County is requested to perform services in connection with youth voting for the office of School Director. These services include all necessary services related to official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, vote centers, drop boxes, vote center workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the implementation of voting by persons aged 16 and 17 years old for the office of School Director in the November 2024 election.
2. The City Council requests that the Registrar of Voters of Alameda County place a vote center on the campus of Berkeley High School, if doing so is reasonably feasible and practical.

