



Office of the City Attorney

CONSENT CALENDAR
July 23, 2024

To: Honorable Mayor and Members of the City Council

From: Farimah Faiz Brown, City Attorney
Bren Darrow, Assistant City Attorney

Subject: Municipal Code Amendments for Measure KK Compliance and Updated Settlement Authority

RECOMMENDATION

Adopt first reading of an Ordinance amending Chapter 2.56 and Sections 2.36.040, 4.04.100, 4.04.110, and 7.12.020 of the Municipal Code to conform to Section 113 of the City Charter (Measure KK), and to increase the City Attorney's authority to settle claims up to \$50,000.

FISCAL IMPACTS OF RECOMMENDATION

No fiscal impacts have been identified; these amendments merely bring the Municipal Code into conformity with existing law.

CURRENT SITUATION AND ITS EFFECTS

The Charter provides that the City Attorney is appointed by the City Council, the budget of the City Attorney's Office is directly approved by the City Council, and the City Attorney has administrative control over the City Attorney's Office. These Charter provisions took effect on January 1, 2021, and the City has complied with them, but outdated and superseded language remains in the Municipal Code. The City Attorney's authority to settle claims without Council approval is currently limited to \$15,000.

BACKGROUND

On November 3, 2020, Berkeley voters approved Measure KK, which amended the City Charter to make the City Attorney a Charter Officer, removing the City Attorney from the supervision of the City Manager. Section 113 of the City Charter provides, in relevant part:

Section 113: The City Attorney shall be an officer of the City of Berkeley, appointed by a vote of five members of the Council, serving at the will of the Council for an indefinite period, and removed only by a vote of five members of the Council, and shall receive such salary as may be fixed by the Council. Upon presentation of a proposed budget by the City Attorney, the Council shall provide funds sufficient to carry out the responsibilities of the office of City Attorney and for the City Attorney's department

(subject to available resources), which shall be under the administrative control of the City Attorney.

The City Council took action to formally appoint Farimah Faiz Brown as City Attorney on April 20, 2021, by Resolution 69,787-N.S. The Council subsequently approved the City Attorney's Office budget as part of the ordinary budget cycle. However, conflicting provisions of the Municipal Code, which are superseded by the language of the City Charter, have not yet been amended to conform to Measure KK.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

No environmental sustainability or climate impacts have been identified; these amendments merely bring the Municipal Code into conformity with existing law.

RATIONALE FOR RECOMMENDATION

These amendments will bring the Municipal Code into compliance with existing provisions of the City Charter. Increasing the City Attorney's settlement authority will allow the City Attorney to expeditiously resolve meritorious claims below \$50,000 that would otherwise require Council approval.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Farimah Faiz Brown, City Attorney, 510-981-6998

Attachments:

1: Ordinance

ORDINANCE NO. -N.S.

AMENDMENTS TO CONFORM TO CHARTER ARTICLE XVI, SECTION 113.

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

Section 1. That Berkeley Municipal Code Chapter 2.56 is amended to read as follows:

2.56.010 City Attorney's Office.

A City Attorney's Office is created which shall be under the direction and administrative control of the City Attorney, subject to the general ~~administrative~~ direction of the City ~~Manager~~Council, and shall consist of the City Attorney and such other employees as the City ~~Manager~~Attorney may ~~assign to the department~~hire into the department.

2.56.020 City Attorney--Duties.

The City Attorney shall be the chief administrative officer of the City Attorney's Office, and shall prosecute and defend for the City of Berkeley, ~~the Redevelopment Agency of the City and the Housing Authority of the City~~ all actions at law or in equity, and all special proceedings for or against the City, except in the case of the Berkeley Housing Authority, the Board of Education, the Rent Stabilization Board and any other boards whose members are elective officers pursuant to the City Charter.~~the Redevelopment Agency or the Housing Authority.~~ The City Attorney shall commence any legal proceedings when directed to do so by the City ~~Manager~~Council, ~~or the council~~, and shall give legal advice verbally or in writing to the Mayor, the ~~City council~~Council, the City Manager, chief officials, departments, boards and commissions, ~~the Redevelopment Agency or the Housing Authority~~, when requested to do so by them, upon questions of law arising in their ~~separate department~~official capacities, involving the rights and liabilities of the City, ~~the Redevelopment Agency or the Housing Authority~~, or take an appeal to any appellate court, unless ordered not to do so by the ~~City council~~Council ~~or the City Manager~~.

2.56.030 City Attorney--Document drafting responsibilities--Council meeting attendance.

The City Attorney shall draw such ordinances, resolutions and contracts, or other instruments, as shall be requested by the ~~City council~~Council ~~or the City Manager~~, and shall attend the meetings of the ~~City council~~Council when requested to do so by the Mayor or ~~members~~members of the council, or ~~the City Manager~~where necessary to carry out the duties detailed in Section 2.56.020.

2.56.040 ~~Reserved~~ City Attorney – Sole Legal Advisor; Exclusive Contracting Authority.

The City Attorney shall be the sole legal advisor to the City of Berkeley. Whenever the interests of the City require it, in the sole professional judgment of the City Attorney, outside legal counsel may be employed at the expense of the City. Neither the City Manager, nor any other officials, departments, boards or commissions may enter into a contract with a licensed attorney except with the express authorization of the City Attorney, and only where the scope of the contract expressly excludes legal services. All contracts whose scope includes legal services to be rendered to the City must be made by the City Attorney or their authorized designee. Contracts entered into in violation of this provision are void and unenforceable.

2.56.050 City Attorney--Recordkeeping and delivery of documents to successor required.

The City Attorney shall keep on file in their office all written communications and opinions, briefs and papers used in cases wherein they appear, subject to reasonable records retention policies. The City Attorney shall deliver all books, records, papers, documents and property of every description, belonging to the City, to ~~the attorney's~~their successor in office.

2.56.060 City Attorney--Action as ex officio prosecuting attorney.

The City Attorney shall be ex officio prosecuting attorney and shall prosecute all criminal violations of the provisions of the Charter or any City ordinance.

2.56.070 Persons authorized to act when City Attorney absent or disabled.

In the absence or disability of the City Attorney, the ~~Deputy Assistant~~ City Attorney shall perform the duties and exercise the powers of the City Attorney. In case of the absence or disability of both the City Attorney and the ~~Deputy Assistant~~ City Attorney, the ~~City Manager~~Mayor shall appoint a ~~n-employee~~Deputy City Attorney as Acting City Attorney who shall perform the duties and exercise the duties and powers of the City Attorney until such time as the City Attorney or Assistant City Attorney is able to return or the City Council approves the appointment of a new City Attorney.

2.56.080 City Attorney's Office--Assistant counsel--Employment authorized when Funding

~~Whenever the interests of the City require it, assistant counsel may be employed at the expense of the City, upon such terms as are prescribed by the council or the City Manager.~~

A. In order to ensure that the legal needs of the City are met, the Charter states that upon presentation of a proposed budget by the City Attorney, the City Council shall

provide funds sufficient to carry out the responsibilities of the office of City Attorney and for the City Attorney's department, subject to available resources.

B. The City Attorney's Office shall be exempt from any City Manager or City Council policy to require City departments to save a portion of their budget as targeted savings, except where Council determines otherwise. The City Attorney shall be authorized to transfer budgeted funds between personnel and non-personnel line items, to the extent that those resources are needed to perform the duties of the City Attorney, and remains within the budget adopted by the City Council.

C. Funds allocated to the City Attorney's Office shall not be returned to the General Fund for other purposes except at the express direction of the City Council.

Section 2. That Berkeley Municipal Code 2.36.040 is amended to read as follows:

2.36.040 City Manager--Jurisdiction--Exemptions.

All officers and employees of the City shall be under the general administrative direction of the City Manager, with the exception of ,~~except~~ the Auditor, the employees of the Auditor's Office, the City Attorney, the employees of the City Attorney's Office, the Office of the Director of Police Accountability, the Rent Stabilization Board, the five library trustees, and the employees of the public libraries,~~shall be under the general administrative direction of the City Manager.~~

Section 3. That Berkeley Municipal Code 4.04.100 is amended to read as follows:

4.04.100 City Manager--Powers generally.

In addition to the City Manager's powers under the Charter, and except in the case of the Auditor, the City Attorney's Office, the Rent Stabilization Board, and the Office of the Director of Police Accountability, ~~,~~ the City Manager shall make transfers, promotions, demotions, reinstatements, layoffs, and shall hire, suspend or dismiss employees, subject to the provisions of this chapter, the personnel rules and applicable memorandum agreements, it being the intent to provide a fair and just approach to municipal employment in order that City employees may be selected and promoted on a merit basis, but in no sense impair the efficiency of a public service.

Section 3. That Berkeley Municipal Code 4.04.110 is amended to read as follows:

4.04.110 City Manager--Duties and responsibilities designated.

The City Manager shall administer the City personnel system and may delegate any of the powers and duties set forth in this chapter to a personnel director or any other officer or employee except as otherwise prohibited by the Charter of the City. Subject to the limited exemptions articulated below, ~~T~~the City Manager shall:

A. Act as the appointing authority for the City;

- B. Attend all meetings of the Personnel Board;
- C. Administer all provisions of the personnel ordinance and of the personnel rules not specifically reserved to the Personnel Board;
- D. Prepare the personnel rules and revisions and amendments to such rules for the Personnel Board's consideration, and after consideration by the board, submit the rules, revisions and amendments, together with the recommendations of the board and their own recommendations, to the City Council for consideration and adoption by the council;
- E. Prepare a position class plan, including class specifications and revisions of the plan for the Personnel Board's consideration, and after consideration by the board, submit a position class plan and revisions, together with the recommendations of the board and their own recommendations, to the City Council for consideration and adoption by the council;
- F. Prepare a salary and wage plan and revisions and amendments to the plan for consideration by the Personnel Board, and after consideration by the board, submit the salary and wage plan and revisions and amendments, together with the recommendation of the board and their own recommendation, to the City Council for consideration and adoption.

The City Attorney, City Auditor, Director of Police Accountability and Executive Director of the Rent Stabilization Board, shall act as the appointing authority for those personnel over whom they have administrative control, and shall have the ability to make recommendations directly to the Personnel Board (regarding rules, positions, class specifications, wages, etc.) specifically applicable to those personnel.

Section 4. That Berkeley Municipal Code 7.12.020 is amended to read as follows:

7.12.020 Expenditures authorized when.

Expenditures from the public liability fund shall be made solely for the purposes of paying public liability claims investigation and adjustment costs, legal defense costs, costs for legal advice obtained to prevent lawsuits, costs to file lawsuits, and payment of any settled public liability claim or judgment. Such payments are hereby authorized to be made without further authorization from the City Council, except that payment of any settled public liability claim, the amount of which is more than ~~fifteen-fifty~~ thousand dollars, shall be authorized by the City Council.

Section 5. 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.

