

ORDINANCE NO. 7,929-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 direction of the City Council, and shall consist of the City Attorney and such other employees as the City Attorney may 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, 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 City Attorney shall commence any legal proceedings when directed to do so by the City Council, and shall give legal advice verbally or in writing to the Mayor, the City Council, the City Manager, chief officials, departments, boards and commissions, when requested to do so by them, upon questions of law arising in their official capacities, involving the rights and liabilities of the City, or take an appeal to any appellate court, unless ordered not to do so by the City Council.

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, and shall attend the meetings of the City Council when requested to do so by the Mayor or members of the council, or where necessary to carry out the duties detailed in Section 2.56.020.

2.56.040 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, exercised in accordance with the California Rules of Professional Conduct, 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 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 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 Assistant City Attorney, the Mayor shall appoint a 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--Funding

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 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..

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, 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 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.

At a regular meeting of the Council of the City of Berkeley held on July 23, 2024, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Hahn, Humbert, Kesarwani, Lunaparra, Taplin, Tregub, Wengraf, and Arreguin.

Noes: None.

Absent: None.