

11 JUL 25 PM 3:33 OAKLAND CITY COUNCIL

RESOLUTION NO. 83502 C.M.S

INTRODUCED BY COUNCILMEMBERS KERNIGHAN AND NADEL

Resolution Submitting, On The Council's Own Motion, To The Electors At The Next Special Or General Municipal Election, A Proposed Charter Amendment, Entitled, "Returning The Elected City Attorney Position To An Appointed Position" And Directing The City Clerk To Fix The Date For Submission Of Arguments And Provide For Notice And Publication In Accordance With The Next Election Date

WHEREAS, City Charter Article IV Section 401 (1) created an elected City Attorney position that had been previously an appointed position; and

WHEREAS, the purpose of this resolution is to return that position to an appointed position; and

WHEREAS, 97.5% of California cities appoint their City Attorneys and only 2.5% have elected City Attorneys¹; and

WHEREAS, the responsibility of a City Attorney is to serve as counsel to the City Council, Mayor, and each department of the City, and to render legal advice; and

WHEREAS, the City Attorney is not the lawyer for the general public or any individual or group within the City²; and

WHEREAS, the ability of a client, namely the City acting through its elected legislature, to hire and fire its legal counsel is critical to a proper attorney-client relationship; and

WHEREAS, the *Ethical Principles for City Attorneys* adopted by the City Attorneys Department of the League of California Cities states that "the city attorney should provide legal advice that avoids the appearance that the advice is based on political alignment or partisanship," and

WHEREAS, the City Attorney should be able to assist a client in choosing wisely from a range of lawful discretionary actions and must not be influenced by personal interest in the political or other external consequences of any such decision, and the City Attorney's advice must be perceived as being free of these influences; and

¹ California League of Cities website accessed June 9, 2011: <http://www.cacities.org>

² This perspective is reflected in the Model City Charter of the National Civic League Section 4.03b.

WHEREAS, selecting a City Attorney through an electoral rather than an appointive process creates a significant potential for such conflicts and perceptions of conflict; and

WHEREAS, an elected City Attorney chooses his or her own boundaries, and can become involved with various aspects of any issue, ranging from legal to policy to politics, which impacts the ability of the client to distinguish between legal, policy and political advice; and

WHEREAS, City Charter Article IV Sections 401 (3), (4) and (5) all relate to that position as an elected position; and therefore, be it

RESOLVED: That the City Council of the City of Oakland does hereby submit to the voters at the next special or general municipal election, that City Charter Article IV Sections 401 (3), (4) and (5) be put forward for elimination; and be it

FURTHER RESOLVED, That City Charter Article IV, Sections 401 (1), and 401(2) be amended as follows:

Section 401(1). City Attorney. The City Attorney shall be ~~nominated and elected in the same manner and at the same election as the Councilmember at large~~ appointed by the City Council and serve at the sole discretion of the City Council. If the Councilmembers are evenly divided, the Mayor shall have a vote pursuant to Section 200 of this Charter. The City Attorney shall receive the salary set by the Council, which shall be not less than 70% nor more than 90% of the average salaries of City Attorneys of California cities within the three immediate higher and the three immediate lower cities in population to Oakland, and may not be reduced during the City Attorney's term of office, except as part of a general reduction of salaries of all officers and employees in the same amount or proportion.

Section 401(2). Qualifications, the City Attorney. No person shall be eligible for or continue to hold the Office of City Attorney ~~either by election or appointment~~, unless he or she is a citizen of the United States, a qualified elector and resident for at least 30 days of the City or a territory lawfully annexed or consolidated, licensed to practice law in all courts of the State of California and so licensed for at least ten years preceding his or her selection.

FURTHER RESOLVED, that each ballot used at said election shall have printed therein, in addition to any other matter required by law, the following:

Measure _____. Shall the Oakland City Charter be amended to return the City Attorney to an appointed position.	Yes	
	No	

FURTHER RESOLVED: That the City Council hereby authorizes and directs the City Clerk, at least 88 days prior to the next special or general municipal election date, to file with the Alameda County Board of Supervisors and the County Clerk certified copies of this resolution; and be it

FURTHER RESOLVED: That the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Oakland, the Government Code and the Elections Code of the State of California; and be it

FURTHER RESOLVED: That the City Council does hereby request that the Registrar of Voters of the County of Alameda perform necessary services in connection with said election; and be it

FURTHER RESOLVED: That the City Clerk is hereby directed to obtain printing, supplies and services as required; and be it

FURTHER RESOLVED: That the City Clerk is hereby authorized to provide such other services and supplies in connection with said election as may be required by the Statutes of the State of California and the Charter of the City of Oakland; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 11 of the Oakland Municipal Code, the City Clerk shall fix and determine a date for submission of arguments for or against said proposed ordinance, and said date shall be posted in the Office of the City Clerk; and be it

FURTHER RESOLVED: The City Clerk and City Administrator hereby are authorized and directed to take any and all actions necessary under law to prepare for and conduct the next municipal election and appropriate all monies necessary for the City Administrator and City Clerk to prepare for and conduct the next municipal election, consistent with law.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 19 2011, 20

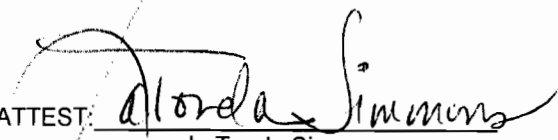
PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, ~~BRUNNER~~, ~~DE LA FUENTE~~, KAPLAN, KERNIGHAN, NADEL, SCHAAF, and PRESIDENT REID - 6

NOES - Brunner, De la Fuente - 2

ABSENT - 0

ABSTENTION - 0

ATTEST: 
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California