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OAKLAND

2015 MAY 28 AM 10:03

AGENDA REPORT

TO: JOHN A. FLORES
INTERIM CITY ADMINISTRATOR

FROM: Sherri Rita

SUBJECT: Amendment and Restatement of the
Mayor's Commission on Persons
with Disabilities Ordinance

DATE: May 6, 2015

City Administrator
Approval

Date

5/27/15

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the City Council:

Adopt an Ordinance amending and restating Ordinance No. 9968 C.M.S. and Ordinance No. 11864 C.M.S., the ordinances that established the Mayor's Commission on Disabled Persons (MCPD), to change the name of the MCPD to the Commission on Persons with Disabilities, and to modify the MCPD's membership number, terms, quorum requirement and meeting frequency.

OUTCOME

As a result of this amendment and restatement the MCPD will be able to more readily achieve a quorum and more efficiently conduct its core substantive oversight responsibilities.

BACKGROUND/LEGISLATIVE HISTORY

The landmark Rehabilitation Act of 1973 (the Act) and the resulting implementing regulations that were adopted in 1977 permanently changed the lives of persons with disabilities in the United States. Section 504 of this Act established that persons with disabilities have the civil right to access programs and services that receive Federal financial assistance. This right included the requirement that recipients of Federal financial assistance take affirmative steps to make their programs and services accessible by removing physical and programmatic barriers to participation by persons with disabilities.

As part of its implementation of Section 504 requirements, the Commission on Disabled Persons was established by the Oakland City Council on August 5, 1980 by Ordinance No. 9968 C.M.S.

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for the purpose of advising, reviewing and commenting on programs, services, City of Oakland activities, funding opportunities, and all matters affecting persons with disabilities in the community. This original enabling ordinance provided for a 15-person membership and established quorum at eight members. The MCPD was instrumental in helping the City fulfill its obligation to engage with the disability community in conducting the City's Section 504-required self-evaluation of the City's programs and services to identify and remediate barriers experienced by persons with disabilities.

Since the establishment of the MCPD, another landmark law further developed the disability civil rights landscape. The Americans with Disabilities Act of 1990 (ADA), and as amended in 2008, extended Section 504's anti-discrimination mandate to private employers, state and local government entities, private businesses, transportation and telecommunications providers. Similar to Section 504, the ADA also contained the requirement of a self-evaluation and the participation of interested persons in conducting the evaluation, including individuals with disabilities and organizations representing individuals with disabilities. The ADA further required the adoption of a Transition Plan (Plan) for prioritizing barrier removal activities based on the self-evaluation findings. In addition to contributing to the plan development, one of the MCPD's primary activities has been monitoring the City's compliance with the Plan.

In 1994, the City Council determined that existing boards and commissions should be governed by uniform requirements regarding member selection, the duties of said members, and general member responsibilities. Ordinance No. 9968 C.M.S. was accordingly amended by Ordinance 11864 C.M.S. although the membership and quorum requirements remained the same.

At the June 24, 2014 Life Enrichment Committee (LEC) meeting, current MCPD Chair Stephen Beard presented the MCPD's annual report for 2013. In his report Chair Beard expressed concern over the MCPD's failure to achieve quorum on a consistent basis, and its difficulties in filling vacancies. The LEC directed the City Administrator to work with the MCPD to revisit its quorum and membership requirements. Consequently, the MCPD, in consultation with the City Administrator's Office, agreed at its November 10, 2014 regular meeting that the MCPD's quorum and membership requirements should be amended and the name formally updated to reflect the "people first" values of the MCPD members, the disability community and the City's practice in referencing the MCPD. Since the November 10, 2014 meeting, staff met with Mayor Libby Schaaf on April 23, 2015 regarding the status of the MCPD, and the Mayor urged consideration of modifying the meeting frequency to bi-monthly rather than monthly as another means for improving attendance and retention. The draft ordinance includes this modification.

ANALYSIS

As stated by Chair Beard in the MCPD's 2013 Annual Report, the MCPD has historically struggled with high vacancy rates and more recently with problems achieving quorum. Currently the MCPD ordinance provides for 15 members and requires a minimum of eight members to

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reach quorum. Up until recently, the MCPD has had only nine members. Of the nine regular meeting dates of the Commission since July 2014 to date, only four meetings achieved quorum (September 2014, November 2014, December 2014, and January 2015); the remainder did not achieve quorum (July 2014, October 2014, and February 2015) or were canceled to allow commissioners to participate in a two-day Leadership Academy sponsored by the ADA Programs Division (March 2015) or due to anticipated absences (April 2015). At each of the meetings that did not achieve quorum since July 2014, seven members were in attendance instead of the required eight.

Two additional appointments were made on May 19, 2015, which brought the total membership to 11 members. Five members' terms expire in September 2015 and they are ineligible for reappointment; recruitment for these upcoming vacancies is underway. If the required number of commissioners remains at 15, that will mean having to recruit for 10 vacancies in just the next few months. Reducing the required membership to 11 members through this ordinance amendment will significantly reduce the burden on staff and current commissioners to find qualified candidates to fill the five anticipated vacancies. Furthermore, an 11-member commission aligns with other similar commissions such as the Commission on Aging.

To improve retention and meeting attendance, the modified ordinance would reduce meeting frequency to every other month. By lessening interference with commissioners' work and other obligations, commissioners may more easily be able to consistently commit to regular meeting attendance.

Finally, the modified ordinance will formally change the MCPD's name to reflect the disability community's "people first" values and current practice. Under the ordinance amendment, the MCPD will be formally known as the "Commission on Persons with Disabilities," not the "Commission on Disabled Persons."

PUBLIC OUTREACH/INTEREST

The MCPD unanimously approved modifying and restating its enabling ordinances to rename the commission and alter the membership and quorum requirements at its Special Meeting on November 10, 2014. Additional modifications with respect to the total number of members and meeting frequency were subsequently made at the suggestion of the Mayor's Office and the City Attorney.

COORDINATION

The Office of the City Attorney, the City Administrator's Office, and the Mayor's Office were consulted in the preparation of this report and final ordinance amendments.

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COST SUMMARY/IMPLICATIONS

Whenever the MCPD is unable to achieve quorum, an informational meeting is often conducted and decision-making on matters presented for MCPD input must be deferred to the next meeting. The staff time involved in preparing for meetings where quorum is not reached, and the deferral of discussions necessary in order to inform staff in making policy decisions results in inefficiencies that can be reduced by these amendments. Also, a more efficient and effective MCPD will play a stronger role in reducing the City's liability for violations of the ADA and related laws by providing timely feedback and policy direction that can enable staff to proactively address community needs and make policy and program adjustments to remediate access problems before they escalate.

SUSTAINABLE OPPORTUNITIES

Economic: The goal of the ADA is to create opportunities so that all persons with disabilities can live, work, and fully participate in community life. The Commission on Persons with Disabilities will be in a better position with these adjustments to its membership and quorum requirements to provide guidance that will help the City create more opportunities for persons with disabilities to participate in the local economy as workers and consumers.

Environmental: These proposed amendments have no ascertainable environmental impact.

Social Equity: These proposed amendments promote social equity by helping the MCPD to fulfill its role as the City's advisory body on the needs of persons with disabilities in Oakland.

For questions regarding this report, please contact Sherri Rita, Acting ADA Projects Coordinator, at 510-283-6919.

Respectfully submitted,



Sherri Rita
Acting ADA Projects Coordinator

Reviewed by:
Alexandra Orologas
Assistant to the City Administrator

Reviewed by:
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Prepared by: Sherri Rita, Acting ADA Projects
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CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING AND RESTATING ORDINANCE NO. 9968 C.M.S. AND ORDINANCE NO. 11864 C.M.S. TO CHANGE THE NAME OF THE COMMISSION ON DISABLED PERSONS TO THE COMMISSION ON PERSONS WITH DISABILITIES, AND TO MODIFY THE COMMISSION'S MEMBERSHIP TERMS, QUORUM REQUIREMENT, AND MEETING FREQUENCY

WHEREAS, the Commission on Disabled Persons was established by the City Council of the City of Oakland on August 5, 1980 by Ordinance No. 9968 C.M.S., for the purpose of advising, reviewing and commenting on programs, services and activities of the City of Oakland, funding opportunities and all matters affecting persons with disabilities in the community and otherwise promoting total integration of persons with disabilities into the community; and

WHEREAS, at a Special Meeting of the City Council convened on or about April 26, 1994, the City Council determined that existing boards and commissions should be amended to incorporate uniform requirements regarding the selection of members, the duties of said members, and the general responsibilities of boards and commissions; and

WHEREAS, the Ordinance which established the Commission on Disabled Persons was amended accordingly by Ordinance No 11864 C.M.S.; and

WHEREAS, the City Council Life Enrichment Committee recommended that, in order to address ongoing difficulties in achieving quorum and full membership, the Commission's enabling ordinance be amended to provide for greater flexibility in membership, attendance and quorum requirements; and

WHEREAS, since the passage of the Americans with Disabilities Act of 1990 (the "ADA"), as amended in 2008, the Commission has evolved in its role as an advisory body responsible for monitoring the City's compliance with honoring the civil rights of persons with disabilities;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council of the City of Oakland hereby determines that the preceding recitals are true and correct and hereby adopts and incorporates them into this Ordinance.

SECTION 2. The Commission on Disabled Persons is hereby renamed the Commission on Persons with Disabilities (the "Commission").

SECTION 3. The provisions governing the Commission as set forth in Ordinance No. 9968 C.M.S. and Ordinance No. 11864 C.M.S. are hereby amended and restated as follows (added language is indicated by underlined text, and deleted language is indicated by strikeout text):

Establishment of Commission

Pursuant to Section 601 of the Charter of the City of Oakland, there is hereby created a Commission on ~~Disabled Persons~~ with Disabilities.

Duties and Functions

The duties and functions of the Commission on ~~Disabled Persons~~ with Disabilities shall be as follows:

- A. The Commission shall advise the City Council on service, funding opportunities and all matters affecting the disability community.
- B. The Commission shall review and comment on all community policies, programs and actions which affect persons with disabilities.
- C. The Commission shall render advice and assistance to other City boards and Commissions, to City departments and to private agencies on matters affecting the disability community.
- D. The Commission shall identify the needs of the disability community and create a citizen awareness of these needs ~~in areas such as employment, housing, transportation, the media, physical and communication accessibility, and other needed areas~~ via outreach and education in Oakland and for City staff. Activities shall be aimed at increasing awareness and access for people with disabilities to local, state and federal programs, and at increasing opportunities to fully engage in civic and cultural life.
- E. The Commission shall promote the total integration of disabled persons with disabilities into all aspects of the community.

- F. The Commission shall submit quarterly regular status reports to the City Council committee designated as liaison to the Commission, at least once annually or more frequently as directed by the Chairperson of the City Council committee to which the Commission reports.
- G. Status reports submitted in fulfillment of subsection F above must include a detailed description of operating and staffing needs, to be developed and maintained by the department responsible for staffing and administration of the Commission.
- H. Each year, the Commission shall review the annual goals and objectives of the City Council. Review of City Council goals and objectives shall be undertaken to provide the Commission the opportunity to better integrate the activities of the Commission with the City's overall goals and objectives.
- I. City Council approval must be obtained prior to the creation of any additional standing committee of the Commission. A proposal to create a standing committee of the Commission must include information regarding the costs associated with staffing the standing committee, and the costs of complying with noticing and reporting requirements resulting from the establishment of any such standing committee of the Commission.
- J. The Commission shall perform such other functions and duties as may be directed by the City Council.

In prescribing the above duties and functions of the Commission, it is not the intent of this Council to duplicate or overlap the functions, duties, or responsibilities heretofore or hereafter assigned to any other City board or commission, or to a City department. As to such functions or responsibilities above set forth which are partially or wholly the responsibilities of another board or commission, or of a department of the City, the Commission will render assistance and advice to such board, Commission, or department as may be requested.

Membership Number and Quorum

- ~~A. To the extent practicable, appointments to the Commission on Disabled Persons shall be made in accordance with the City's affirmative action policies.~~
- A. To the extent practicable, appointments to the Commission shall reflect the geographical diversity of the City.
- B. In making appointments to the Commission on Disabled Persons with Disabilities, the Mayor shall accept for consideration

recommendations for appointments offered by each Council member. Council members must submit recommendations to the Mayor for consideration at least 30 days prior to expiration of an existing Commission member's term.

- C. The Commission shall consist of ~~fifteen (15)~~ eleven (11) members who will be appointed pursuant to Section 601 of the Charter and who shall serve without compensation. ~~A minimum of fifty one per cent (51%)~~ At least a majority of said Commission members appointed shall be persons with disabilities. To the extent possible, the Commission membership will reflect the diverse interests of the business and labor communities and all persons with disabilities.
- D. ~~Eight (8)~~ Six (6) Commissioners shall constitute a quorum.

Membership Terms

- A. ~~Staggered Terms. Commencing with the effective date of this Ordinance, Commission members shall be appointed to staggered terms, said terms to commence upon the date of appointment, except that an appointment to fill a vacancy shall be for the unexpired portion of the term only.~~ Membership terms are currently staggered.
- B. ~~Length of Terms. Except for the initial appointments made immediately following passage of this Ordinance which may be for lesser terms of two (2) year or one (1) year in order to establish staggered terms pursuant to subsection A, All appointments shall be for a period of three (3) years~~ except that an appointment to fill a vacancy shall be for the unexpired portion of the term only.
- C. ~~Limit on Consecutive Terms. Commencing with the effective date of this Ordinance, No person shall be appointed to serve more than two (2) consecutive terms as a member of the Commission on Disabled Persons~~ with Disabilities, except that if a member's initial appointment is for the unexpired portion of a term and that unexpired portion is for a period less than twelve (12) months, then that person may serve up to three (3) consecutive terms. Members of the Commission on Disabled Persons sitting on the effective date of this ordinance shall not be appointed to serve more than one (1) additional consecutive term as a member of the Commission on Disabled Persons with Disabilities.
- D. Holdover Status. In the event an appointment to fill a vacancy has not occurred by the conclusion of a Commission member's term, that member may continue to serve as a member of the Commission during the following term in a holdover capacity for a period not to exceed one year, to allow for the appointment of a Commission member to serve the remainder of said following term.

- E. Removal. To assure participation of Commission members, attendance by the members of the Commission to all regularly scheduled and special meetings of the Commission shall be recorded, and such record shall be provided upon request to the Office of the Mayor for review. A member may be removed pursuant to Section 601 of the City Charter. Among other things, conviction of a felony, misconduct, incompetency, inattention to or inability to perform duties, or absence from three (3) consecutive regular meetings except on account of illness or when absent from the City by permission of the Commission Chair, shall constitute cause for removal.
- F. Vacancy. A vacancy on the Commission will exist whenever a Commissioner dies, resigns, or is removed, or whenever an appointee fails to be confirmed by the Council within ten (10) days of appointment.

Officers and Meetings

Each year, at the first regular meeting in January, the Commission shall elect a chairperson and a vice chairperson from amongst its members. The Commission shall meet at least ~~once each month~~ every other month in the Oakland City Hall, ~~44th and Washington Streets~~ One Frank Ogawa Plaza, Oakland, at an established date and time suitable for its purpose. Such meetings shall be designated regular meetings. Other meetings called by the Mayor or City Administrator and meetings scheduled for a time or place other than for regular meetings, shall be designated special meetings. Written notice of special meetings shall be given to the Commission members, the Council, and the public press ~~at least twenty-four hours before the meeting is scheduled to convene~~ in accordance with the open meeting requirements of the Oakland Municipal Code.

Rules and Reports

The Commission shall, ~~in consultation with the City Manager and with the approval of the Council,~~ establish rules and procedures for the conduct of its business by a majority vote of the Commissioners present. Said rules and any amendments thereto shall be delivered to the City Administrator for review and approval. Voting shall be required for the adoption of any motion or resolution. The Commission shall make its reports, findings and recommendations in writing unless otherwise directed by the Mayor. All reports, findings, and recommendations shall be made either to the City Administrator or the City Council. Recommendations from the Commission to the City Administrator or the Mayor shall be carefully and fully considered by him/her. If rejected by the City Administrator or Mayor, the Commission may submit its recommendations to the Council for its consideration, as appropriate.

Staff

The City Administrator ~~may~~shall provide the Commission with staff assistance from City employees under his or her jurisdiction. ~~The provisions of Section 221 of the Charter shall apply to members of the Commission.~~

SECTION 4. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 5. Effective Date. This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID, AND PRESIDENT
GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

NOTICE AND DIGEST

ORDINANCE AMENDING AND RESTATING ORDINANCE NO. 9968 CM.S. AND ORDINANCE NO. 11864 C.M.S. TO CHANGE THE NAME OF THE COMMISSION ON DISABLED PERSONS TO THE COMMISSION ON PERSONS WITH DISABILITIES, AND TO MODIFY THE COMMISSION'S MEMBERSHIP TERMS, QUORUM REQUIREMENT, AND MEETING FREQUENCY

This Ordinance amends and restates Ordinance No. 9968 CM.S. and Ordinance No. 11864 C.M.S. to change the name of the Commission on Disabled Persons to the Commission on Persons with Disabilities and modify the Commission's membership terms and quorum requirement. This Ordinance also clarifies the Commission's functions and duties, and changes the Commission meeting frequency from once a month to every other month.