



MEMO

TO: HONORABLE CITY COUNCIL
Oakland, California

FROM: Asha Reed, City Clerk

DATE: June 12, 2024

Honorable President Fortunato Bas and Members of The City Council:

RECOMMENDATION

Staff Recommends That The City Council Adopt:

(1) Ordinance Adding Section 3.08.035 To The Oakland Municipal Code To Authorize Persons Aged 16 And 17, Who Are Otherwise Eligible To Vote Under State Law, To Vote For The Office Of School Board Director

And

(2) Resolution Authorizing The City Administrator To (1) Execute A Memorandum Of Understanding (MOU) Between The County Of Alameda, City Of Berkeley, And Berkeley Unified School District To Conduct Youth Voting Elections, And (2) Amend The MOU And Take All Actions Necessary To Implement Youth Voting

BACKGROUND / LEGISLATIVE HISTORY

On November 3, 2020, Oakland voters passed Measure QQ, which amended the City Charter to allow the City Council to pass an ordinance to allow 16- and 17-year-olds, who are otherwise eligible to vote under state law, to vote for the Office of School Board Director.

In November 2021, the City Council passed Resolution No. 88907 C.M.S., which requested that the Alameda County Registrar of Voters (ROV) take all steps necessary, including but not limited to updating its DIMS Election Management System, to allow 16- and 17-year-olds to register to vote and participate in ranked choice voting in the elections of Oakland school board directors.

On May 21, 2024, the Oakland City Council approved Resolution No. 90253 C.M.S. authorizing the reimbursement of costs required for Alameda County to update its DIMS Election Management system with its vendor, Runbeck Election Services (“Runbeck”), based on Oakland’s proportionate share of pre-registered youth voters, in an amount not to exceed \$84,000.

The City of Oakland, Alameda County Registrar of Voters (“Registrar”), Berkeley Unified School District, and the City of Berkeley have been working collaboratively to develop youth voting procedures in Alameda County since Oakland and Berkeley voters passed youth voting charter amendments. Although system testing is still underway, it is possible that the Registrar will be ready to implement youth voting in Berkeley for the November 2024 election.

To prepare for that possibility, counsel for BUSD, the City of Berkeley, the City of Oakland, and the Registrar of Voters have now drafted a Memorandum of Understanding (“MOU”) to implement youth voting in school board elections. (Exhibit A to the Resolution). That MOU is now before the City Council for its consideration. Key terms of that MOU are summarized below, along with a brief explanation about how youth voting would proceed, and what additional steps are necessary to enable youth voting to proceed in Oakland. The City of Oakland and Oakland Unified School District are separately negotiating the proportionate share of election costs, including youth voting, and this MOU will not preclude the final disposition of costs between the City and Oakland Unified School District but will ensure that there are no delays to implement youth voting.

Additionally, the City of Oakland is required by the Charter to pass an ordinance authorizing youth voting. The draft Ordinance adds a new section to the OMC, with key provisions similarly outlined below.

ANALYSIS

Key Terms of the MOU

Responsibilities Of The Registrar (Section 3): The Registrar agrees to take all necessary steps within their control to implement youth voting in time for the November 2024 election. The MOU acknowledges that in order for youth voting to move forward, the City of Oakland will have to enact an ordinance authorizing youth voting. For each election, the Registrar agrees to publish the necessary information for youth voting procedures on its website.

Responsibilities Of The Cities And The Districts (Section 4): BUSD and the City of Oakland agree to pay the costs of youth voting, as further specified below.

The MOU specifies that in order for youth voting to take place in Oakland in any given election, the City must file with the Registrar a resolution calling the election on or before 88 days prior to any election, specifying that the jurisdiction intends for the election to involve youth voting.

Timeframes (Section 5): If possible, the Registrar of Voters will notify Oakland whether the Registrar is capable of implementing youth voting for the November 2024 election by July 12, 2024.

Runbeck Implementation Costs (Section 6): The Registrar currently contracts with Runbeck for its voting equipment and software. Runbeck has had to update the existing election management system to make it possible to implement youth voting. It is possible that Runbeck would have to make future updates to maintain the system in order to continue implementing youth voting.

BUSD and the City of Oakland have already agreed to pay the initial Runbeck implementation costs, estimated at \$113,000, and would be obligated to pay future implementation costs. Costs would be divided between BUSD and Oakland according to the percentage of preregistered youth voters currently living in their jurisdictions. For example, on November 17, 2023, there were 1,088 preregistered youth voters in Oakland and 381 preregistered youth voters in Berkeley. Based on these numbers, Oakland was responsible for 74% of Runbeck's initial implementation costs and BUSD was responsible for 26% of such costs. Note that these numbers are expected to fluctuate in the future so that future percentages are also expected to fluctuate. This means that in the future Oakland may be responsible for a greater or lesser share of Runbeck's costs.

The Registrar would provide BUSD and Oakland with as much advance notice of such costs as practicable. If future costs are deemed too high, Oakland could suspend or terminate participation in the MOU.

The Registrar's Maintenance Costs (Section 7): The Registrar's Office has already incurred substantial costs in preparing to implement youth voting, but the Registrar will not pass those initial costs along to BUSD or Oakland. However, if the Registrar's Office incurs costs in the future to maintain youth voting, the Registrar could pass those costs along to BUSD and Oakland. For example, if a future Runbeck software upgrade requires the Registrar to incur costs to train its staff in how to operate the upgraded system, such costs could be passed through to BUSD and Oakland. As with Runbeck's costs, these costs would be divided between BUSD and Oakland according to the percentage of preregistered voters living in their jurisdictions at that time.

Furthermore, as with Runbeck's costs, the Registrar would provide BUSD and Oakland with as much advance notice as practicable. If future costs are deemed too high, Oakland could terminate or suspend participation in the MOU.

Youth Voting Election Costs (Section 8): Traditionally, the Registrar provides jurisdictions within the County with an advanced estimate of how much the election is expected to cost each jurisdiction on a per voter basis. The Registrar then invoices the jurisdictions after the election with the actual cost of the election on a per voter basis.

Under the MOU, youth voting would proceed similarly. The Registrar estimates that youth voting will cost Oakland the standalone special election rate per preregistered youth voter for every election with youth voting. The estimated costs for the standalone special election rate in 2024 are \$19 - \$21. Based on this estimate and the prior available count of preregistered voters in Oakland – 1,088 – the election costs for youth voting in November 2024 could be between \$20,672 - \$22,848, in addition to costs

of printing and translation, as well as other administrative materials necessary for youth voting. Note, however, that the number of preregistered voters in Oakland is expected to increase if youth voting is implemented in the City, and the actual per-preregistered voter costs could be higher or lower than the estimated costs. Additionally, the costs may be higher if the City works with the County on youth voter outreach and education. The ROV had previously estimated the overall cost of conducting youth voting elections ranges from \$126,000 – \$294,000.

Other Jurisdictions Might Be Required To Offset Oakland's Implementation Costs (Section 10): If other cities within Alameda County (other than Berkeley and Oakland) adopt youth voting in the future, the Registrar will try to make those cities pay their proportionate share of Runbeck Implementation Costs and the Registrar's Maintenance Costs. This could include having to reimburse Oakland for costs paid prior to the new city implementing youth voting, and contributing to future Runbeck Implementation Costs and the Registrar's Maintenance Costs.

Indemnification (Section 11): BUSD and Oakland would agree to indemnify the County against any claims or liabilities arising out of the performance of the MOU. In turn, the County would agree to indemnify BUSD and Oakland against any claims or liabilities arising out of the County's negligence or willful misconduct in performing the MOU. Indemnification clauses are not unusual. For example, when Berkeley, Oakland, and San Leandro entered into an MOU with the Registrar of Voters to implement Rank Choice Voting in 2010, it contained a similar indemnification clause.

Termination Or Suspension Of The MOU (Section 14): BUSD, Oakland, and the Registrar would have the option to terminate or suspend its participation in the MOU, generally with 180 days' notice. Certain obligations would survive the termination or suspension, including but not necessarily limited to the duty to pay costs incurred prior to termination.

Please see the MOU as Exhibit A to the Resolution for additional provisions and details.

Key Terms of the Ordinance Authorizing Youth Voting

The Ordinance will authorize persons aged 16 and 17, who are otherwise eligible to vote under California state law, to vote for the office of School Board Director in School Board Elections. The Ordinance does not authorize persons aged 16 and 17 to be a candidate for School Board Director, or to sign nomination papers or qualification statements for the office of School Board Director.

This Ordinance will authorize youth voting in School Director Elections for future elections if so authorized in the ordinance, resolution, and/or any other documentation required by law to call the election, and so long as the County Registrar is able to conduct the election on behalf of the City. This means that the City Council must authorize youth voting for each future election in which youth voting will occur.

Pre-registration under state law, pursuant to the procedures developed by the California Secretary of State, shall be the exclusive means by which a person aged 16 or 17 may register to vote for School Board Elections. Youth voters will be provided information on the Registrar's website outlining the procedures for how they may vote in the particular election. Youth voting would generally proceed in the same way that traditional voting proceeds except that it is anticipated that youth voting would be conducted as a vote-by-mail election. Preregistered youth voters would receive a ballot in the mail, which would only include school board elections.

Next Steps

Council's approval of the MOU and Ordinance are prerequisites to implementing youth voting in Berkeley. Additional steps before youth voting can proceed in the November 2024 election also include:

- The Registrar's Office will have to complete its testing of the systems designed to implement youth voting in Berkeley and Oakland, and notify the jurisdictions whether the systems are prepared to proceed with implementing youth voting.
- The other parties to the MOU will have to approve the MOU.
- The City Council will need to include the legislation calling the November 2024 election authorizing for youth voting.

FISCAL IMPACT

There is no direct fiscal impact of adopting the Ordinance.

In terms of the fiscal impact of the MOU, first, it memorializes the prior authority given to the City Administration to reimburse the ROV up to \$84,000 for updates to the ROV's election management system. (See Resolution No. 90253 C.M.S.)

Second, the MOU commits the City to paying the proportionate share of future costs to update the County's election management system. The City will receive as much advanced notice of these costs as practicable, and will have the option to terminate or suspend participation in the MOU as needed.

Third, the MOU will require the City to pay the costs of each youth voting election in which the City authorizes youth voting per legislation. The Registrar estimates that youth voting will cost Oakland the standalone special election rate per preregistered youth voter for every election with youth voting. The estimated costs for the standalone special election rate in 2024 are \$19 - \$21 per registered youth voter. Based on this estimate and the prior available count of preregistered voters in Oakland – 1,088 – the election costs for youth voting in November 2024 could be between \$20,672 - \$22,848, in addition to costs of printing and translation, as well as other administrative materials necessary for youth voting. Note, however, that the number of preregistered voters in Oakland is expected to increase if youth voting is implemented in the City, and the actual per-preregistered voter costs could be higher or lower than the estimated costs. Additionally, the costs may be

higher if the City works with the County on youth voter outreach and education. The ROV had previously estimated the overall cost of conducting youth voting elections ranges from \$126,000 – \$294,000.

Finally, the MOU will require the City to indemnify the County for claims and liabilities arising out of the County's performance of the MOU. There is currently litigation pending against the County related in part to the constitutionality of youth voting in Oakland for which the City may be responsible for litigation defense costs.

Please note that City of Oakland and Oakland Unified School District are separately negotiating for the inter-Oakland allocation of school board director costs, including youth voting costs, which will determine Oakland's final share of election costs.

ACTION REQUESTED OF THE CITY COUNCIL

As a result of Oakland Voters approving Measure QQ (Youth Voting), Staff Recommends That the City Council Adopt:

(1) Ordinance Adding Section 3.08.035 To The Oakland Municipal Code To Authorize Persons Aged 16 And 17, Who Are Otherwise Eligible To Vote Under State Law, To Vote For The Office Of School Board Director

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Asha Reed
City Clerk, Office of The City Clerk
and Clerk of the Council

/s/Malia McPherson
Malia McPherson
Deputy City Attorney