

CITY OF OAKLAND
AGENDA REPORT

10 JAN 20 PM 1:57

TO: Rules Committee
FROM: Office of the City Attorney
DATE: February 4, 2010

RE: **AN ORDINANCE DELETING MUNICIPAL CODE (OMC) SECTION 3.08.140 (ELECTION OF CANDIDATES), AMENDING SECTION 3.08.150 (ORDER OF CANDIDATES NAMES); DELETING SECTION 3.12.210 (TIME PERIODS FOR EXPENDITURES); AMENDING 3.12.040 (INTERPRETATION OF THIS ACT), TO MAKE THE OMC CONSISTENT WITH RANKED CHOICE VOTING SOMETIMES REFERRED TO AS INSTANT RUNOFF VOTING**

SUMMARY

To implement ranked choice voting (RCV) in future Oakland elections, the City Council must amend existing ordinances in Oakland's Municipal Code to make them consistent with RCV. The changes are necessary because the City will no longer conduct a "primary" or "nominating" election when it implements RCV.

FISCAL IMPACT

There is no fiscal impact to the City from these conforming ordinance changes.

BACKGROUND

In November, 2006, Oakland voters approved a proposal that established a system of ranked choice voting for future Oakland elections, contingent upon the Alameda County Registrar of Voters being "able" to conduct such an election. A RCV voting system allows voters to rank the candidates so that a majority winner can be determined in one election. RCV typically proceeds as follows: All the first choices are tallied. If any candidate receives a majority (more than 50%) of the first choices, that candidate is elected. If no candidate receives a majority, the "instant runoff" begins. The candidate who receives the fewest first choice votes is eliminated, and the voters who listed the eliminated candidate as their first choice have their votes tabulated for their next-ranked candidate. All ballots are recounted in the instant runoff and the process continues, round by round, until a candidate wins a majority of the votes.

Item: _____
City Council
February 4, 2010

KEY ISSUES AND IMPACTS

I. Proposed Changes In Oakland's Elections Code And Campaign Reform Act

The Office of the City Attorney has identified several sections of the Oakland Municipal Code that must be amended in order to be consistent with the RCV process. At its November 2, 2009, meeting, the Public Ethics Commission reviewed the amendments.

The proposed amendments will take effect when the City implements an RCV process pursuant to the City Charter.

A. Elections Code, OMC Sections 3.08.140 and 3.08.150

The proposed changes delete (1) the provisions that address the need for a run-off election in the event a candidate does not receive a majority of votes and (2) references to "nominating" and "general" elections.

B. Oakland Campaign Reform Act, OMC Sections 3.12.040, 3.12.210

The proposed changes delete (1) language pertaining to primary and general election cycles (OMC Section 3.12.040) and (2) provisions related to the system by which campaign expenditures currently are apportioned between the April/June election and a November "general" election (OMC Section 3.12.210).

II. Examination of the Election Expenditure and Contribution Limits for Each Election

In addition to the above ordinance sections, RCV may have a practical impact on campaign fundraising and spending. The existing campaign contribution and expenditure limits are limits for each election period. (OMC Sections 3.12.050, 3.12.060, 3.12.200.) With RCV, the campaign season will change from two election periods to one. While formerly there was a primary season from January-June and a general election period from June-November, under RCV there will be one long election season. Candidates have already begun campaigning. However, the maximum amount a candidate can collect from each contributor and the maximum amount that each candidate can spend on his/her election to communicate to the voters would effectively be cut in half with RCV.

The Public Ethics Commission declined to consider whether the change from two elections to one election warranted a reexamination and discussion of the City's campaign expenditure limits and contribution limits. Some commissioners expressed a desire not to agendize discussion of such a core campaign issue until someone presented the commission with a proposal to change the limits.

Ultimately, this is a matter for the City Council to decide. The City Attorney's Office recommends that the City Council double the expenditure limits and the contribution limits for two reasons. First, because two election seasons are being folded into one and a doubling of the limits does not change the amounts that will be donated or spent over the course of the entire election year. Second, because RCV is a major change in voting systems which will require candidates – at least in the first few RCV cycles – to perform additional outreach to educate residents.

The City Council should agendaize for a future meeting discussion of this possible change. Because the actual limits are not noticed for discussion, the City Council cannot discuss the substance of the contribution and expenditure limits. It can only ask that the matter be noticed for a future meeting

SUSTAINABLE OPPORTUNITIES

Economic: There are no economic opportunities created because of the amendments.

Environmental: There are no environmental opportunities created because of the amendments.

Social Equity: There are no social equity opportunities created as the result of the technical changes.

DISABILITY AND SENIOR CITIZEN ACCESS

The proposed amendments have no direct impact on access by seniors and people with disabilities.

RECOMMENDATION(S) AND RATIONALE

The City Attorney's Office recommends adoption of the amendments to the Oakland Municipal Code. Without the amendments, the Municipal Code will be in conflict with the City Charter.

ACTION REQUESTED OF THE CITY COUNCIL

The City Attorney's Office requests that the City Council adopt the amendments to the Oakland Municipal Code. This Office also recommends that the City Council agendaize for a future meeting discussion of possible changes to the expenditure and contribution limits for campaigns in light of the fact that RCV folds two campaign seasons into one season.

Respectfully submitted,



John Russo
City Attorney

Attorney Assigned:
Mark Morodomi

Paul Gordon

City Attorney

INTRODUCED BY COUNCILMEMBER _____

OFFICE OF THE CITY CLERK
OAKLAND
JAN 21 AM 11:58

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

AN ORDINANCE DELETING MUNICIPAL CODE (OMC) SECTION 3.08.140 (ELECTION OF CANDIDATES), AMENDING SECTION 3.08.150 (ORDER OF CANDIDATES NAMES); DELETING SECTION 3.12.210 (TIME PERIODS FOR EXPENDITURES); AMENDING 3.12.040 (INTERPRETATION OF THIS ACT), TO MAKE THE OMC CONSISTENT WITH RANKED CHOICE VOTING SOMETIMES REFERRED TO AS INSTANT RUNOFF VOTING

WHEREAS, in February 2007, the Oakland City Council submitted to the voters a proposed charter amendment, Measure O, to adopt a system of ranked choice voting, also known as instant runoff voting, to elect all city offices by majority vote in one election;

WHEREAS, at the November 7, 2006, a majority of the voting electors adopted Measure O;

WHEREAS, in order to implement ranked choice voting for city offices, changes to the Oakland Municipal Code are necessary; now therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The Oakland Municipal Code is hereby amended to add, delete, or modify sections as set forth below (section numbers and titles are indicated in **bold type**; additions are indicated by underscoring and deletions are indicated by ~~strike-through type~~; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed.

~~3.08.140 Election of candidates.~~

~~Any candidate receiving a majority of the vote cast for all candidates for that office at the municipal nominating election shall be declared elected. If at any such election there is any office to which no person was elected, then the two candidates for such office receiving the highest number of votes for such office shall be the candidates, and the only candidates, for such office whose names shall be printed upon ballots to be issued at the second or general municipal election; provided that, in any event, all persons receiving a number of votes equal to the highest number of votes received by any candidate shall also be candidates at such second election. The candidate receiving the highest number of votes cast for all candidates for that office at the second or general municipal election shall be declared elected.~~

3.08.150 Order of candidates' names.

A. Within ten days following the last day on which nominating petitions may be filed for an the municipal nominating election or another Oakland municipal election in which nominating petitions are accepted, the City Clerk shall hold a public drawing to

determine the order in which the names of qualifying candidates for each office shall appear on the ballot.

The City Clerk shall write the name of each candidate for an office on a slip of paper, fold the slip so as to conceal the name and place the slip in a box. The City Clerk shall then draw the slips of paper from the box until all the slips are withdrawn. The names of candidates shall be printed on the ballot in the order in which the slips of paper containing the names of candidates are drawn.

~~B. Following the municipal nominating election, the City Clerk shall conduct a drawing to determine the order in which the names of candidates qualifying for the general municipal election shall appear on the ballot. The drawing shall be conducted in the manner specified in subsection A of this section.~~

C. At least five days prior to the date on which any drawing is conducted pursuant to this Section, the City Clerk shall place a notice on the official bulletin board, City Hall, specifying the time, date, and location of the drawing.

~~3.12.210 Time periods for expenditures.~~

~~For purposes of the expenditure ceilings, qualified campaign expenditures made at any time on or before March 31st of the election year shall be considered primary election expenditures, and qualified campaign expenditures made from April 1st until December 31st of the election year shall be considered general election expenditures. However, in the event that payments are made but the goods or services are not used during the period purchased, the payments shall be considered qualified campaign expenditures for the time period in which they are used. Payments for goods or services used in both time periods shall be prorated.~~

3.12.040 Interpretation of this Act.

Unless the term is specifically defined in this Act or the contrary is stated or clearly appears from the context, the definitions set forth in Government Code Sections 81000 et seq., as they appear in 1998 shall govern the interpretation of this Act.

"Broad-based political committee" means a committee of persons which has been in existence for more than six months, receives contributions from one hundred (100) or more persons, and acting in concert makes contributions to five or more candidates.

"City offices" for the purposes of this Act include: Mayor, City Attorney, City Auditor, City Council members and School Board Directors.

"Election" means any ~~primary or general~~ election held in the city of Oakland for city office. ~~Primary and general elections are separate elections for purposes of this Act. The primary election period shall extend from January 1st of the first year of an election cycle up to and including March 30th of the fourth year of the election cycle, and the~~

~~general election period shall extend from April 1st of the fourth year of the election cycle up to and including December 31st of the fourth year of the election cycle.~~

SECTION 2. Severability. If any article, section, subsection sentence, clause or phrase of this ordinance or exhibit is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions which shall remain in full force and effect.

SECTION 3. Effective Date. This ordinance shall not take effect if instant runoff voting is not used pursuant to City Charter Section 1105 (m).

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2009

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

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

DATE OF ATTESTATION: _____