



Berkeley City Council

ACTION CALENDAR

May 21, 2013

*(Continued from May 7, 2013)*

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Laurie Capitelli and Susan Wengraf  
Subject: Commission Term Limits

RECOMMENDATION

Refer to the City Manager an amendment to BMC 3.02.040 that imposes an eight-cumulative-year (in any ten year period) term limit for all commissioners now subject to an eight-year consecutive term limit and whose service commenced on or after December 1, 2004.

FINANCIAL IMPLICATIONS

Costs related to the additional administrative burden on the City Clerk's Office of tracking the cumulative number of years a commissioner has served (as opposed to consecutive years under current law).

BACKGROUND

Currently most commissioners are subject to a term limit of eight consecutive years. This has often been evaded by tendering a resignation shortly before a term expires, then accepting a new eight-year appointment after a brief absence from the commission.

At their meeting of March 13, 2007, the City Council approved the first reading of proposed amendments to BMC Section 3.02.40: 1. To repeal term limits for all commissioners except for those who serve on the four which exercise quasi-judicial powers: the Housing Advisory Commission ("HAC"), the Landmarks Preservation Commission ("LPC") Planning Commission ("PC") and the Zoning Adjustments Board ("ZAB"); 2. Limit service on designated commissions to eight cumulative years, requiring a two year break before reappointment to the same commission; 3. Limit membership on designated commissions to one commission. (On March 20, 2007 the first reading was rescinded and the item was referred to the Agenda Committee.)

The term limit is designed to provide for broader membership and fresh insights on commissions.

We suggest that the provision should apply to commissioners now subject to an eight-year consecutive term limit and whose service commenced on or after December 1, 2004.

CONTACT PERSON

Councilmember Laurie Capitelli, District 5	981-7150
Councilmember Susan Wengraf, District 6	981-7160

ATTACHMENTS:

1: Action Calendar Item #22, March 13, 2007. "Limits on Terms, Membership Designated Commissions."

<http://www.ci.berkeley.ca.us/citycouncil/2007citycouncil/packet/031307/2007-03-13%20Item%2022%20Limits%20on%20Terms%20Membership%20Designated%20Commissions.pdf>



Office of the City Attorney

ACTION CALENDAR  
March 13, 2007

To: Honorable Mayor and  
Members of the City Council

From:  Phil Kamlarz, City Manager

Submitted by: Manuela Albuquerque, City Attorney

Subject: Limits on Terms, Membership Designated Commissions

RECOMMENDATION

Adopt first reading of an Ordinance that: 1) imposes a eight, cumulative year term limit for four designated commissions; 2) repeals term limits on any other commission; and 3) limits designated commission membership to that commission, alone.

FISCAL IMPACTS OF RECOMMENDATION

There will be administrative costs associated with tracking eligibility for the designated four commissions which will be absorbed within the City Clerk's budget. These tasks are already being performed for all commissions under current law. Repealing the term limit for all commissions will result in lessening some administrative burdens. However the proposed ordinance will impose the additional administrative burden on the City Clerk's Office of tracking the cumulative number of years a commissioner has served (as opposed to consecutive years under current law) and enforcing the limit on membership to a single designated commission.

CURRENT SITUATION AND ITS EFFECTS

Under current law, an eight consecutive year limit has been in effect for the majority of boards and commissions. It is often evaded in practice by the tendering of a resignation shortly before the end of the eight-year term. There is currently no limit on the number of commissions on which an individual may serve.

The enabling ordinance for the Youth Commission (BMC 3.42.030) limits terms of office to four consecutive years. This provision will not be affected by the proposed ordinance.

BACKGROUND

This year, the City Council directed the City Attorney to prepare an ordinance that would repeal the term limit for all but four designated commissions, which exercise quasi-judicial powers: the Housing Advisory Commission ("HAC"), the Landmarks Preservation Commission ("LPC") Planning Commission ("PC") and Zoning Adjustments Board ("ZAB"). The Council directed that the ordinance become effective July 1, 2007 so as to give advance notice to any HAC, LPC, PC or ZAB sitting commissioners who might be removed as a result of the term limit. The

Council also directed that the ordinance provide that a person serving on the designated commissions would be precluded from serving on any other commission.

The attached ordinance implements the Council's direction.

RATIONALE FOR RECOMMENDATION

The term limit is designed to provide for broader membership and fresh insights on key commissions exercising quasi-judicial powers. The one designated commission limit is designed to diversify community participation on the four commission and to increase the range of persons providing their insights, expertise and life experience in making decisions on important quasi-judicial decision-making commissions.

ALTERNATIVE ACTIONS CONSIDERED

None, in light of the City Council's direction to the City Attorney.

CONTACT PERSON

Manuela Albuquerque, City Attorney, 981-6950

Attachments:

1: Ordinance

ORDINANCE NO. N.S.

AMENDING THE TITLE OF BERKELEY MUNICIPAL CODE (BMC) CHAPTER 3.02;  
AND AMENDING BMC SECTION 3.02.040 TO LIMIT TERMS ON DESIGNATED  
COMMISSIONS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That the title of Berkeley Municipal Code Chapter 3.02 is amended as follows:

Chapter 3.02 MISCELLANEOUS RULES RELATING TO COMMISSIONS  
~~AUTOMATIC TERMINATION OF APPOINTMENTS~~

Section 2. That Berkeley Municipal Code Section 3.02.040 is amended to read as follows:

**Section 3.02.040 Limiting the number of years ~~terms~~ commissioners on designated commissions may serve and precluding membership on any additional commission for members serving on designated commissions. ~~consecutively.~~**

A. Commissioners on the Housing Advisory Commission, Landmarks Preservation Commission, Planning Commission and Zoning Adjustments Board (hereafter "Designated Commissions") shall serve not more than eight ~~consecutive~~ cumulative years on such a commission, commencing with service occurring on or after December 1, 1995. Interruption of service shall be counted for purposes of calculating whether the commissioner has exceeded the limit imposed by this section, notwithstanding interruption of service including: due to the following:

A.1. Absence from the commission due to termination pursuant to Berkeley Municipal Code Section 3.02.020;

~~B.2. Absence from the commission due to any leave(s) of absence pursuant to Berkeley Municipal Code Section 3.02.030;~~

~~C. 3. Absence from the commission due to termination pursuant to the provisions of the Conflict of Interest Code, for failure to file the required Statement of Economic Interests, and subsequent reappointment.~~

Temporary appointment to a Designated Commission to fill a temporary vacancy caused by a commissioner who is on a leave of absence from the Designated Commission shall not be included for purposes of calculating the eight cumulative years limit imposed by this section. Termination of appointment pursuant to this section A above shall be eight cumulative years starting from the date of the initial appointment. A commissioner who has served eight years on a Designated Commission may be reappointed to such commission after a two-year break in service. ~~Commissioners cannot be reappointed to their respective boards or commissions until a two-year break in service has occurred.~~

~~Notwithstanding the above, if the term of a member of the Mental Health Commission would terminate prior to expiration of the term the member was appointed to, this section shall not require that such member be terminated prior to the member serving the full term to which the member was appointed.~~

B. No commissioner who serves on any other board or commission, including the Rent Stabilization Board, Board of Library Trustees, School Board or Berkeley Housing Authority Board shall be eligible for service on a Designated Commission and may be terminated from such Designated Commission on the effective date of this ordinance. In addition, any member of any City board or commission, who serves on any Designated Commission shall be ineligible to serve on any other commission appointed by the City Council unless s/he first resigns from the Designated Commission, except where the Designated Commission is itself represented on another body, and the Commissioner is serving on that body as a representative of that Designated Commission.

This provision shall become effective July 1, 2007 ~~December 1, 1990~~, and shall apply to commissioners serving as of that date and to all appointments made on or after that date. (Ord. 6624-NS § 1, 2001; Ord. 6201-NS § 1, 1993; Ord. 6009-NS § 1, 1990)

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 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.