

Office of the City Manager

ACTION CALENDAR
October 14, 2003

To: Honorable Mayor and
Members of the City Council
From: ~~Weldon~~ Rucker, City Manager
Subject: Changes to Candidate Nomination Process (*CF 13-03*)

RECOMMENDATION

That Council determine whether it desires to: 1) require candidates to submit signatures in support of a candidate's nomination over and above the 20 currently required; 2) establish a filing fee to cover the cost of processing a candidate's nomination papers; 3) require candidates to pay their pro rata share for the cost of printing, handling, translating, and mailing the candidate statement as part of the voter pamphlet; 4) make revisions to information contained in the candidate statement; and 5) give direction to the City Clerk and City Attorney related to preparing any required ordinances or charter amendments.

1. Signatures for Nomination of Candidates

The City of Berkeley follows Election Code 10220 which provides that each candidate shall be proposed by not less than 20 nor more than 30 voters. It has also been past practice based on a City Attorney opinion of Article V, Section 9 of the Charter, that while members of the council must be elected by the electors within a council district, they may be nominated by any registered voter in the city as a whole and need not be nominated by registered voters within the district.

It is common for charter cities to require nominating signatures that exceed those provided for in the Elections Code. As an example, the City of Oakland requires candidates to be nominated by no less than 50 and no more than 100 registered voters for both district and citywide offices. In Oakland, candidates running for a district seat must obtain signatures from registered voters within the district. Other charter cities surveyed require a similar number of signatures and all require nominators to reside within the district to nominate a person to a district office.

If the City Council desires to increase the number of registered voters required to nominate a candidate and/or limit the nomination to registered voters within a district for a council race, the Council would need to direct the City Attorney to prepare a charter amendment and indicate the Council's preference as to number of signatures.

2. **Filing Fees and Signatures in Lieu of**

The City currently does not charge candidates for the cost of processing their nomination papers.

Filing fees and signatures in lieu of filing fees are common for state offices. Under Election Code Sections 8103 and 8106 filing fees for state offices are based on a percentage of the annual salary for the state office and signatures in lieu of filing fees are either a set amount or based on a four to one ratio of signatures for each dollar of the fee.

Election Code 10228 provides that local jurisdictions may charge a filing fee proportionate to the costs of processing a candidate's nomination papers as determined by the city council and set by ordinance, but not exceeding \$25. Many general law cities charge the \$25 filing fee and some allow for signatures in lieu of filing fees. The formulas vary so that a candidate may submit anywhere from 25 to 100 signatures in lieu of the filing fee.

Charter cities generally require a filing fee commensurate with the cost of processing the nomination papers. The City of Oakland charges a filing fee of \$300 for both district and citywide offices and does not provide for signatures in-lieu. The City of San Francisco charges \$2,000 or 2% of the annual salary of the office the candidate is seeking with the exception of candidates running for school board, community college district and board of supervisors. These candidates pay a flat filing fee of \$500. The City of San Francisco's formula for signatures in-lieu of filing fees is \$0.50 per signature.

In the City of Berkeley the actual cost of processing a candidate's nomination papers is approximately \$150 per candidate.

The Council may decide to require candidates to pay all or a portion of the processing cost and to provide an option for signatures in lieu of a filing fee. The Council could also require a different number of signatures in lieu of the fee for candidates running in a district race versus candidates running in a citywide race. A signature in lieu of option ensures that candidates with limited funds will not be shut out of the election process.

The City Attorney has determined that establishing a filing fee with or without signatures in lieu of would require an amendment of the charter since the charter currently only authorizes the imposition of a fee to recover the pro rata costs for printing a candidate's statement. If the Council desires to require a filing fee to cover the cost of processing the candidate's nomination papers and to include a provision for signatures in lieu of the fee, the Council should direct the City Attorney to prepare a charter amendment to authorize the Council to be able to establish a filing fee by ordinance. If the amendment is approved by the voters, staff will prepare the implementing ordinance to be effective for the November 2004 Election.

3. Pro Rata Share of Printing Candidate Statement

The City currently does not charge a candidate for the cost of printing his/her candidate statement even though the charter authorizes the Council to adopt an ordinance setting an appropriate amount by ordinance.

Under Election Code Section 13307 each candidate for office may prepare a candidate statement of no more than 200 words, which would provide a brief description of the candidate's education and qualifications expressed by the candidate himself or herself.

In addition, Article III, Section 6 1/2 of the Charter provides that at the time of filing his or her nomination papers, each candidate for an elective office may file with the City Clerk a verified statement showing the name of the candidate, the office for which he or she is a candidate, his or her place of residence, place of birth, present occupation, what public offices he or she has held, whether he or she is a taxpayer in the City of Berkeley, a statement giving information as to his or her experience and qualifications, and a recent photograph, to the end that the electors may be in a position to estimate his or her fitness to fill the office, and the names of not less than 5 or more than 20 residents of the City of Berkeley to whom he or she refers

All of this information is combined and included in the voter pamphlet that is mailed to every registered voter within the district or citywide depending on whether or not the candidate is running for a district or citywide office.

Election Code Section 13307 allows the local agency to estimate and charge the candidate in advance for the total cost of printing, handling, translating and mailing the candidate statement. Election Code Section 13309 provides that if a candidate alleges to be indigent and unable to pay the estimate charges in advance, the local agency may require proof of financial worth and delay billing the candidate his or her pro rata share of the cost until after the election.

Article III, Section 6 1/2 of the Charter, adopted in 1949, provides that the council, by ordinance, may establish a fee for the printing of the candidate statement in the voter pamphlet. The Council adopted Ordinance No. 4312-N.S. in 1967 establishing a fee of \$100 for the printing of the candidate statement. Ordinance No. 4748-N.S. was adopted in January 1975 to allow those unable to pay for the printing of a candidate statement to file an "Affidavit of Inability to Pay the Fee". In February 1975, Ordinance No. 4765-N.S. was adopted which eliminated any fee.

Most jurisdictions surveyed by the City Clerk require candidates to either pay a set fee or their pro-rata share of printing the candidate statement. The City of Berkeley has not required the candidate to pay any of these costs since 1975. In the 2002 election the cost of printing candidate statements for all candidates running for auditor, mayor, and 4 council seats was \$12,200. The cost of printing candidate statements for all 5 candidates running for the rent board was \$6,250 and the cost for printing candidate statements for all 7 candidates running for school board was \$8,750. The average cost was \$600 per statement for a candidate running for a council district and \$1,250 for a candidate running for auditor, mayor, school board director and

rent stabilization board commissioner. The total cost to the City varies depending on the number of candidates running and individual costs fluctuate slightly with each election.

The Council may desire to require candidates to pay all or a portion of the cost of printing the candidate statement. The Council may also provide for an exemption of payment for this statement based on a candidate's inability to pay these charges.

If the Council elects to require candidates to pay all or a portion of the costs associated with printing the candidate statement, it should give direction to staff to prepare the appropriate ordinance language and set this matter for a public hearing as required by the Brown Act because this would be a new fee. The fee would be based upon a calculation of the administrative costs for printing, handling, translating and mailing the candidate statement and the ordinance would also provide for a waiver for indigents posting costs in advance as required by state law.

4. **Other Revisions to the Candidate Statement**

In addition to the 200 word candidate statement provided for under Election Code 13307, Article III, Section 6 1/2 of the Charter provides that at the time of filing his or her nomination papers, each candidate for an elective office may file with the City Clerk a verified statement showing the name of the candidate, the office for which he or she is a candidate, his or her place of residence, place of birth, present occupation, what public offices he or she has held, whether he or she is a taxpayer in the City of Berkeley, a statement giving information as to his or her experience and qualifications, and a recent photograph, to the end that the electors may be in a position to estimate his or her fitness to fill the office, and the names of not less than 5 or more than 20 residents of the City of Berkeley to whom he or she refers. Until otherwise provided by ordinance, such statements shall not exceed 200 words in length.

Article III, Section 6 ½ provides that this section is self-executing, but the Council, by ordinance, may more definitely prescribe the form of the candidate statement.

Berkeley Municipal Code Section 2.18.010 further provides that each candidate may also submit a record of community service of no more than 25 words, which may include a list of prior service, affiliation or membership in community organizations or any other organization.

Under both Election Code 13307 and Article III, Section 6 ½ of the Charter, the submission of a candidate statement and the contents of that statement are considered permissive and not required. It has been the past practice of the City Clerk Department to include any information provided by the candidate as part of the candidate statement and not to reject the statement if the candidate chooses not to include any portion of the statement. It has also been past practice to include titles and/or associations of the residents referred to and the residents' addresses if provided.

The Council may desire to review the information that candidates are providing as part of the candidate statement and offer amendments or clarification to this information. A point in case is

the question that is included for the candidate to respond to regarding whether or not the he or she is a taxpayer in the City. This question has been interpreted broadly and has generally been responded to as a "yes" if the candidate pays any type of tax, such as sales tax. The question as stated and the response appears to offer no information as to whether the person is fit to fill the office. The Council may also wish to review the number of residents referred to in the statement and to clarify that inclusion of residents' titles and home addresses is acceptable. Clarification of the statement may require an ordinance amendment but additions or deletions of information contained in the candidate statement would require a charter amendment.

Staff has pointed out a few of the issues that arise for candidates when filing their candidate statements. The components of the candidate statement are described more fully in the attached chart. If the Council desires to make any changes to this section of the charter, staff recommends that the amending charter language establish by ordinance, rather than by charter, the specifics to be included in a candidate statement.

FISCAL IMPACTS OF RECOMMENDATION

If the Council takes an action that requires a charter amendment and the Council desires to place this amendment on the March 2004 ballot, the City must pay actual costs of printing and translation of ballot materials including the measure text and arguments in three languages. This cost varies depending on the length of the measure, and is estimated at \$10,000 for each measure.

Alameda County also bills each city for its pro rata share of printing the ballots and administering the election. This cost varies depending on the number of jurisdictions participating in any given election. The more jurisdictions that consolidate for any given election, the more this cost can be shared among jurisdictions. The Alameda County Registrar of Voters has provided the City Clerk with an estimate of \$1 per registered voter for a March 2004 election and \$ 0.50 per registered voter for a November 2004 election. However these are merely estimates. Based on these estimates the cost for placing measures on the March 2004 ballot would be approximately \$80,000 plus the cost of each measure.

By requiring candidates to pay the direct costs associated with the printing of the candidate statement, the City would save anywhere from \$25,000 to \$40,000 per election. In addition the City would be able to recoup the cost of processing the candidate's nomination papers by establishing a filing fee as provided for under the Elections Code Section 10228.

CURRENT SITUATION AND ITS EFFECTS

A registered voter may currently run for office and have his or her name on the ballot and his or her candidate statement mailed to every registered voter within the district or within the city depending on the office by filing nomination papers that include the names of no less than 20 and no more than 30 registered voters of the city who nominate that candidate for office.

The City currently does not charge candidates a filing fee as allowed for under Elections Code Section 10228 for the processing of a candidate's nomination papers. In addition the City

currently pays the full costs associated with the printing, handling, translating, and mailing of the candidate's statements as part of the voter pamphlet for all candidates running for office.

Many candidates file nomination papers and have their names placed on the ballot, but do not participate in any of the public debates or run any active campaigns. Generally candidates that do not actively participate in the election process draw a small percentage of the total votes cast at the election. However, in hotly contested races these spoilers force other candidates with a greater proportion of the vote to face off in a costly runoff election.

BACKGROUND

At the Council meeting of May 13, 2003 the Council directed the City Clerk to explore possible changes to the nomination process including, but not limited to, requiring filing fees and providing for signatures in lieu of filing fees.

RATIONALE FOR RECOMMENDATION

Raising the number of signatures required for a candidate to be nominated to office and/or restricting the signature process, in the case of district elections, to registered voters within the district will result in candidates initially running for office with a broader base of support.

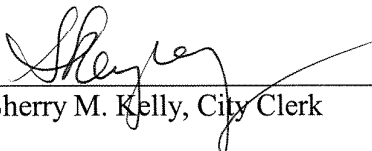
Requiring a candidate to pay a filing fee or providing for signatures in lieu of a filing fee and requiring a candidate to pay the pro rata share for the cost of printing all or a portion of the costs associated with the printing of the candidate statement will not prevent any interested registered voter from running for office but will help defray the cost of elections and will possibly eliminate candidates placing their names on the ballot without a real intent on participating more fully in the election process.

The attached chart presents each of the issues raised in the report along with options for Council consideration and information on the process required to make amendments.

CONTACT PERSON

Sherry M. Kelly, City Clerk, 981-6900

Approved:



Sherry M. Kelly, City Clerk

Enclosure – Options Matrix

Candidate Nomination Requirements

Signatures for Nomination: Require candidates running for district office to obtain signatures from registered voters residing in the district (Option 1). Raise the number of registered voter signatures required for candidates running for district and citywide offices. (Options 2 and 3)

| Current Situation | Options | Process | Council Action |
|---|--|---|---|
| <p>Require 20 to 30 signatures of registered voters to nominate a candidate for either district or citywide office.</p> <p>Registered voters need not live in the district to nominate a candidate for district office.</p> | <p>1) Require candidates running for district office to obtain signatures from registered voters within the district.</p> <p>2) Raise number of registered voter signatures for candidates running for district offices.</p> <p>3) Raise number of registered voter signatures for citywide offices.</p> | <p>All options require charter amendment.</p> | <p>Each option can be considered independently or combined.</p> |

Candidate Nomination Requirements

Filing Fees for Processing Nomination Papers: Candidates to pay a filing fee to cover the cost of processing the candidate's nomination papers.

| Current Situation | Options | Process | Council Action |
|------------------------|---|--|--|
| No filing fee charged. | 1) Require candidates to pay a filing fee of \$150. 2) Provide for signatures in-lieu of filing fee. | Requires a charter amendment to establish an ordinance to set the fee. | Option 2 only need be considered if Council adopts Option 1. |

Candidate Nomination Requirements

Cost of Candidate Statement: Require a candidate to pay his/her pro-rata share of the cost of printing, translating and mailing his/her candidate statement.

| Current Situation | Options | Process | Council Action |
|--|---|--|--|
| City pays full costs for all candidates. | 1) Require a candidate to pay his/her pro-rata share of the full costs. | Any of these options requires a public hearing and adoption of an ordinance. | Consider Option 1 or Option 2 independently. Option 3 may be considered in conjunction with either Option 1 or 2. |
| | 2) Require a candidate to pay a portion of his/her costs by establishing a set fee. | | |
| | 3) Allow for an "exemption to pay" based on a candidate's ability to pay. | | |

Candidate Nomination Requirements

Candidate Statement Requirements: Review requirements contained in the candidate statement and consider amendments and/or clarification.

| Current Situation | Candidate Statement Inclusions | Process | Council Action |
|--|--|---|--|
| <p>A candidate <u>may</u> file a candidate statement to be published in the voter pamphlet. The charter specifies certain statements and/or additions to be included with the candidate statement.</p> <p>The past practice of the City Clerk Department has been to accept a candidate that includes any portion of the inclusionary statements and to not reject a statement if some sections are omitted and to accept the inclusions broadly unless further defined.</p> | 1) Place of birth | <p>Any amendments to add or eliminate portions of the candidate statement may require a charter amendment.</p> <p>Clarification of the statement may not require charter amendment.</p> | <p>Consider amendments to or clarifications of any portion of the candidate statement.</p> |
| | 2) Present occupation (No word limit and no definition of either present or occupation.) | | |
| | 3) Is candidate a taxpayer? (No definition of taxpayer. All candidates say "yes".) | | |
| | 4) Recent photograph (No definition of recent. Photographs have been omitted and sketches have been accepted in lieu of photographs.) | | |
| | 5) Statement of no more than 200 words of qualifications (City Clerk follows Election Code 13307 for contents and prohibitions contained in the statement.) | | |
| | 6) Public offices held (No word limit. City Attorney has issued a statement that defines public offices.) | | |
| | 7) Community service (Limited to 25 words per BMC 2.18.010) | | |
| | 8) Names of not less than 5 or more than 20 residents (City Clerk has included titles/associations and addresses if requested by candidate. Refers to residents not registered voters.) | | |