



Office of the City Manager

CONSENT CALENDAR

December 13, 2005

To: Honorable Mayor and  
Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: Sara T. Cox, City Clerk

Subject: Revisions to Commissioners' Manual Chapter II(B)(3), Incompatible Public Offices Prohibited

RECOMMENDATION

Adopt a Resolution amending the City of Berkeley Commissioners' Manual (Resolution No. 62,418-N.S.) to revise Chapter II(B)(3), Incompatible Public Offices Prohibited, to clarify language regarding the ability to serve on two or more city boards or commissions.

FISCAL IMPACTS OF RECOMMENDATION

None

BACKGROUND

On September 13, 2005 the City Council adopted Ordinance No. 6,876-N.S. (Berkeley Municipal Code Chapter 3.80), which abrogates the common law doctrine of incompatible public offices with respect to membership on two or more city boards or commissions. The Commissioners' Manual, adopted by Resolution No. 62,418-N.S., states that "incompatible public offices prohibits a public official from occupying two public offices which are incompatible in terms of their duties and/or the likelihood of divided loyalties...." Modifying language in the Commissioners' Manual to state that service on two or more city commissions is permitted will further clarify this issue.

RATIONALE FOR RECOMMENDATION

Revising the Commissioners Manual will conform language regarding incompatible public offices with BMC Chapter 3.80 which allows for service on two or more city boards and commissions.

CONTACT PERSON

Cheryl Morse, Assistant City Clerk, 981-6905

Attachments:

- 1: Resolution  
Exhibit A: Commissioners' Manual

RESOLUTION NO. ##,###-N.S.

AMENDING THE CITY OF BERKELEY COMMISSIONERS' MANUAL CHAPTER II(B)(3)  
TO CLARIFY LANGUAGE REGARDING INCOMPATIBLE OFFICES

WHEREAS, it is the desire of the City Council to allow commissioners to serve on two or more city boards or commissions; and

WHEREAS, on October 20, 2005, the City Council adopted Berkeley Municipal Code (BMC) Chapter 3.80 (Ordinance No. 6,876-N.S.) abrogating the common law doctrine of incompatible offices with respect to membership on two or more city boards or commissions; and

WHEREAS, the Commissioners' Manual provides basic information to all members, and establishes certain standards of conduct and procedure, and delineates responsibilities of secretaries, chairpersons and the body as a whole; and

WHEREAS, there is a need to modify language in Chapter II(B)(3) of the Commissioners' Manual to reflect the City's abrogation of the Common Law Doctrine of Incompatible Public Offices with respect to membership on two or more city boards or commissions as codified in BMC Chapter 3.80.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Commissioners' Manual is hereby amended as noted in Exhibit A to abrogate the Common Law Doctrine of Incompatible Public Offices with respect to membership on two or more city boards or commissions.

BE IT FURTHER RESOLVED, that Resolution No. 62,418-N.S. is hereby amended.

Exhibits

A: Commissioners' Manual Section II(B)(3) as amended to show changes

All commission members affected will be routinely advised of these requirements and deadlines by the City Clerk. Not all commissioners are required to report the same degree of disclosure. The Conflict of Interest Code is designed to require only that degree of disclosure needed to protect the public interest while balancing that need with an individual's right to privacy (Conflict of Interest Code Resolution).

### **3) Incompatible Public Offices Prohibited**

The common law doctrine of incompatible public offices prohibits a public official from occupying two public offices which are incompatible in terms of their duties and/or the likelihood of divided loyalties. However, in Berkeley, serving on two or more city boards or commissions is permitted (BMC 3.80).

If you already occupy an elected or appointed office other than a city board or commission, and you are applying for appointment to a ~~second public office~~ city board or commission, you should seek the City Attorney's advice as to whether the two offices may be deemed incompatible.

### **4) Incompatible Activities for Compensation**

Government Code Section 1126 prohibits a public official from engaging in activities for compensation which are incompatible with their public office. If you are engaged in compensated activities which may be incompatible with your duties as a commissioner, please consult the City Attorney.

## **C. COMMISSION ORGANIZATION**

### **1) Officers Election and Term of Office**

Unless otherwise provided by ordinance<sup>1</sup>, the chairperson and vice chairperson are elected by the majority of the commission for a one-year term and hold office until their successors are elected or until their terms as members of the commission expire. No commissioner shall serve as chairperson for more than two consecutive years. The annual election of commission officers should occur during the month of February. The results of the vote should be publicly announced and the vote recorded in the minutes.

### **2) Mandatory Annual Training for Officers (Resolution No. 60,531-N.S.)**

Chairpersons and vice chairpersons are required to attend mandatory annual training on: a) the parliamentary procedure of conducting and presiding over meetings according to the Brown Act and City policy; b) the role of the commission and its organization; and c) the commission's relationship to the City Council, the City Manager, the secretary, other commissions, outside agencies, and the general public.

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<sup>1</sup> Election of Officers to the Police Review Commission, Board of Library Trustees and Landmarks Preservation Commission are regulated by Berkeley Municipal Code Sections 3.32.050 3.04.040, and 3.24.030 respectively.