

## Zero Waste Commission Regular Meeting

Monday, January 27, 2020, 7:00 p.m.  
City of Berkeley Corporation Yard (Ratcliff Building, Willow Room)  
1326 Allston Way, Berkeley

### Meeting Agenda

#### PRELIMINARY MATTERS (30 Minutes):

- 7:00 p.m. Call to Order  
*Chair will call the meeting to order; Secretary will call roll.*
- Christienne de Tournay (Chair)**, appointed by CM Sophie Hahn, District 5  
**Alfred Twu (Vice Chair)**, appointed by former CM Kriss Worthington, District 7  
**Annette Poliwka**, appointed by Mayor Jesse Arreguin  
**Ilana Golin**, appointed by CM Rashi Kesarwani, District 1  
**Marilyn McCartney**, appointed by CM Cheryl Davila, District 2  
**Antoinette Stein**, appointed by CM Ben Bartlett, District 3  
**Margo Schueler**, appointed by CM Kate Harrison, District 4  
**Jennifer Lombardi**, appointed by CM Susan Wengraf, District 6  
**David Grubb**, appointed by CM Lori Droste, District 8
- 7:05 p.m. Approve Meeting Agenda
- 7:10 p.m. Public Comment  
*Speakers are generally allotted up to three minutes. Speakers may be allotted less time at the discretion of the Chair.*
- 7:20 p.m. Commissioner Announcements  
*Commissioners may make general announcements; no action will be taken.*
- 7:25 p.m. Approval of Minutes: November 25, 2019 Regular Meeting\*

#### INFORMATION AND ACTION ITEMS (90 minutes):

- 7:30 p.m. Staff Updates:
- Solid Waste and Recycling Transfer Station Feasibility Study
  - SB 1383 Rulemaking
- 7:35 p.m. 1. Presentation from Stephanie Regni of Fillgood.co
- 8:00 p.m. 2. Skip the Slip Goldman School of Public Policy Proposal Update\*
- 8:10 p.m. 3. Discuss February Commissioner election process for Chair and Vice Chair\*
- 8:20 p.m. 4. Discuss City Clerk guidance regarding the wording of Commission recommendations to Council\*
- 8:25 p.m. 5. Discuss Single Use Foodware & Litter Reduction Ordinance Implementation\*

- 8:35 p.m. 6. Discussion and possible action to approve the creation of a Design Guidelines for New Construction Subcommittee
- 8:45 p.m. 7. Discussion and possible action to support AB1080/SB54 if amended and reintroduced in the state legislature with the recommendation to remove references to extended producer responsibility for single-use packaging
- 8:55 p.m. 8. Discuss future agenda items
- 9:00 p.m. 9. Action to adjourn the meeting

## COMMUNICATIONS:

*Documents/letters are included as attachments in the agenda packet. Links to online information are included below; printed hard copies of linked items are available at the meeting or upon request.*

- Ilana Golin
  - GSPP Skip the Slip Policy Proposal student resume\*
- Chrise de Tournay
  - Skip the Slip Council documents\*
- Antoinette Stein
  - Emailed links to CBA 2019 presentations including audio and slides of Lawrence Berkeley National Laboratory (LBL) on “Enabling Anaerobic Digestion Deployment for Municipal Solid Waste-to-Energy” available here:
    - i. [14th Annual California Bioresources Alliance Symposium](#)
    - ii. <https://www.epa.gov/ca/2019-california-bioresources-alliance-symposium-agenda-speaker-bios-and-presentations> .
    - iii. Audio recording of Lawrence Berkeley National Laboratory (LBL) presentation entitled “[Enabling Anaerobic Digestion Deployment for Municipal Solid Waste-to-Energy](#)”
    - iv. [Bioenergy Potential from Food Waste in California](#)
  - Why use PCR Drainage HDPE Pipes PDF\*\*
  - US Plastic Recycling & Domestic Markets--New AASHTO Pipe Specification 294R allows Post Consumer Recycled content (PCR) HDPE for Storm Drain pipes Webinar Link: [Northeast Recycling Council NERC YouTube Video of the presentation](#)
- Alice La Pierre
  - 13g Trash Can question for the Commission\*
- Melissa McDonough, Office of the City Manager
  - Flyer for the Strategic Plan Commissioners’ Info Session Thursday Jan 16\*
- Mark Numainville, City Clerk
  - Memo to Commissioners re: Lobbyist Registration Ordinance\*
  - Lobbyist Registration Ordinance Effective 1/1/20 - BMC Chapter 2-09\*
  - Lobbyist Full Manual\*

- Rebecca Day-Rodriguez, Health, Housing & Community Services Public Health Division
  - Tobacco Prevention Program presentation re: Tobacco Litter Audits\*
- Informational article links/webinars forwarded by staff\*\*
  - Berkeleyside Article: <https://www.berkeleyside.com/2019/11/13/confused-about-recycling-in-berkeley-we-answer-your-top-10-questions>
  - Save the Date - Jan. 15th Bay Area Deconstruction Workgroup: The next **Bay Area Deconstruction Workgroup** Meeting will be Wednesday, January 15, 2020, 10:00 AM – 12:30 PM at U.S. EPA Region 9 in San Francisco.
    - i. Update - Portland’s Expanded Mandatory Residential Deconstruction Ordinance – City Council Meeting video & Q&A with Shawn Wood, Construction Waste Specialist, [City of Portland](#)

\*Indicates material included in the agenda packet

\*\* Indicates material to be available at the meeting



This meeting is being held in a wheelchair-accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services Specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

*Communications to Berkeley boards, commissions or committees are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication.* Please contact the secretary to the relevant board, commission or committee for further information.

Zero Waste Commission Secretary: Heidi Obermeit, Recycling Program Manager, 1201 2<sup>nd</sup> St. Berkeley, CA 94710, 510-981-6357, [hobermeit@cityofberkeley.info](mailto:hobermeit@cityofberkeley.info)

**MINUTES**

The meeting was convened at 7:00 p.m. with Chrise de Tournay, Chair, presiding.

**ROLL CALL**

Present: Chrise de Tournay, Alfred Twu, Annette Poliwka, Marilyn McCartney, Antoinette Stein, Margo Schueler, David Grubb  
LOA: Ilana Golin, Jennifer Lombardi  
Absent: None

**STAFF PRESENT:** Greg Apa, Heidi Obermeit, Jenny Wong, Eunice Kwon, Claudette Biemeret, Sean O’Shea, Keith Morin

**MEMBERS OF THE PUBLIC PRESENT:** 5

**PUBLIC COMMENT:** 5

**ACTIONS TAKEN:**

1. **Approval of the November 25, 2019 Regular Meeting Agenda**  
M/S/C (Twu/de Tournay) to approve the agenda for the November 25, 2019 regular meeting.  
Ayes: Unanimous; Abstain: None; Absent: Golin, Lombardi
2. **Approval of the October 28, 2019 Meeting Minutes**  
M/S/C (Schueler, Stein) to approve the October 28, 2019 regular meeting minutes.  
Ayes: Twu, Poliwka, McCartney, Stein, Schueler, Grubb;  
Abstain: de Tournay; Absent: Golin, Lombardi
3. **Approval of the Zero Waste Commission 2020 Meeting Schedule**  
M/SC/ (de Tournay/Poliwka) to approve the following Zero Waste Commission regular meeting schedule for 2020:

Month	Meeting Day and Date	Time
January 2020	Monday 1/27/20	7:00 pm
February 2020	Monday 2/24/20	7:00 pm
March 2020	Monday 3/23/20	7:00 pm
April 2020	Monday 4/27/20	7:00 pm
May 2020	TUESDAY 5/26/20	7:00 pm
June 2020	Monday 6/22/20	7:00 pm

Month	Meeting Day and Date	Time
July 2020	Monday 7/27/20	7:00 pm
August 2020	<b>NO MEETING</b>	
September 2020	Monday 9/28/20	7:00 pm
October 2020	Monday 10/26/20	7:00 pm
November 2020	Monday 11/23/20	7:00 pm
December 2020	<b>NO MEETING</b>	

Ayes: Unanimous; Abstain: None; Absent: Golin, Lombardi

**4. Approval to extend the meeting by five minutes and to delay discussion/possible action on agenda items #6 and #7 until the next regular meeting of the zero Waste commission scheduled for January 27, 2020.**

M/S/C (de Tournay/Stein) to extend the meeting by five minutes and delay discussion/action on the following two agenda items until the January 27, 2020 meeting:

- Agenda item #6: Discussion and possible action to approve the creation of a Design Guidelines for New Construction Subcommittee
- Agenda item #7: Discussion and possible action to support AB1080/SB54 if amended and reintroduced in the state legislature with the recommendation to remove references to extended producer responsibility for single-use packaging.

Ayes: Unanimous; Abstain: None; Absent: Golin, Lombardi

**5. Adjournment at 9:05 p.m.**

M/S/C (Schueler/de Tournay) to adjourn the meeting at 9:05 p.m.

Ayes: Unanimous; Abstain: None; Absent: Golin, Lombardi

The next regular meeting of the Zero Waste Commission will be held on Monday, January 27, 2020 at 7:00 p.m. at the City of Berkeley Corporation Yard (Ratcliff Bldg, Willow Rm), 1326 Allston Way.

Respectfully Submitted:

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Heidi Obermeit, Secretary



Kate Harrison  
Councilmember District 4

CONSENT CALENDAR  
February 19, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Kate Harrison, Rigel Robinson, and Cheryl Davila  
Subject: Support for AB 161 (Skip the Slip)

RECOMMENDATION

Send a letter of support for AB 161, which requires that proof of purchase (receipts) be provided only in electronic form unless the customer specifically requests paper, to Senator Skinner and Assemblymember Wicks

BACKGROUND

AB 161 (Ting) requires that following retail sale of food, goods, and services, the proof of purchase be provided only in electronic form unless the customer specifically requests a paper receipt. Violations would result in small administrative fines assessed on the noncompliant business, enforced by the same officers authorized to enforce the California Retail Food Code.

According to Green America<sup>1</sup> 10 million trees and 21 billion gallons of water are used to create proof of purchase receipts every year in America. After they are produced, receipts generate 686 million pounds of solid waste and 12 billion pounds of carbon dioxide. These 10 million trees represent more than 15% of the 68 million trees used to produce paper.

A 2018 study<sup>2</sup> showed that 93% of tested paper receipts had elements of bisphenol A (BPA) or bisphenol S (BPS), chemicals with notable negative effects on hormones and metabolism. Exposure to BPA or BPS during pregnancy has been found to affect fetal impact and is linked to ADHD, obesity, and type 2 diabetes. Retail workers and other people who handle receipt paper as a part of their job are at especially high risk of exposure; though the chemicals are present in some plastics, roughly 88% of BPS exposure comes from handling receipts. The City of Berkeley has already acknowledged the negative effects of BPA-treated receipt paper. On September 25<sup>th</sup>, 2018, the City Council voted to implement a community education effort on the adverse

<sup>1</sup> <https://greenamerica.org/skiptheslip>

<sup>2</sup> [https://www.ecocenter.org/sites/default/files/healthy-stuff/Ecology%20Center%20Receipt%20Study%202018%20Report%20final\\_0.pdf](https://www.ecocenter.org/sites/default/files/healthy-stuff/Ecology%20Center%20Receipt%20Study%202018%20Report%20final_0.pdf)

health effects of BPA-treated paper. AB 161 represents a tangible way to reduce everyday exposure to BPA.

In addition to the health impacts, thermal paper cannot be recycled, and traces of BPA contaminate other recovered fibers.

Decreasing reliance on receipt paper would improve California's environmental and human health.

FISCAL IMPACTS OF RECOMMENDATION

None.

ENVIRONMENTAL SUSTAINABILITY

The production and disposal of paper receipts generates billions of pounds of carbon dioxide every year. Decreasing California's reliance on paper receipts would have a significant positive effect on the environment.

CONTACT PERSON

Kate Harrison, Berkeley City Councilmember, (510) 981-7140

Attachments:

- 1: Draft Letter of Support
- 2: Text of AB 161 (Ting)

The Honorable Buffy Wicks  
Member of the Assembly  
State Capitol, Room 5160  
Sacramento, CA, 95814

Re: AB 161 (Ting)

Dear Assemblymember Wicks,

Berkeley City Council writes in support of AB 161 (Ting), which would reduce our state's reliance on receipt paper.

Receipt paper is wasteful to produce and dispose of. The solid waste of old receipts produces 12 billion pounds of carbon dioxide every year in America alone. When receipts are printed on thermal paper, the bisphenol A or bisphenol S can cause significant health defects. BPA is an endocrine disruptor that can alter the functions of hormone receptors, affect fertility, and cause fetal defects when pregnant women are exposed to the chemical.

AB 161 would require all businesses to offer electronic receipts as a default, providing paper receipts only upon specific request. Businesses that do not comply would be issued nominal fines according to the California Retail Food Code. These small fines would lead to significant decreases in paper receipts, which will benefit human and environmental health across California.

Respectfully,  
Berkeley City Council

CC: Senator Nancy Skinner  
Assemblymember Buffy Wicks



**ASSEMBLY BILL**

**No. 161**

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**Introduced by Assembly Member Ting**

January 7, 2019

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An act to add Chapter 5.8 (commencing with Section 42359) to Part 3 of Division 30 of the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 161, as introduced, Ting. Solid waste: paper waste: electronic proofs of purchase.

Existing law, the California Retail Food Code, establishes uniform health and sanitation standards for, and provides for regulation by the State Department of Public Health of, retail food facilities, as defined. Existing law defines "enforcement officer," for purposes of enforcing these provisions, to mean certain appointees of the State Public Health Officer, and all local health officers, directors of environmental health, and their duly authorized registered environmental health specialists and environmental health specialist trainees.

Existing law prohibits certain stores from providing a single-use carryout bag to a customer at the point of sale and prohibits full-service restaurants from providing single-use plastic straws to consumers unless requested by the consumer.

This bill would require, on and after January 1, 2022, a proof of purchase for the retail sale of food, alcohol, or other tangible personal property, or for the provision of services, provided to a consumer, as defined, by a business to be provided only in electronic form, unless the consumer requests that the proof of purchase be provided in paper form. The bill would specify that the first and 2nd violations of these provisions would result in a notice of violation and any subsequent

violation would be an infraction punishable by a fine of \$25 for each day the business is in violation, but not to exceed an annual total of \$300. The provisions would be enforced by the same enforcement officers authorized to enforce the California Retail Food Code. By creating a new crime and imposing additional enforcement duties on local health agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The report titled “Skip the Slip: Environmental Costs &
- 4 Human Health Risks of Paper Receipts with Proposed Solutions”
- 5 from Green America found that 10 million trees and 21 billion
- 6 gallons of water in America are used to create proof of purchase
- 7 receipts.
- 8 (b) Receipts generate 686 million pounds of waste and 12 billion
- 9 pounds of carbon dioxide, the equivalent of one million cars on
- 10 the road, and most paper receipts contain chemicals that would
- 11 contaminate other recyclable paper materials.
- 12 (c) The Green America report also found that 93 percent of
- 13 paper receipts are coated with Bisphenol-A (BPA) or Bisphenol-S
- 14 (BPS) chemicals, which the United States Food and Drug
- 15 Administration has banned from baby bottles because those
- 16 chemicals are known to disrupt hormones, causing cancerous
- 17 tumors, birth defects, and other developmental issues.
- 18 (d) The BPA or BPS on receipts can enter people’s bodies
- 19 simply through touch, which poses a major risk to retail workers,

1 who have 30 percent more BPA or BPS found in their bodies than  
2 others who do not have regular contact with receipts.

3 (e) Data from Square, a company that provides mobile payment  
4 services, shows that their sellers send over 10 million digital  
5 receipts each month.

6 (f) Prohibiting businesses from providing paper receipts except  
7 upon request would have significant positive environmental and  
8 public health effects.

9 SEC. 2. Chapter 5.8 (commencing with Section 42359) is added  
10 to Part 3 of Division 30 of the Public Resources Code, to read:

11  
12 CHAPTER 5.8. PROOF OF PURCHASE

13  
14 42359. For purposes of this chapter, the following definitions  
15 apply:

16 (a) "Consumer" means a person who purchases, and does not  
17 offer for resale, food, alcohol, other tangible personal property, or  
18 services.

19 (b) "Electronic form" includes, but is not limited to, a form sent  
20 through email or text message.

21 (c) "Enforcement officer" has the same meaning as specified  
22 in Section 113774 of the Health and Safety Code.

23 42359.1. (a) On and after January 1, 2022, a proof of purchase  
24 for the retail sale of food, alcohol, or other tangible personal  
25 property, or for the provision of services, provided to a consumer  
26 by a business shall be provided only in electronic form, unless the  
27 consumer requests that the proof of purchase be provided in paper  
28 form.

29 (b) This section shall be enforced by an enforcement officer.  
30 The first and second violations of subdivision (a) shall result in a  
31 notice of violation, and any subsequent violation shall constitute  
32 an infraction punishable by a fine of twenty-five dollars (\$25) for  
33 each day the business is in violation, but not to exceed three  
34 hundred dollars (\$300) annually.

35 SEC. 3. No reimbursement is required by this act pursuant to  
36 Section 6 of Article XIII B of the California Constitution for certain  
37 costs that may be incurred by a local agency or school district  
38 because, in that regard, this act creates a new crime or infraction,  
39 eliminates a crime or infraction, or changes the penalty for a crime  
40 or infraction, within the meaning of Section 17556 of the

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1 Government Code, or changes the definition of a crime within the  
2 meaning of Section 6 of Article XIII B of the California  
3 Constitution.

4 However, if the Commission on State Mandates determines that  
5 this act contains other costs mandated by the state, reimbursement  
6 to local agencies and school districts for those costs shall be made  
7 pursuant to Part 7 (commencing with Section 17500) of Division  
8 4 of Title 2 of the Government Code.

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Office of the City Manager

ACTION CALENDAR  
September 25, 2018

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Kelly Wallace, Interim Director, Health, Housing, & Community Services

Subject: Companion Report: Ban on Receipts Made with Bisphenol A (BPA) and Other Phenols

RECOMMENDATION

Take no action on the Community Health Commission recommendation to adopt an ordinance to ban the use of thermal paper by 2020 and instead implement a community education effort about methods for reducing exposure to BPA-treated thermal paper.

FISCAL IMPACTS OF RECOMMENDATION

A community education campaign using the materials developed by other jurisdictions will incur minimal costs. The Public Health Division consulted with the Minnesota Pollution Control Agency, and they have agreed to allow the City of Berkeley to adapt their existing BPA educational toolkit (See Attachment 1). Professional translation of the best practice document is estimated at \$7,500. The cost to produce 10,000 outreach flyers for retail businesses and grocers will be approximately \$1,600 (958-4505-440-various). Public Health staff will work with other departments and divisions who interact with businesses to share educational information through already-existing channels.

CURRENT SITUATION AND ITS EFFECTS

On October 17, 2017, City Council recommended the referral of an ordinance banning receipts made with BPA and other phenols to the Health Commission. Following public comment and Council discussion, referral to the Community Environmental Advisory Commission was added.

On March 8, 2018, the Community Environmental Advisory Commission passed a motion that stated: "The CEAC supports the principle outlined in the City ordinance on Ban on Receipts Made with BPA and other Phenols, presented at Council on October 17, 2017 agenda, provided the recommendation includes input from retail businesses or business associations. At a minimum, the City should apply the language of the ordinance to City government businesses."

On April 26, 2018, the Community Health Commission passed a motion to forward to Council a Ban on BPA Thermal Paper Recommendation.

## BACKGROUND

Bisphenol A (BPA) is a chemical utilized in the production of polycarbonate plastics, epoxy resins, and thermal paper applications<sup>1</sup>. Exposure to BPA can occur at low-levels from consuming food or water that has been stored in containers manufactured using BPA<sup>2</sup>. Research conducted on BPA in receipt paper indicates that it can be absorbed into the skin through handling of thermal receipts,<sup>2</sup> and is commonly found in receipts<sup>3</sup>. The Center for Disease Control indicates widespread exposure to BPA in the U.S. population. The CDC Fact Sheet on BPA also states that the impact of low environmental exposures to BPA are unknown, and that further research is warranted<sup>2</sup>.

## ENVIRONMENTAL SUSTAINABILITY

A community education campaign would involve the printing of flyers, posting materials on the website and, when appropriate, mailing flyers to local businesses. We will work with vendors to use recycled (and BPA-free) paper for educational materials.

## RATIONALE FOR RECOMMENDATION

Staff reviewed three jurisdictional efforts to reduce the impact of BPA thermal paper, and recommend an education campaign is the best effort for the City to implement. Below is a summary of three jurisdictional efforts reviewed by staff:

Jurisdiction	Effort	Result
Minnesota Pollution Control Agency	Received a grant of about \$80,000 to provide education targeted to BPA use in retail receipts. Developed and implemented educational materials on reducing exposure and alternatives to receipts.	Three case studies showed businesses experienced up to 90% reduction in use of thermal paper, and a cost reduction of \$195-\$3,600 per year in paper costs.
Suffolk County, New York	In 2013, enacted a local law to prohibit the use of thermal paper containing BPA for any sales receipt. The law is enforced via complaint.	As of July 2018, Suffolk County has received no complaints.
State of Connecticut	Enacted a ban on BPA Receipt Paper (SB 210) effective October 2013.	As of July 2018, the office of the Commissioner of Consumer Protection, the enforcement unit of this Act, reported that they have not implemented a procedure to enforce this law.

## ALTERNATIVE ACTIONS CONSIDERED

Staff considered implementing a ban on PBA receipt paper within Berkeley. Concerns regarding the feasibility and effectiveness of ongoing enforcement of the ban resulted in the recommendation of an education/outreach program.

<sup>1</sup> United States Environmental Protection Agency, *Bisphenol A Alternatives in Thermal Paper* available at [https://www.epa.gov/sites/production/files/2015-08/documents/bpa\\_final.pdf](https://www.epa.gov/sites/production/files/2015-08/documents/bpa_final.pdf) (last accessed July 30, 2018).

<sup>2</sup> Centers for Disease Control and Prevention, *Bisphenol A (BPA) Factsheet* available at [https://www.cdc.gov/biomonitoring/BisphenolA\\_FactSheet.html](https://www.cdc.gov/biomonitoring/BisphenolA_FactSheet.html) (last accessed July 26, 2018).

<sup>3</sup> Environmental Working Group, *BPA Coats Cash Register Receipts* available at <https://www.ewg.org/research/bpa-in-store-receipts#.W2HgwJKjcs> (last accessed July 30, 2018).

Additionally, in considering other enforcement resources, a recent audit completed by the Code Enforcement Unit found that it currently has insufficient staffing to absorb work load increases. Recommendations contained in the audit included that City Council should consider the impact and feasibility of proposed policies prior to adoption, including the opportunity costs (i.e. consideration of other activities that will be deprioritized in order to meet new demands).

#### CONTACT PERSON

Roberto Terrones, Health Services Program Specialist, Health, Housing and Community Services, 981-5324

Lisa Hernandez, M.D. MPH, Public Health Division Health Officer, Health Housing and Community Services, 981-5308

Janice Chin, MPH, Public Health Division Manager, Health Housing and Community Services

#### Attachment:

1: From Minnesota Pollution Control Agency: Strategies for Reducing Use and Exposure to BPA Thermal Receipts

<sup>1</sup> United States Environmental Protection Agency, *Bisphenol A Alternatives in Thermal Paper* available at [https://www.epa.gov/sites/production/files/2015-08/documents/bpa\\_final.pdf](https://www.epa.gov/sites/production/files/2015-08/documents/bpa_final.pdf) (last accessed July 30, 2018).

<sup>2</sup> Centers for Disease Control and Prevention, *Bisphenol A (BPA) Factsheet* available at [https://www.cdc.gov/biomonitoring/BisphenolA\\_FactSheet.html](https://www.cdc.gov/biomonitoring/BisphenolA_FactSheet.html) (last accessed July 26, 2018).

<sup>3</sup> Environmental Working Group, *BPA Coats Cash Register Receipts* available at <https://www.ewg.org/research/bpa-in-store-receipts#.W2HgwJKjcs> (last accessed July 30, 2018).

## Strategies for reducing thermal paper receipts

Cashiers have been found to have higher concentrations of BPA in their urine than people in other occupations. Because these chemicals on papers are free or “unbound,” they can be transferred to and absorbed through the skin.

Reducing thermal paper use is the most effective strategy for reducing BPA exposure from thermal paper for employees and customers. Preliminary research results for BPS, a common alternative to BPA in thermal paper, shows endocrine activity similar to BPA. Since there are no known clearly safer alternatives to BPA in thermal paper, moving to a paperless point-of-sale (POS) system is the ideal solution for businesses.

MPCA has also developed a list of strategies to reduce potential exposure in cases where thermal receipts must be used.

### Best practices

- Use digital receipt software programs that work with existing POS systems.
- Only print customer receipts upon request.
- Ask customers: “Do you need a receipt?” or “Is an e-receipt OK?”
- Only print receipts for transactions over \$25 or \$50.
- Do not print merchant copy of receipt if transaction is already kept electronically.

### If thermal receipts must be handled

- Minimize employee handling of thermal receipts as much as possible. Direct staff to:
  - avoid crumpling receipts
  - handle with just two fingers
  - minimize grip pressure
  - minimize friction/wipe action or fingers on paper.
- Offer protective food grade silicone fingertips to cashiers to wear on their index fingers and thumbs when tearing receipts, changing receipt rolls, or cleaning machines.
- Fold one-sided printed paper in on itself before handing to customer. One-sided thermal paper (paper that can only be printed on one side), usually has more chemical on the printed side.
- Encourage employees to avoid hand to mouth contact when handling receipts.
- Encourage cashiers to avoid handling receipts after using alcohol-based cleaners or when hands are wet, or when greasy from food or lotion.
- Encourage cashiers to wash and dry hands thoroughly during breaks, after changing receipt rolls or cleaning machines, and prior to and after eating or preparing food.
- Protect high-risk populations from unnecessary BPA exposure. Focus on protecting pregnant and nursing women, infants, toddlers, small children, and women of child-bearing age.
- Never hand receipts to babies or toddlers.
- Discuss with pregnant and nursing cashiers feasible means of minimizing exposures, including alternate job functions.
- Designate a check-out lane for customers not needing paper receipts or able to accept electronic receipts.
- Allow customers to tear their own receipts off machines.
- Do not place thermal paper receipts/orders directly on food during its preparation.
- Keep drink/meal receipts dry. Do not adhere them to the sides of moist glassware.

MPCA is still evaluating its guidance for best methods of disposal of waste thermal receipt papers

### For more information

MPCA contact: [Madalyn Cioci](mailto:Madalyn.Cioci), 651-757-2276, [madalyn.cioci@state.mn.us](mailto:madalyn.cioci@state.mn.us)

[www.pca.state.mn.us/receipts](http://www.pca.state.mn.us/receipts)



## EDUCATION

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**University of California, Berkeley, Goldman School of Public Policy** — Berkeley, CA Expected May 2020  
*Master of Public Policy*

Coursework In: Decision Analysis, Modeling, and Quantitative Methods; Economics of Public Policy Analysis; Financial Management of Nonprofits; Law in Public Policy; Behavioral Science in Public Policy; Public Policy Analysis.

Graduate Projects and Papers: “Using Behavioral Science to Inform Health Care Payer Reimbursement Strategy,” “Policy Brief – North Carolina Medicaid Expansion: Opportunities for Rural Health.”

**Mount Holyoke College** — South Hadley, MA Awarded May 2015  
*Bachelor of Arts in Economics and Art History, cum laude*

## PROFESSIONAL

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**NC Department of Health and Human Services (NC DHHS)** — Raleigh, NC Summer 2019  
*Behavioral Health Fellow*

- Led analysis of federal behavioral health related grants totaling \$950+ million to North Carolina institutions. Identified missed grant opportunities worth \$400 million and new approaches for strategic grant management that the NC DHHS Secretary directed other NC DHHS divisions to adopt.
- Developed a new tool to increase Olmstead Agreement compliance by encouraging and streamlining the process of North Carolinians moving from institutionalized care to community-based care.
- Developed tools, including a survey, for NC DHHS’s new push for voting-compliance and outreach efforts for people with disabilities.

**District Bridges** — Berkeley, CA (remote) Spring 2019  
*Policy Analyst - Team of 4 – “The Price of Permit Processes”*

- Analyzed the direct and indirect costs of Washington, DC’s small business permit and licensing processes, identified process inefficiencies, and developed tools and strategies for streamlining permitting and licensing.

**Nonprofit Policy Consultant (Self-Employed)** — Berkeley, CA (remote) December 2018-Present

- Conducted a CA Bay Area and San Diego nonprofit property development analysis and edited a Metropolitan Transit System New Best Practices Manual for a city in California, for Norwood Development Strategies.
- Provided strategic advice for a start-up DC nonprofit, including advising on HR and Administration best practices and relationship building with DC City Government.

**ACT for NIH: Advancing Cures Today** — Washington, DC May 2015-July 2018  
*Director of Operations, Executive Assistant to the President*

- Served as organization operations lead; managed vendor and contractor relationships; drafted annual budgets in excess of \$1.5 million, and evaluated monthly financial reports and activity to ensure funds were spent appropriately and efficiently.
- Tracked Senate and House Appropriations subcommittees and analyzed other policy issues as related to the National Institutes of Health and its funding, and represented the organization when meeting with committee and agency staff.
- Led event planning, including annual event celebrating National Institutes of Health (NIH) appropriations increases held on Capitol Hill with 20+ Senators and Representatives in attendance.

**Friends of Medical Research Political Action Committee** — Washington, DC May 2015-July 2018  
*Treasurer, Assistant Treasurer*

- Developed, and upon consultation with the Board, implemented political strategy for a budget over \$100,000.
- Ensured PAC was compliant with all relevant campaign finance law by preparing all required FEC reports.
- Scheduled and coordinated political events, and developed relationships with proven medical research congressional champions and their fundraising staff.

**Office of U.S. Representative Donna F. Edwards (MD-04)** — Washington, DC Summer 2014  
*Legislative Intern*

## SKILLS

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*Proficiency in:*

- Microsoft Excel, Word, PowerPoint, Access, Publisher, and Outlook; Adobe InDesign and Acrobat
- STATA; Tableau; QuickBooks; FECFile; Intranet Quorum; WordPress; Canva; Hootsuite

**3) Incompatible Public Offices**

The common law doctrine of incompatible public offices prohibits a public official from occupying two public offices that 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, including quasi-judicial bodies, is permitted (BMC Chapter 3.80). A commissioner who already occupies an elected or appointed office other than a City board or commission and wants to apply for appointment to a City commission 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 that are incompatible with his or her public office. A commissioner engaged in compensated activities that may be incompatible with his or her duties as a commissioner should consult the City Attorney.

**5) State-Mandated Ethics Training**

State law (AB 1234) requires certain local agency officials to receive training in ethics. In Berkeley, the officials identified for requirement are Mayor and City Council, City Auditor, Rent Stabilization Board Commissioners, Board of Library Trustees, and Police Review Commissioners.

These officials will receive a notice from the City Clerk advising them of the required training. The training may be completed on the FPPC website. The training must be completed within one year of the date of appointment and every two years thereafter. A certification of completion must be filed with the City Clerk. For more information, please contact the City Clerk Department.

**F. COMMISSION ORGANIZATION****1) Election of Officers and Terms of Office**

Unless otherwise provided by ordinance,<sup>2</sup> the chair and vice-chair 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 chair for more than two consecutive years. There is no term limit for vice-chair.

Unless otherwise provided for in the enabling legislation, the annual election of commission officers should occur during the month of February. The election of officers must be listed as an item on the agenda.

Two meetings prior to the meeting at which officers will be elected, commissions are encouraged to list as an agenda item a discussion of the election, to inform all commissioners of the opportunity to seek nomination and election for the offices of chair and vice chair, to discuss and agree to the nomination process and timing for nominations (if no policy has been enacted by the commission), and to add clarity for commissioners and the

<sup>2</sup> Election of officers to the Police Review Commission, Board of Library Trustees, and Landmarks Preservation Commission are regulated by BMC Sections 3.32.050, 3.04.040, and 3.24.030, respectively.

public. In order to facilitate an orderly and fair nomination process, commissions may open nominations at the January meeting (or the meeting prior to the February meeting) and then hold the vote on officers at the February meeting. A Commission may enact a policy on officer elections in conformance with the requirements stated below, specifying the timing for nominations, the order in which nominations will be voted upon, and any other details that support a fair, orderly and transparent process for election of officers.

If there are multiple nominees for chair or vice-chair, the commission may wish to use a process by which all nominations can be made prior to voting. Full discussion of nominations is recommended, including the ability of nominees to speak on behalf of their own candidacy.

Additional regulations for officer elections:

- Nominations for chair and vice-chair require a motion (with second).
- A commissioner may nominate himself or herself.
- Any member of the commission, regardless of length of tenure on the commission may be elected chair or vice-chair.
- There is no automatic succession from vice-chair to chair.
- Motions to nominate must be voted on in the public forum, and no secret ballots are allowed.
- A roll call vote is recommended for votes on commission officers, and is required if any commissioner requests a roll call vote.
- The results of the vote must be publicly announced and the vote recorded in the minutes (Resolution No. 60,531-N.S.).
- A commissioner may not be elected chair if he or she will not be able to finish the term due to the two-year limitation.

Terms of office for officers are determined by the date the election regularly occurs, not by the date it may have actually occurred. If there is a slight variation in the date of the election, the sitting chair may serve on an interim basis provided that they do not exceed the two-year limit.

Scenario:

The chair is elected in February 2016. The chair resigns in April 2016. A new chair is elected in May 2016. The newly elected chair will serve from May 2016 to February 2017, when the next regular election is held.

**2) Mandatory Annual Training for Chairs and Vice-Chairs**

Chairs and vice-chairs are required to complete mandatory annual training. Resolution No. 63,876-N.S. was adopted by the City Council to implement video training for commission officers to satisfy the requirements of Resolution No. 60,531-N.S.

The chair and vice-chair must view, in its entirety, a training video on commission procedures and legal requirements. Upon completion, the chair and vice-chair must file with the City Clerk an Affirmation of Completion.

September 16, 2019

To: Commission Secretaries

From:  Mark Numainville, City Clerk

Subject: Commission Recommendations to the City Council

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City commissions are tasked with providing recommendations to the City Council on issues that are within the purview of the commission. Recent recommendations from some commissions to the council have been worded in a manner that gives the inference that the commission is providing direction to city staff instead of making a recommendation to the council. At the City Council meeting on September 10, 2019 the Council asked that clarification be provided to commissions regarding the correct wording for recommendations to council.

As your commission crafts recommendations to the council in the future, please remind them that the wording of the recommendation should be clear that the commission is not providing direction to city staff, but rather advising the council to take an action.

Please advise the commission to avoid this wording:

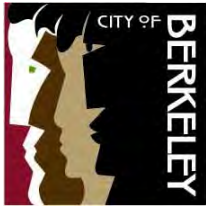
*“Recommendation: Direct the City Manager to...”*

*“Recommendation: Direct the city staff to...”*

Please advise the commission to use the following wording:

*“Recommendation: The Commission recommends that the City Council refer to the City Manager to...”*

If you have any questions, please contact me at [mnumainville@cityofberkeley.info](mailto:mnumainville@cityofberkeley.info).



December 18, 2019

Facility Name  
Facility Address  
Berkeley, CA 947XX

**RE: New Rules for Food Service Ware Effective January 1, 2020**

Dear Prepared Food Vendor,

On February 19, 2019, the Berkeley City Council adopted a Single Use Foodware and Litter Reduction Ordinance, No. 7,639-N.S., BMC Chapter 11.64. The goal of this Ordinance is to reduce the use and disposal of single-use plastics.

Single-use foodware - including cups, lids, straws, stirrers, cutlery, “clamshells,” and other disposable foodware – is a major contributor to street litter, ocean pollution, harm to wildlife, and greenhouse gas emissions.

**The Ordinance is implemented in three phases:**

- **Phase 1 - Effective March 27, 2019:** Accessory Disposable Foodware Items (e.g. straws, stirrers, cup sleeves, lids, utensils, napkins, etc.) are to be available only upon customer request or at self-service stations. Color-coded recycle and compost receptacles must be placed next to trash receptacles available to customers.
- **Phase 2 - Effective January 1, 2020:** Single-use plastic foodware is prohibited. All foodware must be BPI-certified compostable. Food vendors must charge \$0.25 for each disposable cup provided to customers.
- **Phase 3 - Effective July 1, 2020:** Disposable foodware is prohibited for on-premises dining. Foodware utilized for on-premises dining must be reusable.

**Enforcement of each phase does not begin until one year after the effective date of each phase in order to allow businesses time to comply with the ordinance requirements.**

Please see the reverse side of this letter and the attached Fact Sheet for additional information and resources.

**Complimentary on-site technical assistance is available. If you have questions or would like to request on-site assistance, please submit an email request to [customerservice@cityofberkeley.info](mailto:customerservice@cityofberkeley.info).**

Thank you for doing your part to reduce the use and disposal of single-use plastics.

Sincerely,

City of Berkeley

Attachment: Foodware Ordinance Fact Sheet

## Single Use Foodware & Litter Reduction Ordinance Frequently Asked Questions

### Q. Does this Ordinance apply to my business?

A. The Ordinance applies to all Prepared Food Vendors, defined as any establishment located within the City of Berkeley, including a Bakery, Cafeteria, Drive In, Food Products Store, Food Service Establishment (Carry Out, Quick Service, Full Service), Drugstore or Theater, as defined in BMC 23F.04, Mobile Food Facility, Temporary Food Facility (CA Health and Safety Code Sections 113831 and 113930), bar and other similar establishment, selling Prepared Food to be consumed on and/or off its premises. Prepared Food means foods or beverages which are prepared on the vendor's premises by cooking, chopping, slicing, mixing, freezing, squeezing, or other processing, and which require no further preparation to be consumed.

### Q. How do I find compliant compostable disposable foodware?

A. Disposable foodware such as paper takeout containers, cups, plates, straws, and other moisture or grease-resistant products must be Biodegradable Products Institute (BPI) certified compostable. Find BPI-certified products at [products.bpiworld.org](http://products.bpiworld.org). Foodware that is unlined, uncoated, made from 100% natural fiber (e.g. paper or wood), and does not contain fluorinated chemicals (e.g. napkins, wood toothpicks, wood chopsticks, and wood utensils) is allowed.

### Q. Am I required to increase my prices to add the \$0.25 charge for disposable cups?

A. This is the individual business' decision. If disposable cups are provided, the \$0.25 charge for disposable cups shall be itemized separately on menus, displays, ordering platforms, and receipts. If a customer brings in their own cup, they do not pay the \$0.25 cup charge. Customers with SNAP/WIC vouchers/EBT cards are also exempt from the \$0.25 cup charge.

### Q. What happens to the \$0.25 cup charge? Do businesses keep it?

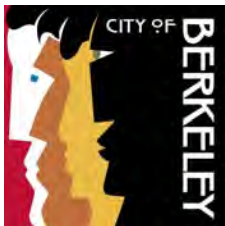
A. Yes. The disposable cup charge is retained by the Prepared Food Vendor to help offset costs.

### Q. Does this Ordinance apply to takeout (to-go) meals?

A. Yes. Takeout foodware must be BPI-certified compostable and all Prepared Food Vendors and Takeout Food Delivery Services must provide options for customers to affirmatively request Accessory Disposable Foodware Items separate from orders for food and beverages across all ordering and point-of-sale platforms, including but not limited to web, smart phone and other digital platforms, telephone and in-person. For safety reasons, disposable cups for delivery may include lids, spill plugs, and sleeves without affirmative customer request.

### Q. What if I have additional questions?

A. More information is available online at [cityofberkeley.info/FoodwareOrdinance](http://cityofberkeley.info/FoodwareOrdinance). You may also submit questions or requests for assistance by emailing [customerservice@cityofberkeley.info](mailto:customerservice@cityofberkeley.info).



# BERKELEY SINGLE USE FOODWARE & LITTER REDUCTION ORDINANCE

## Ordinance Requirements for Prepared Food Vendors

### Phase 1 Effective March 27, 2019



#### ◆ Accessory Items Upon Request

- ✓ Provide Accessory Disposable Foodware Items (e.g. straws, utensils, cup lids, sleeves, stirrers, napkins, etc.) only upon customer request or at self-service stations.



#### ◆ Front-of-House Recycle & Compost Receptacles

- ✓ Place color-coded recycle and compost receptacles next to trash receptacles available to customers.
- ✓ Post signage above and/or on each receptacle.

### Phase 2 Effective January 1, 2020



#### ◆ Certified Compostable Foodware

- ✓ Disposable foodware must be BPI-certified compostable.
- ✓ No disposable plastics allowed.
- ✓ Recyclable aluminum foil is allowed for burritos & wraps.



#### ◆ \$0.25 Disposable Cup Charge

- ✓ Charge \$0.25 for every disposable cup provided to customers.
- ✓ Identify the \$0.25 cup charge separately on menus, menu boards, delivery ordering platforms, and receipts.

### Phase 3 Effective July 1, 2020



#### ◆ Reusable Foodware for On-Premises Dining

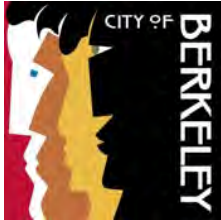
- ✓ Foodware utilized for on-premises dining must be reusable.
- ✓ Disposable foodware is prohibited for on-premises dining.
- ✓ Exceptions: Compostable paper tray liners are allowed. Napkins & compostable straws allowed upon customer request.

Enforcement begins one year after the effective date of each phase. Technical assistance will be available to assist businesses with the transition to reusables prior to enforcement.

# Resources

**Complementary on-site technical assistance is available.**

Please email [customerservice@cityofberkeley.info](mailto:customerservice@cityofberkeley.info) if you have questions or would like to request on-site assistance.



## **Ordinance Information:**

- [cityofberkeley.info/FoodwareOrdinance](http://cityofberkeley.info/FoodwareOrdinance)



## **Signage & Educational Resources:**

- Download printable posters: [cityofberkeley.info/zerowaste](http://cityofberkeley.info/zerowaste)
- Create your own posters: [stopwaste.org/signmaker](http://stopwaste.org/signmaker)
- Email [customerservice@cityofberkeley.info](mailto:customerservice@cityofberkeley.info) to request additional signage, on-site assistance or staff training.



## **Apply for Free Indoor Compost Bins:**

- [RecyclingRulesAC.org/containers](http://RecyclingRulesAC.org/containers)



## **Find BPI Certified Compostable Disposable Foodware:**

- [products.bpiworld.org](http://products.bpiworld.org)



## **Reusable Food Serviceware Guide:**

- [rethinkdisposable.org/resources](http://rethinkdisposable.org/resources)



From: A. La Pierre [energyqueen@earthlink.net]  
Sent: Sunday, December 22, 2019 10:53 AM  
To: Obermeit, Heidi  
Subject: Trash Can question for the Commission

Dear Ms. Obermeit,

As Secretary to the Zero Waste Commission, I respectfully ask you to please relay this message to the Commission.

More than two months ago, our sanitation worker threw our little 13-gallon trash can into his truck and took it away. I immediately complained and asked for a new one. City said, "We no longer stock those little cans, you'll have to get the larger one, which will cost you more."

Our Council voted for our city to be a Zero Waste community -- that we would eventually have zero waste going to the landfill, and that everything we have would be re-used, recycled or composted. We barely ever filled that little can every week as it was.

I filed a complaint, and City worker Freddie came out to visit me. I let him know that we wanted the smaller can, that we barely ever filled it up as it was. He left, saying he would report back and try and find a smaller can for us. To date, we have not heard anything back.

Since the removal of our 13-gallon can, we've generated only a small amount of trash (mostly filmy plastics which can't be recycled anymore). and some dog waste. (Most of the dog's waste ends up in the cans at the Ohline Dog Park.) You would think that the City would be more inclined to offer the smaller cans, if Zero Waste is the goal of the Solid Waste Division, since this is a directive from Council.

I understand that more revenue is generated by the size of the can used by residents. However, this need for revenue and the mandate from Council would appear to be in contrast, putting the residents in an awkward position -- those of us who truly want a Zero Waste Community, vs. those who are either unaware of the directive, or who have given up on how to comply, because of the contradictory message, and lack of smaller cans.

I don't have any answers, except that perhaps a fee restructuring is in order. No fees are charged for recycling or composting. Perhaps this needs to change, while providing smaller trash cans, to be more equitable, so that people are encouraged to reduce their waste, and recycle and compost more. I hope the Commission is able to address this in a meaningful way, and resolve this in a way that satisfies the Council's wishes, without causing a budget deficit.

Respectfully,

Alice La Pierre  
1900 Parker St.  
Berkeley, CA



# STRATEGIC PLAN COMMISSIONERS' INFO SESSION

**Thursday Jan. 16, 6:30-8 pm**

**2180 Milvia St, 1st floor**

**RSVP appreciated**


**[mmcdonough@cityofberkeley.info](mailto:mmcdonough@cityofberkeley.info)**

Discuss the many ways in which the work of Commissions reflects and supports Strategic Plan goals and projects.



November 18, 2019

To: Members of Berkeley Boards and Commissions

From:  Mark Numainville, City Clerk

Subject: Berkeley Lobbyist Registration Ordinance

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On October 2, 2018 the City Council adopted Chapter 2.09 of Berkeley Municipal Code creating a new lobbyist registration system. The effective date of this ordinance is January 1, 2020. As an appointed City official, contacts you have with members of community, agencies, organizations, businesses, etc. may be covered by the ordinance.

To be clear, your service as a commissioner does not itself create any obligation or requirement for you under the ordinance. Rather, as an appointed City official, you may on the receiving end of covered lobbying activities.

The requirement to register applies broadly. The definition of a “Local Government Lobbyist” includes any individual who is paid specifically to communicate with any elected or appointed City official or employee for the purpose of influencing any proposed or pending governmental action of the City; or any person whose duties as a salaried employee, officer or director of any corporation, organization or association include communication with any elected or appointed City official or City employee, for the purpose of influencing any proposed or pending governmental action of the City. See Section 2.09.050.M for the complete definition. There are also may exceptions and caveats to the requirements of the ordinance.

Once registered, a Local Government Lobbyist must file quarterly disclosures with the City (or annual disclosures if the lobbyist is a sole proprietorship or works for a lobbying firm with four or fewer employees). Your name and the subject of the lobbying activity may appear in these disclosures if you were lobbied on a proposed or pending governmental action. The lobbying disclosure forms are public documents and will be posted on the City’s website.

The attached ordinance and Lobbyist Registration Manual provides additional background on the registration, disclosure, and activity requirements and regulations.

If you have questions about the requirements, please contact the City Clerk Department at [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info).

**Chapter 2.09**  
**LOBBYIST REGISTRATION AND REGULATIONS**

## Sections:

## Article 1. General Provisions

- [2.09.010](#) Title.
- [2.09.020](#) Findings.
- [2.09.030](#) Purpose.

## Article 2. Definitions and Interpretation of This Act

- [2.09.040](#) Words and phrases.
- [2.09.050](#) Definitions.

## Article 3. Registration of Lobbyists

- [2.09.060](#) Registration with the Open Government Commission.
- [2.09.070](#) Cessation of employment.
- [2.09.080](#) Lobbyist training.
- [2.09.090](#) Exceptions.
- [2.09.100](#) Failure to Register.
- [2.09.110](#) Availability of information.
- [2.09.120](#) Filing under penalty of perjury.
- [2.09.130](#) Records.

## Article 4. Disclosure of Lobbying Activities and Audits

- [2.09.140](#) Quarterly disclosure.
- [2.09.150](#) Registration and filing of disclosures by organizations.
- [2.09.160](#) Audits.

## Article 5. Prohibitions

- [2.09.170](#) No unregistered employment or activity.
- [2.09.180](#) Personal obligation of City officials prohibited.
- [2.09.190](#) Deception prohibited.
- [2.09.200](#) False appearances prohibited.
- [2.09.210](#) Prohibited representations.
- [2.09.220](#) Restrictions on payments and expenses benefiting local public officials.
- [2.09.230](#) Restriction on campaign consultants lobbying current and former clients.

## Article 6. Enforcement

- [2.09.240](#) Rules and regulations.
- [2.09.250](#) Complaint, investigative procedures, and probable cause.
- [2.09.260](#) Notice and hearing on violations.
- [2.09.270](#) Violations – commission action.
- [2.09.280](#) Civil actions.
- [2.09.290](#) Civil penalties.
- [2.09.300](#) Criminal violation.
- [2.09.310](#) Joint and several liability.
- [2.09.320](#) Effective date.
- [2.09.330](#) Severability.

### **2.09.010 Title.**

This chapter shall be known as the Berkeley Lobbyist Registration Act, hereafter "the Act." (Ord. 7629-NS § 1 (part), 2018)

### **2.09.020 Findings.**

A. Democracy in our representative form of government requires that the public have an opportunity to know as much as possible what lobbying efforts are taking place that may affect decisions being made by our elected officials, City staff, boards, and commissions.

B. To the extent possible, it is the government's responsibility to balance the responsibility to ensure the health, safety, and general welfare of the public at large in a fiscally and environmentally sustainable manner. (Ord. 7629-NS § 1 (part), 2018)

### **2.09.030 Purpose.**

Therefore, the purpose of this ordinance is to codify certain existing practices, as well as to adopt new practices, to ensure that the public has an adequate opportunity to be informed of the City's activities and to communicate its concerns to its elected and appointed officials. (Ord. 7629-NS § 1 (part), 2018)

### **2.09.040 Words and phrases.**

Words and phrases used in this Act shall have the same meanings and be interpreted in the same manner as words and phrases used in the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12) and the Political Reform Act of 1974, California Government Code 81000 — 91014, hereafter the Political Reform Act, as amended and the regulations issued pursuant thereto, unless otherwise expressly provided or unless the context otherwise requires. (Ord. 7629-NS § 1 (part), 2018)

### **2.09.050 Definitions.**

For the purposes of this Act, the following definitions shall be applicable:

- A. "Campaign consultant" means any person or entity that receives or is promised economic consideration equaling \$1,000 or more in a calendar year for campaign consulting services. The term "campaign consultant" includes any person or entity that subcontracts with a campaign consultant to provide campaign consulting services, and that receives or is promised economic consideration equaling \$1,000 or more in a calendar year for providing campaign consulting services. The term "campaign consultant" does not include attorneys who provide only legal services, accountants who provide only accounting services, pollsters who provide only polling services, and treasurers who provide only those services which are required of treasurers by the Political Reform Act and the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12).
- B. "Campaign consulting services" means participating in campaign management or developing or participating in the development of campaign strategy.
- C. "Client" means the real party in interest for whose benefit the services of a local governmental lobbyist are actually performed. An individual member of an organization shall not be deemed to be a "client" solely by reason of the fact that such member is individually represented by an employee or agent of the organization as a regular part of such employee's or agent's duties with the organization as long as such member does not pay an amount of money or other consideration in addition to the usual membership fees for such representation.
- D. "Committee" shall be defined as set forth in the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12).
- E. "Contractor" means any party to an agreement in which the value of the consideration exceeds one thousand dollars (\$1,000), and, (1) The City is a party, or (2) the agreement or its effectiveness is in any way dependent or conditioned upon approval by the City Council or any board or commission, officer or employee of the City.
- F. "Contribution" shall have the same meaning as set forth in the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12).
- G. "Controlled committee" shall have the same meaning as set forth in the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12), but shall not include any state committees.
- H. "Employee" shall have the same meaning as set out in Title 20 of the Code of Federal Regulations § 404.1007(b).
- I. "Gift" shall be defined as set forth in the Political Reform Act, and the regulations adopted thereunder.
- J. "Gift of travel" shall mean payment, advance, or reimbursement for travel, including transportation, lodging, and food and refreshment connected with the travel.
- K. "Governmental action" means any discretionary administrative or legislative action of the City other than an

action which is ministerial in nature.

L. "Influence" or "influencing" means contacting a City elected or appointed official or employee, either directly or indirectly, for the purpose of promoting, supporting, modifying, opposing, causing the delay or abandonment of conduct, or otherwise intentionally affecting the official actions.

M. "Local governmental lobbyist" means any individual who: (1) receives or is entitled to receive one thousand dollars (\$1,000) or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, to communicate directly or through agents with any elected or appointed City official or City employee, for the purpose of influencing any proposed or pending governmental action of the City; or (2) whose duties as a salaried employee, officer or director of any corporation, organization or association include communication directly or through agents with any elected or appointed City official or City employee, for the purpose of influencing any proposed or pending governmental action of the City. No person is a local governmental lobbyist by reason of activities described in Section [2.09.090](#). In case of any ambiguity, the definition of "local governmental lobbyist" shall be interpreted broadly.

N. "Payment" means a payment, distribution transfer, loan advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

O. "Person doing business with the City" means any person whose financial interests are materially affected by governmental action as defined by Section [2.09.050\(K\)](#). It includes persons currently doing business with the City, planning to do business with the City, or having done business with the City within two years. For purposes of this Act a person's financial interests shall not be found to be materially affected by the issuance of any license or permit which does not require the exercise of discretion by City elected or appointed officials or employees.

P. "Public event" shall mean an event or gathering that any member of the public may attend, has been publicly announced and publicized in advance, and for which there is no admission cost or fee.

Q. "Public official" means an elected or appointed officer or employee or officially designated representative, whether compensated or not, of the United States or any of its agencies, the State of California, any political subdivision of the state, including cities, counties, districts, or any public corporation, agency or commission.

R. "Registered client" means any client of a local governmental lobbyist listed as part of the requirements of sections [2.09.060](#) and [2.09.140](#).

S. "State committee" shall mean a committee that makes contributions or expenditures to support or oppose candidates or measures voted on in state elections, or in more than one county. (Ord. 7629-NS § 1 (part), 2018)

#### **2.09.060 Registration with the Open Government Commission.**

A. No person shall act as local governmental lobbyist before registering as a local governmental lobbyist with the Open Government Commission, through the office of the City Clerk.

- B. At the time of registering, the local governmental lobbyist shall file with the City Clerk, in writing:
1. His or her name, business address, e-mail address, and business telephone number.
  2. The name, business address, and business telephone number of each client for whom the local governmental lobbyist attempts or receives compensation to influence any proposed or pending governmental action of the City.
  3. The name, business address, and business telephone number of the local governmental lobbyist's employer, firm or business affiliation.
- C. The local governmental lobbyist shall reregister annually during the month of January and at that time shall resubmit the required information.
- D. Local governmental lobbyists shall amend any information submitted to the Open Government Commission through registration and quarterly disclosures within five business days of the changed circumstances that require correction or updating of such information.
- E. At the time of initial registration, and during each annual registration, each local governmental lobbyist shall pay a fee of \$500.
- F. Failure to pay the annual fee shall constitute a termination of a local governmental lobbyist's registration with the Open Government Commission. The Open Government Commission is also authorized to establish additional processes for the termination of a local governmental lobbyist's registration.
- G. The City Clerk shall waive all registration fees for any employee of a tax-exempt organization presenting proof of the organization's tax-exempt status under 26 U.S.C. Section 501(c)(3) or 501(c)(4), so long as they are acting in that capacity.
- H. The City Clerk shall deposit all fees collected pursuant to this Section in the General Fund of the City of Berkeley. (Ord. 7629-NS § 1 (part), 2018)

**2.09.070 Cessation of employment.**

A local governmental lobbyist who has terminated all activities requiring registration shall notify the City Clerk of that fact and thereupon shall be relieved of any further obligations under this Act until such time as he or she commences activity requiring registration. (Ord. 7629-NS § 1 (part), 2018)

**2.09.080 Lobbyist training.**

A. Each local governmental lobbyist must complete a lobbyist training session offered by the Open Government Commission, through the Office of the Clerk, within 30 days of the local governmental lobbyist's initial registration. Thereafter, local governmental lobbyists shall engage in additional training sessions as



required by the Open Government Commission, at its discretion.

B. The Open Government Commission shall make local governmental lobbyist training sessions available on its website.

C. On or before the deadline for completing any required local governmental lobbyist training session, a local governmental lobbyist must file a signed declaration with the Open Government Commission stating, under penalty of perjury, that the local governmental lobbyist has completed the required training session. (Ord. 7629-NS § 1 (part), 2018)

### **2.09.090 Exceptions.**

The provisions of this Act shall not apply:

A. To a public official acting in his or her official capacity.

B. To the publication or broadcasting of news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge governmental action.

C. To a person specifically invited by the City Council or any committee thereof, or by any board or commission, or any committee of a board or commission, or by any officer or employee of the City charged by law with the duty of conducting a hearing or making a decision, for the purpose of giving testimony or information in aid of the body or person extending the invitation.

D. To a person who, without extra compensation and not as part of, or in the ordinary course of, his or her regular employment, presents the position of his or her organization when that organization has one or more of its officers, directors, employees or representatives already registered under the provisions of this Act.

E. To designated representatives of a recognized employee organization whose activities are limited to communicating with elected or appointed City officials or their representatives regarding (1) wages, hours and other terms and conditions of employment pursuant to the procedures set forth in Government Code Sections 3500—3510, or (2) the administration, implementation or interpretation of an existing employment agreement.

F. To persons whose only activity is to (1) submit a bid on a competitively bid contract, (2) respond to a request for proposal or qualifications, or (3) apply for grant funding or (4) negotiate the terms of a written contract or grant if selected pursuant to such bid or request for proposal or qualifications. This exception shall not apply to persons who attempt to influence the award or terms of a contract or grant with any elected or appointed official, unless their attempts are limited to speaking during public comment at a publicly noticed meeting.

G. To any individuals serving in their professional capacity (e.g. attorneys, architects, or engineers), who are employed by a local government lobbyist, and whose attempts to influence governmental action are limited to: (1) Publicly appearing at a public meeting, public hearing, or other official proceeding open to the public to

represent or testify on behalf of a proposed development; (2) Preparing or submitting documents or writings in connection with the proposed development for use at a public meeting, public hearing, or other official proceeding open to the public; and (3) Contacting city employees or agents working under the direction of the city manager directly relating to (1) and (2) above, or contacting elected or appointed City officials directly relating to (1) and (2) above.

H. Persons employed by, or a member of, a labor union. (Ord. 7629-NS § 1 (part), 2018)

#### **2.09.100 Failure to Register.**

If the Open Government Commission determines that a person is subject to registration and he or she fails to register within seven days of that determination, he or she shall be barred from acting as a local governmental lobbyist except when appearing before the City Council or other board or commission at a noticed public meeting. Such debarment shall be in effect for three months from the date of such determination or until registration, whichever is later. (Ord. 7629-NS § 1 (part), 2018)

#### **2.09.110 Availability of information.**

All registration information shall be retained by the City Clerk for a period of five years from the date of filing, shall constitute part of the public records of the City, and shall be open to public inspection. (Ord. 7629-NS § 1 (part), 2018)

#### **2.09.120 Filing under penalty of perjury.**

All information required by this Act shall be filed with the City Clerk on forms prescribed by the Open Government Commission, and accompanied by a declaration by the local governmental lobbyist that the contents thereof are true and correct under penalty of perjury. (Ord. 7629-NS § 1 (part), 2018)

#### **2.09.130 Records.**

A local governmental lobbyist shall retain, for a period of five years, all books, papers and documents necessary to substantiate the registration required to be made under this Chapter. (Ord. 7629-NS § 1 (part), 2018)

#### **2.09.140 Quarterly disclosure.**

For each calendar quarter in which a local governmental lobbyist was required to be registered, he or she shall file a quarterly report with the City Clerk, unless the local governmental lobbyist is a sole proprietorship or works for a lobbying firm with four or fewer employees, in which case they shall file annually. The reports shall be due no later than thirty (30) days after the end of the reporting period. The report shall contain the following information:

A. The item(s) of governmental action and the name and address of the client(s) on whose behalf the local governmental lobbyist sought to influence.

B. For each item of governmental action sought to be influenced, the name and title of each City employee, or elected or appointed City official with whom the local governmental lobbyist specifically met or communicated.

C. A brief narrative description (no longer than three sentences) of the position advocated by the local governmental lobbyist on behalf of the identified client.

D. If any local governmental lobbyist, or a registered client at the behest of a local governmental lobbyist, employs or requests, recommends or causes a client of the local governmental lobbyist to employ, and such client does employ, any City employee, or elected or appointed City official, in any capacity whatsoever, or a member of the immediate family of one of these individuals, the local governmental lobbyist shall disclose (1) the name of the person employed or hired, (2) a description of the services actually performed, and (3) the total payments made to the City employee or elected or appointed City official during the reporting period identified only by the following categories: less than \$250; between \$250 and \$1,000; greater than \$1,000 but less than \$10,000; greater than \$10,000.

E. If any elected City officeholder or candidate for elected City office employs or hires a local governmental lobbyist to provide compensated services to the officeholder or candidate, the local governmental lobbyist shall disclose (1) the name of the person who employed or hired the local governmental lobbyist, (2) a description of the services actually performed, and (3) the total payments made during the reporting period identified only by the following categories: less than \$250; between \$250 and \$1,000; greater than \$1,000 but less than \$10,000; greater than \$10,000.

F. If a local governmental lobbyist solicits any person to make a contribution to an elected City officeholder, candidate for City office or to any committee or campaign fund controlled by such officeholder or candidate, the local governmental lobbyist shall disclose the names of the persons whom the local governmental lobbyist solicited, and the officeholder or candidate for whose benefit each solicitation was made. A solicitation does not include a request for a contribution made:

1. in a mass mailing sent to members of the public;
2. in response to a specific request for a recommendation;
3. to a gathering which members of the public may attend; or
4. in a newspaper, on radio or television, or in any other mass media.

A local governmental lobbyist does not "solicit" solely because his or her name is printed with other names on stationery or a letterhead used to request contributions. If a local governmental lobbyist sources a donation from more than fifty individual members or employees of a corporation, union or other association that is a registered client of the local governmental lobbyist, or if the local governmental lobbyist makes a solicitation to all members or employees of a corporation, union or association that is a registered client of the local governmental lobbyist, the local governmental lobbyist may choose to disclose the name of the registered client instead of the names of the persons whom the lobbyist actually solicited. (Ord. 7629-NS § 1 (part), 2018)

**2.09.150 Registration and filing of disclosures by organizations.**

The Open Government Commission is authorized to establish procedures to permit the registration and filing of local governmental lobbyist disclosures by a business, firm, or organization on behalf of the individual local governmental lobbyists employed by those businesses, firms, or organizations. (Ord. 7629-NS § 1 (part), 2018)

**2.09.160 Audits.**

At least once every year, the Open Government Commission shall initiate audits of at least 5% of registered local governmental lobbyists, at minimum one local governmental lobbyist, selected at random. At the request of the Open Government Commission, the City Clerk may assist in conducting these audits. This requirement shall not restrict the authority of the Open Government Commission or the City Clerk to undertake any other audits or investigations of a local governmental lobbyist authorized by law or regulation. Within ten business days of a request by the Open Government Commission or City Clerk, a local governmental lobbyist or anyone required to register as a local governmental lobbyist shall provide the requested documents required to be retained under this Chapter. (Ord. 7629-NS § 1 (part), 2018)

**2.09.170 No unregistered employment or activity.**

- A. A local governmental lobbyist shall not engage in any activity on behalf of a client as a local governmental lobbyist unless such local governmental lobbyist is registered and has listed such client with the City Clerk.
- B. No person shall accept compensation for acting as a local governmental lobbyist except upon condition that he or she forthwith register as required by this Act. (Ord. 7629-NS § 1 (part), 2018)

**2.09.180 Personal obligation of City officials prohibited.**

Local governmental lobbyists, or clients shall abstain from carrying out any act with the express purpose and intent of placing any elected or appointed City official or City employee under personal obligation to such local governmental lobbyist, client, contractor or person. (Ord. 7629-NS § 1 (part), 2018)

**2.09.190 Deception prohibited.**

No local governmental lobbyist or client shall deceive or attempt to deceive a City employee, or elected or appointed City official as to any material fact pertinent to any pending or proposed governmental action. (Ord. 7629-NS § 1 (part), 2018)

**2.09.200 False appearances prohibited.**

No local governmental lobbyist or client shall attempt in any way to create a fictitious appearance of public favor or disfavor of any governmental action or to cause any communication to be sent to a city employee in the name of any fictitious person or in the name of any real person without the real person's consent. (Ord. 7629-NS § 1 (part), 2018)

**2.09.210 Prohibited representations.**

No local governmental lobbyist or client shall represent, either directly or indirectly, orally or in writing that such

person can control or obtain the vote or action of any City employee, or elected or appointed City official. (Ord. 7629-NS § 1 (part), 2018)

**2.09.220 Restrictions on payments and expenses benefiting local public officials.**

A. No local government lobbyist or a registered client shall make any payment or incur any expense, including any gift of travel, that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals, in which the cumulative value of such payments or expenses exceeds \$240 during any calendar year. This \$240 limit may be adjusted every four years by the OGC to account for inflation. The payments and expenses specified in subsections 2.09.220(A)-(D) include gifts, honoraria and any other form of compensation but do not include:

1. gifts of food or refreshment worth \$25 or less per occasion, if the local governmental lobbyist is a 501 (c)(3) nonprofit organization, the gift of food or refreshment is offered in connection with a public event held by the 501 (c)(3) nonprofit organization, and the same gift of food or refreshment is made available to all attendees of the public event;
2. payments or expenses that, within thirty (30) days after receipt, are returned unused or are reimbursed;
3. gifts of food or beverage worth \$25 or less per occasion, if said gift is provided in the home of an individual local governmental lobbyist or individual local governmental lobbyist's registered client when the individual or member of the individual's family is present;
4. a pass or ticket to a fundraising event for a campaign committee or candidate, or for an organization exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code;
5. informational material;
6. campaign contributions not to exceed the limit imposed by the Berkeley Election Reform Act or state law, as applicable; and
7. salaries, consulting fees or other payments for services rendered or bargained for. No other exception to, or exclusion from, the definition of gift or honoraria contained in the Political Reform Act of 1974 as amended, and the regulations issued pursuant thereto, shall apply to this section.

For purposes of the gift limits imposed by subsections (A)-(C), gifts shall be aggregated set forth in California Code of Regulations, Title 2, Section 18945.1, as it may hereafter be amended.

B. No lobbyist or a lobbyist's registered client shall make any payment to a third-party for the purpose of making any payment or incurring any expense, including any gift of travel, that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals.

C. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from any lobbyist for the individual's personal benefit or for the personal benefit of a member of the immediate family of one of these individuals.

D. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from a third-party if the officer knows or has reason to know that the third-party is providing the payment or expense on behalf of a lobbyist. (Ord. 7629-NS § 1 (part), 2018)

**2.09.230 Restriction on campaign consultants lobbying current and former clients.**

A. No campaign consultant, individual who has an ownership interest in the campaign consulting business, or employee of the campaign consultant shall lobby any elected or appointed City official of the city who is a current or former client of the campaign consultant.

B. This prohibition shall not apply to:

1. an employee of a campaign consultant whose sole duties are clerical; or
2. an employee of a campaign consultant who did not personally provide campaign consulting services to the officer of the city with whom the employee seeks to communicate in order to influence local legislative or administrative action.

C. The exceptions in Subsection (B) shall not apply to any person who communicates with an officer of the city in his or her capacity as an employee of the campaign consultant who is prohibited by Subsection (A) from making the communication.

D. Whenever the following words or phrases are used in this Section, they shall be defined as follows:

1. "Current client" shall mean a person for whom the campaign consultant has been contracted to provide campaign consulting services. If such person is a committee as defined by Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12), the current client shall be any individual who controls such committee; any candidate that such committee was primarily formed to support; and any proponent or opponent of a ballot measure that the committee is primarily formed to support or oppose.
2. "Employee" shall mean an individual employed by a campaign consultant, but does not include any individual who has an ownership interest in the campaign consultant that employs them.
3. "Former client" shall mean a person for whom the campaign consultant has terminated all campaign consulting services within the past twenty-four (24) months. (Ord. 7629-NS § 1 (part), 2018)

**2.09.240 Rules and regulations.**

The Open Government Commission may adopt, amend, and rescind rules, procedures, and regulations to carry

out the purposes of this Chapter, and to govern the Commission's procedures to enforce this Chapter. (Ord. 7629-NS § 1 (part), 2018)

**2.09.250 Complaint, investigative procedures, and probable cause.**

A. Any person who believes that a violation of any portion of this chapter has occurred may file a complaint with the Open Government Commission. The Open Government Commission may initiate an investigation of a possible violation of this chapter based on information brought before the commission, including information presented by staff.

B. After receiving a complaint or information regarding a possible violation of this chapter, the Open Government Commission shall decide whether to (1) refer to the secretary to investigate, to the extent the secretary has not done so; (2) dismiss the complaint; or (3) find probable cause that a violation of this chapter has occurred. (Ord. 7629-NS § 1 (part), 2018)

**2.09.260 Notice and hearing on violations.**

After the Open Government Commission determines there is probable cause for believing that a provision of this Chapter has been violated and makes a good faith effort to give reasonable written notice to the person or persons involved in the allegation using the contact information with which they registered, it may hold a hearing to determine if a violation has occurred, and may determine an appropriate remedy if a violation is found. The hearing pursuant to this section shall be conducted in an impartial manner, consistent with the requirements of due process. A record shall be maintained of the proceedings, and a report summarizing the facts, issues, and any remedial actions shall be issued by the commission following the conclusion of the hearing.

The commission shall conduct such hearings and proceedings with respect to determinations of probable cause pursuant to adopted procedures. All interested persons may participate in the hearing. (Ord. 7629-NS § 1 (part), 2018)

**2.09.270 Violations – commission action.**

If the Open Government Commission finds a violation of this Act, the Open Government Commission may: (1) Find mitigating circumstances and take no further action; (2) issue a public statement or reprimand, (3) impose a civil penalty in accordance with this Act, or (4) take other action as specified in 2.06.190(A)(1). (Ord. 7629-NS § 1 (part), 2018)

**2.09.280 Civil actions.**

If the commission has reason to believe that a violation of this chapter has occurred or is about to occur, it may also institute action at law or equity to enforce and compel compliance with the provision of this chapter. Any resident of the City who believes that a violation of this chapter has occurred, may institute such action at law or equity for injunctive relief and to compel compliance with the provisions of this chapter. (Ord. 7629-NS § 1 (part), 2018)

**2.09.290 Civil penalties.**

- A. Except as otherwise specified in this Act, the Open Government Commission may impose penalties of up to one thousand dollars (\$1,000) for each violation or, if the violation was a prohibited payment, expense or gift under section [2.09.220](#), of up to three times the value of each prohibited payment, expense or gift.
- B. If any civil penalty imposed by the Open Government Commission is not timely paid, the Open Government Commission shall refer the debt to the appropriate City agency or department for collection.
- C. For local government lobbyists found to have repeatedly over more than one quarter, knowingly, or willfully violated the Act, the Open Government Commission may impose penalties of up to twenty-five thousand dollars (\$25,000) for any violation, using factors adopted by the Open Government Commission through its rules, regulations, or procedures. (Ord. 7629-NS § 1 (part), 2018)

**2.09.300 Criminal violation.**

- A. Any person who knowingly or willfully violates the provisions of this Act is guilty of a misdemeanor.
- B. The prosecution of any misdemeanor violation of this Act shall commence within four years after the date on which the alleged violation occurred.
- C. No person convicted of a misdemeanor violation of this Act may act as a local governmental lobbyist, render consultation or advice to any registered client, or otherwise attempt to influence a governmental action for compensation for one year after such conviction. (Ord. 7629-NS § 1 (part), 2018)

**2.09.310 Joint and several liability.**

- A. Should two or more persons be responsible for any violation under this Chapter, they may be jointly and severally liable.
- B. The client or employer of a local governmental lobbyist shall be jointly and severally liable for all violations of this Chapter committed by the local governmental lobbyist in connection with acts or omissions undertaken on behalf of that client or employer.
- C. If a business, firm or organization registers or files local governmental lobbyist disclosures on behalf of its employees pursuant to Section [2.09.150](#) the business, firm or organization may be held jointly and severally liable for any failure to disclose its employees' lobbying activities. (Ord. 7629-NS § 1 (part), 2018)

**2.09.320 Effective date.**

The effective date of this Act shall be January 1, 2020. The Act may be effective at an earlier date if administratively feasible. (Ord. 7629-NS § 1 (part), 2018)

**2.09.330 Severability.**

The provisions of this Chapter are declared to be separate and severable. The invalidity of any clause,



sentence, paragraph, subdivision, section or portion of this Chapter, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this Chapter, or the validity of its application to other persons or circumstances. (Ord. 7629-NS § 1 (part), 2018)



# LOBBYIST MANUAL 2020 EDITION

BACKGROUND INFORMATION  
RULES AND PROCEDURES



ADOPTED BY ORDINANCE NO. 7,629-N.S. (OCTOBER 2, 2018)

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## CHAPTER I. INTRODUCTION

### CHAPTER I. INDEX

- A. The History and Purpose of Berkeley's Lobbyist Registration Act
- B. The Open Government Commission
- C. Who must Register?
- D. What are Lobbying Activities?
- E. What kind of Communication falls within these Lobbying Activities?
- F. Who Are The Officers of the City of Berkeley?
- G. What Kind of Communications are Exempt?

#### **A. The History and Purpose of Berkeley's Lobbyist Registration Act**

On October 2, 2018, the Berkeley City Council adopted the Lobbyist Registration Act (Berkeley Municipal Code Chapter 2.09) by Ordinance No. 7,629-N.S. The ordinance goes into effect on January 1, 2020.

The findings of the Ordinance state that democracy in our representative form of government requires that the public have an opportunity to know as much as possible what lobbying efforts are taking place that may affect decisions being made by our elected officials, City staff, boards, and commissions.

As such, the stated purpose of the Lobbyist Registration Act (the Act) is to codify certain existing practices, as well as to adopt new practices, to ensure that the public has an adequate opportunity to be informed of the City's activities and to communicate its concerns to its elected and appointed officials.

This guide, prepared by the City, provides background information on the rules and procedures for lobbying activities in the City of Berkeley. Words and phrases used in this Manual and the Act have the same meanings and be interpreted in the same manner as words and phrases used in the Berkeley Election Reform Act and the state Political Reform Act of 1974 (California Government Code sections 81000 to 91014) and the regulations issued pursuant to both, unless otherwise expressly provided or unless the context otherwise requires. (BMC 2.09.040)

#### **B. The Open Government Commission**

The Open Government Commission (OGC) consists of the nine members of the Berkeley Fair Campaign Practices Commission who serve as *ex officio* members of the OGC. The Commission hears complaints of several open government laws, considers ways to informally resolve those complaints, and makes recommendations to the City Council regarding such complaints. Enforcement of the Lobbyist Registration Act is delegated by the Act to the OGC.

The OGC is staffed by the Berkeley City Attorney's Office. Please contact OGC staff at (510) 981-6998 or at [FCPC@cityofberkeley.info](mailto:FCPC@cityofberkeley.info) for questions regarding the requirements, definitions, and enforcement provisions of the Act.

### C. Who must Register?

The Act requires every “local governmental lobbyist” to register. A person qualifies as a local governmental lobbyist in the City of Berkeley if the individual:

1. Receives or is entitled to receive one thousand dollars (\$1,000) or more in economic consideration in a calendar month (other than reimbursement for reasonable travel expenses) to communicate directly or through agents with any elected or appointed City official or City employee, for the purpose of influencing any proposed or pending governmental action of the City; or
2. Is a salaried employee, officer, or director of a corporation, organization or association, and whose duties include communication directly or through agents with any elected or appointed City official or City employee, for the purpose of influencing any proposed or pending governmental action of the City.

#### *Examples:*

- A business hires a consultant for \$1,000 per month to communicate the business’s position on a proposed affordable housing development to a City Council staff member. The consultant qualifies as a lobbyist and must register.
- A salaried Executive Director of a non-profit organization that receives funding from the City speaks at a City Council meeting in their official capacity to advocate for funding. They qualify as a lobbyist and must register.

In case of any ambiguity, the definition of “local governmental lobbyist” shall be interpreted broadly.

- ❖ While the Act requires only individuals to register (and not companies or organizations), each employer and client of a lobbyist must be identified on both the Lobbyist Registration Form and the Lobbyist Quarterly/Annual Disclosure Reports.

### D. What are Lobbying Activities?

Lobbying activities that fall within the scope of the Act include any direct or indirect communication with any appointed or elected City official or City employee, for the purpose of influencing any proposed or pending governmental action of the City.

In other words, the communications are for the purpose of promoting, supporting, modifying, opposing, causing the delay or abandonment of conduct, or otherwise intentionally affecting the official government actions.

- ❖ Governmental action is discretionary administrative or legislative actions of the City, other than an action which is ministerial in nature.

**E. What kind of Communication falls within these Lobbying Activities?**

For purposes of the Act, a communication for the purpose of influencing a governmental action includes any contact with a City elected or appointed public official or employee, either directly or indirectly, orally, in writing, or electronically. Examples include, but are not limited to, an in-person meeting, telephone call, video conference, email, letter, text message, or indirectly through intermediaries.

**F. Who are the Officers of the City of Berkeley?**

The Act covers lobbying of any elected or appointed official, or employee, whether compensated or not, of the City of Berkeley or any of its agencies.

- An employee shall have the same meaning as set out in Title 20 of the Code of Federal Regulations § 404.1007(b).
- Examples include permanent staff, temporary employees, City Councilmembers, Rent Board members, School Board members, City Council aides, and appointed commissioners.
- Boards and Commissions shall mean any body created by the City Council or City Charter.

**G. What kind of Communications are Exempt?**

The Act exempts certain types of individuals and communications. Those exemptions include:

1. A public official acting in their official capacity.
2. The publication or broadcasting of news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge governmental action.
3. A person specifically invited by the City Council or any committee thereof, or by any board or commission, or any committee of a board or commission, or by any officer or employee of the City charged by law with the duty of conducting a hearing or making a decision, for the purpose of giving testimony or information in aid of the body or person extending the invitation.
4. A person who, without extra compensation and not as part of, or in the ordinary course of, their regular employment, presents the position of their organization when that organization has one or more of its officers, directors, employees or representatives already registered under the provisions of this Act.

*Examples:*

- A person who talks to a City public works employee on behalf of a neighborhood association to get a stop sign placed at a busy intersection does not qualify as a lobbyist unless the person is being paid \$1,000 per month or more to lobby on behalf of the association or is a salaried employee, officer, or director, of the neighborhood association.
- An employee of a community agency speaking at a City Council meeting, to advocate on behalf of their agency when the Executive Director of the agency is already registered as a local governmental lobbyist does not have to register.

5. The designated representatives of a recognized employee organization whose activities are limited to communicating with elected or appointed City officials or their representatives regarding (1) wages, hours and other terms and conditions of employment pursuant to the procedures set forth in Government Code Sections 3500—3510, or (2) the administration, implementation or interpretation of an existing employment agreement.
6. Persons whose only activity is to (1) submit a bid on a competitively bid contract, (2) respond to a request for proposal or qualifications, or (3) apply for grant funding or (4) negotiate the terms of a written contract or grant if selected pursuant to such bid or request for proposal or qualifications. This exception shall not apply to persons who attempt to influence the award or terms of a contract or grant with any elected or appointed official, unless their attempts are limited to speaking during public comment at a publicly noticed meeting.
7. Any individuals serving in their professional capacity (e.g. attorneys, architects, or engineers), who are employed by a local government lobbyist, and whose attempts to influence governmental action are limited to: (1) Publicly appearing at a public meeting, public hearing, or other official proceeding open to the public to represent or testify on behalf of a proposed development; (2) Preparing or submitting documents or writings in connection with the proposed development for use at a public meeting, public hearing, or other official proceeding open to the public; and (3) Contacting city employees or agents working under the direction of the City Manager directly relating to (1) and (2) above, or contacting elected or appointed City officials directly relating to (1) and (2) above.
8. Persons employed by, or a member of, a labor union.

*Examples:*

An architect attends and presents to the Zoning Adjustments Board, advocating for approval of their current development project:

- The developer or property owner is already registered as a local governmental lobbyist.
  - Since a representative from the project is already registered, the architect is exempt from registering.
- The developer or property owner is not registered as a local governmental lobbyist.
  - Then the architect must register.
- A property owner representing themselves before ZAB would not have to register.

## CHAPTER II. GETTING STARTED: REGISTRATION

### CHAPTER II. INDEX

- A. Filing Officer
- B. Initial Registration
- C. Failure to Register
- D. Training
- E. Termination of Lobbying Activities
- F. Availability of City Records
- G. Individual Lobbyist Records

#### **A. Filing Officer**

Berkeley's filing officer under both city and state law is the City Clerk. The City Clerk will provide forms and technology to complete and file the required reports. All lobbyist forms required by the Lobbyist Registration Act are filed with the City Clerk Department, located on the first floor of 2180 Milvia Street.

#### **B. Initial Registration (BMC 2.09.060)**

Beginning on January 1, 2020, a local governmental lobbyist must register prior to any lobbying activity taking place. At the time of initial registration, each local governmental lobbyist shall pay a fee of \$500. Upon registration, lobbyists will be given information regarding how to access the online portal provided by NetFile for future disclosure filing obligations.

- ❖ After initial registration, all individual local governmental lobbyists must also pay an annual re-registration fee of \$500 on or before every subsequent February 1.
- ❖ The City Clerk will waive all registration fees for any employee of a tax-exempt organization presenting proof of the organization's tax-exempt status under 26 U.S.C. Section 501(c)(3) or 501(c)(4), so long as the employee is acting in that capacity as a local government lobbyist.

All information required shall be filed with the City Clerk on forms provided by the City Clerk, and accompanied by a handwritten signature and a declaration that the contents thereof are true and correct under penalty of perjury.

On the registration form, the local governmental lobbyist must provide:

1. Their name, business address, e-mail address, and business telephone number.
2. The name, business address, and business telephone number of each client for whom the local governmental lobbyist attempts or receives compensation to influence any proposed or pending governmental action of the City.



3. The name, business address, and business telephone number of the local governmental lobbyist's employer, firm or business affiliation.

Failure to pay the registration fee shall constitute a termination of a local governmental lobbyist's registration with the Open Government Commission.

**C. Failure to Register (BMC 2.09.100)**

If the OGC determines that a person is subject to registration and failed to register within **seven** days of that determination, the person shall be barred from acting as a local governmental lobbyist except when appearing before the City Council or other board or commissions at a noticed public meeting. Such debarment shall be in effect for three months from the date of such determination or until registration, whichever is later. The OGC may establish additional processes for the termination of a local governmental lobbyist's registration.

**D. Training (BMC 2.09.080)**

Each local governmental lobbyist must complete a lobbyist training session offered by the OGC, through the Office of the City Clerk, **within 30 days** of the local governmental lobbyist's initial registration. The training is available via an online training.

Once completed, the local governmental lobbyist must file a signed Affirmation of Training Completion stating, under penalty of perjury, that the local governmental lobbyist has completed the training session. An original signature is required and must be submitted to the City Clerk Department.

Failure to file an Affirmation of Training **Completion** can result in a civil penalty.

**E. Termination of Lobbying Activities (BMC 2.09.070)**

A local governmental lobbyist who has ended all activities that require registration, must notify the City Clerk and will be relieved of any further filing responsibilities until such time that they resume activity requiring registration. The lobbyist must file an amended registration form, indicating the termination, accompanied by a quarterly disclosure filing that indicates lobbying activities that are up-to-date with the date of termination.

**F. Availability of City Records (BMC 2.09.110)**

All registration and disclosure information is open for public inspection at the City Clerk Department and online through NetFile. The information will be retained by the City for a period of five (5) years and will be accessible through the City's webpage.

**G. Individual Lobbyist Records (2.09.130)**

A local governmental lobbyist shall retain, for a period of five years, all books, papers and documents necessary to substantiate the registration required to be made under the Act. Records must be sufficient to document the accuracy of disclosure reports. Upon request, lobbyists must make all records available to the OGC, City Attorney, and City Clerk.

## CHAPTER III. WHEN AND WHAT MUST A LOBBYIST FILE ON DISCLOSURE REPORTS?

### CHAPTER III. INDEX

- A. Quarterly Disclosure Report
- B. Annual Disclosure Report
- C. General Disclosure Requirements
- D. How to File?

#### **A. Quarterly Disclosure Report (BMC 2.09.140)**

For each calendar quarter in which a local governmental lobbyist was required to be registered, they shall file a quarterly disclosure report with the City Clerk. The reports shall be due no later than thirty (30) days after the end of the reporting period.

- ❖ An amendment is required within five (5) business days of changed circumstances that require correction or updating of such information.

#### **B. Annual Disclosure Report (BMC 2.09.140)**

If a local governmental lobbyist is a sole proprietorship or works for a lobbying firm with four or fewer employees, they shall file annually. The annual disclosure reports are due by January 31, covering the period January 1 through December 31. The annual disclosure report must include the same required information defined below.

#### **C. General Disclosure Requirements**

To comply with either the annual or quarterly disclosure filing requirements, a local government lobbyist must complete and submit a disclosure of lobbying activities report, detailing the lobbying activity that took place to the City Clerk Department. The disclosure of lobbying activities reports contain the schedules listed below. Lobbyists shall use only the schedules that pertain to their type of lobbying activities. The cover page of the disclosure report includes the option to indicate that no reportable lobbying activity has taken place.

<u>Deadline</u>	<u>Reporting Period</u>	
April 30	January 1 - March 30	** Only applies to sole proprietor or firms with 4 or fewer employees.
July 31	April 1 - June 30	
October 31	July 1 - September 30	
January 31	October 1 - December 31	
Annual: January 31**	January 1 - December 31	

1. **Schedule A: Governmental Action Disclosure.** Lists information regarding all discretionary administrative or legislative actions of the City, other than an action which is ministerial in nature, that the lobbyist sought to influence, including:

- a. The item(s) of governmental action and the name and address of the client(s) on whose behalf the local governmental lobbyist sought to influence.
- b. For each item of governmental action sought to be influenced, the name and title of each City employee, or elected or appointed City official with whom the local governmental lobbyist specifically met or communicated.
- c. A brief narrative description (no longer than three sentences) of the position advocated by the local governmental lobbyist on behalf of the identified client.

2. **Schedule B: Employment.** Lists information regarding the employment of any City employee, elected/appointed City official, or a member of the immediate family of one of these individuals by the local governmental lobbyist, or a registered client of a the lobbyist, including:

- a. The name of the person employed or hired.
- b. A description of the services actually performed.
- c. The total payments made to the City employee or elected or appointed City official during the reporting period identified only by the following categories: less than \$250; between \$250 and \$1,000; greater than \$1,000 but less than \$10,000; greater than \$10,000.

3. **Schedule C: Compensated Services.** Lists information regarding any compensated services the local governmental lobbyist has been hired to perform for any elected City officeholder or candidate for elected City office, including:

- a. The name of the person who employed or hired the local governmental lobbyist.
- b. A description of the services actually performed.
- c. The total payments made during the reporting period identified only by the following categories: less than \$250; between \$250 and \$1,000; greater than \$1,000 but less than \$10,000; greater than \$10,000.

**“Client”** means the real party in interest for whose benefit the services of a local governmental lobbyist are actually performed.

**“Payment”** means a payment, distribution transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

4. **Schedule D: Contribution Solicitations.** Lists information regarding any solicitations by the local governmental lobbyist for contributions to an elected City officeholder, candidate for City office, or committee or campaign fund controlled by such officeholder or candidate, including:

- a. The names of the persons whom the local governmental lobbyist solicited.
- b. The officeholder or candidate for whose benefit each solicitation was made.

If a local governmental lobbyist sources a donation from more than fifty individual members or employees of a corporation, union or other association that is a registered client of the local governmental lobbyist, or if the local governmental lobbyist makes a solicitation to all members or employees of a corporation, union or association that is a registered client of the local governmental lobbyist, the local governmental lobbyist may choose to disclose the name of the registered client instead of the names of the persons whom the lobbyist actually solicited.

#### **D. How to File?**

You may file disclosure reports either in person at the City Clerk Department or by accessing the City's online filing portal, NetFile. Quarterly and annual disclosure reports may be obtained through the individual lobbyist's filing portal. NetFile can be accessed through the City's webpage or visiting the filer access portal at <http://www.netfile.com/agency/berk/>.

Registered lobbyists must complete the report, print and sign it, and upload it into the system. **A hand-written signature is required on all documents.** Completed disclosure reports may also be sent by U.S. mail or delivered in person to the City Clerk Department. Disclosure reports may not be submitted via email.

Complete user instructions for NetFile are available through the City Clerk Department. Lobbyists may contact the City Clerk Department at (510) 981-6908 or [elections@cityofberkeley.info](mailto:elections@cityofberkeley.info) to get started with NetFile. The City Clerk Department also offers one-on-one training for lobbyists on using NetFile.

## CHAPTER IV. PROHIBITED ACTIVITIES

### CHAPTER IV. INDEX

- A. Personal Obligation of City Officials Prohibited
- B. Deception & False Appearances Prohibited
- C. Deception Prohibited
- D. Restrictions on Payments And Expenses Benefiting Local Public Officials
- E. Restriction on Campaign Consultants Lobbying Current And Former Clients

#### **A. Personal Obligation of City Officials Prohibited (BMC2.09.180)**

A local governmental lobbyist, or the lobbyist's clients must abstain from carrying out any act with the express purpose and intent of placing any elected or appointed City official or City employee under personal obligation to the local governmental lobbyist, client, contractor or person.

**"City official"** means the Mayor, members of the City Council and Rent Stabilization Board, City Commissioners, the City Auditor, and School Board members.

#### **B. Deception & False Appearances Prohibited (BMC 2.09.190 & 2.09.200)**

No local governmental lobbyist or client may deceive or attempt to deceive a City employee, or elected or appointed City official as to any material fact pertinent to any pending or proposed governmental action. Neither may a local governmental lobbyist or client attempt in any way to create a fictitious appearance of public favor (or disfavor) of any governmental action or to cause any communication to be sent to a City employee in the name of any fictitious person or in the name of any real person without the real person's consent.

#### **C. Deception Prohibited (BMC 2.09.210)**

No local governmental lobbyist or client may represent, either directly or indirectly, orally or in writing that such person can control or obtain the vote or action of any City employee, or elected or appointed City official.

#### **D. Restrictions on Payments and Expenses Benefiting Local Public Officials (BMC 2.09.220)**

No local government lobbyist or client shall make any payment or incur any expense, including any gift of travel, that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals, in which the cumulative value of such payments or expenses exceeds \$240 during any calendar year. The prohibited payments and expenses include gifts, honoraria and any other form of compensation.

**"Payment"** means a payment, distribution transfer, loan advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible

The following are exempt from the restrictions in 2.09.220:

1. gifts of food or refreshment worth \$25 or less per occasion, if the local governmental lobbyist is a 501 (c)(3) nonprofit organization, the gift of food or refreshment is offered in connection with a public event held by the 501 (c)(3) nonprofit organization, and the same gift of food or refreshment is made available to all attendees of the public event;
2. payments or expenses that, within thirty (30) days after receipt, are returned unused or are reimbursed;
3. gifts of food or beverage worth \$25 or less per occasion, if said gift is provided in the home of an individual local governmental lobbyist or individual local governmental lobbyist's registered client when the individual or member of the individual's family is present;
4. a pass or ticket to a fundraising event for a campaign committee or candidate, or for an organization exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code;
5. informational material;
6. campaign contributions not to exceed the limit imposed by the Berkeley Election Reform Act or state law, as applicable; and
7. Salaries, consulting fees or other payments for services rendered or bargained for.

No other exception to, or exclusion from, the definition of gift or honoraria contained in the Political Reform Act of 1974 as amended, and the regulations issued pursuant thereto, shall apply to this section.

For purposes of the gift limits imposed by section 2.09.220, gifts shall be aggregated as set forth in state law.

The following types of payments are prohibited under 2.09.220:

1. A lobbyist or a lobbyist's registered client cannot use an intermediary for payments, including any gift of travel that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals.
2. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from any lobbyist for the individual's personal benefit or for the personal benefit of a member of the immediate family of one of these individuals.

3. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from a third-party if the officer knows or has reason to know that the third-party is providing the payment or expense on behalf of a lobbyist.

**E Restriction on Campaign Consultants Lobbying current and former Clients (BMC 2.09.230)**

A campaign consultant cannot lobby any elected or appointed City official of the City who is a current or former client of the campaign consultant. This prohibition shall not apply to:

1. An employee of a campaign consultant whose sole duties are clerical; or
2. An employee of a campaign consultant who did not personally provide campaign consulting services to the officer of the city with whom the employee seeks to communicate in order to influence local legislative or administrative action.

Whenever the following words or phrases are used in Section 2.09.230, they are defined as follows:

1. "Current client" means a person for whom the campaign consultant has been contracted to provide campaign consulting services. If such person is a committee as defined by Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12), the current client shall be any individual who controls such committee; any candidate that such committee was primarily formed to support; and any proponent or opponent of a ballot measure that the committee is primarily formed to support or oppose.
2. "Employee" means an individual employed by a campaign consultant, but does not include any individual who has an ownership interest in the campaign consultant that employs them.
3. "Former client" means a person for whom the campaign consultant has terminated all campaign consulting services within the past twenty-four (24) months.

## CHAPTER V. ENFORCEMENT

### CHAPTER V. INDEX

- A. Complaints, Investigations & Civil Actions
- B. Hearings & Violations
- C. Penalties
- D. Criminal Violation
- E. Joint and Several Liability

#### **A. Complaints, Investigations & Civil Actions (BMC 2.09.250 & 2.09.280)**

Any person who believes a violation of the Act has occurred may file a complaint with the OGC, which may (1) refer to the secretary to investigate, to the extent the secretary has not done so; (2) dismiss the complaint; or (3) find probable cause that a violation of this chapter has occurred.

The Commission may also initiate an investigation of a possible violation based on information presented to it, including by staff.

If the Commission has reason to believe that a violation has occurred or is about to occur, it may also institute action at law or equity to enforce and compel compliance with the provisions in BMC Chapter 2.09.280. Any resident of the City who believes that a violation has occurred, may institute such action at law or equity for injunctive relief and to compel compliance with the provisions in BMC Chapter 2.09.

#### **B. Hearings & Violations (BMC 2.09.260 & 2.09.270)**

In reviewing a complaint or an investigation that the Commission has initiated, if the Commission determines that there is probable cause for believing that a violation has occurred and makes a good faith effort to give reasonable written notice to the person or persons involved, it may hold a hearing to determine if the violation has occurred, and may determine an appropriate remedy if a violation is found. The Commission shall conduct such hearings and proceedings with respect to determinations of probable cause pursuant to adopted procedures.

➤ If the Commission finds a violation, the Commission may:

1. Find mitigating circumstances and take no further action.
2. Issue a public statement or reprimand.
3. Impose a civil penalty.
4. Take other advisory or informal action as specified in the Open Government Ordinance.



**C. Penalties (BMC 2.09.280 - BMC 2.09.290)**

The Commission may impose penalties of up to one thousand dollars (\$1,000) for each violation or, if the violation was a prohibited payment, expense or gift under Section 2.09.220, of up to three times the value of each prohibited payment, expense or gift.

Unpaid penalties will be referred to the appropriate City agency or department for collection.

For local government lobbyists found to have repeatedly (over more than one quarter), knowingly, or willfully violated the Act, the Commission may impose penalties of up to twenty-five thousand dollars (\$25,000) for any violation, using factors adopted by the Commission.

**D. Criminal Violation (BMC 2.09.300)**

Any person who knowingly or willfully violates the provisions of this Act is guilty of a misdemeanor. The prosecution of any misdemeanor violation shall commence within four years after the date on which the alleged violation occurred.

No person convicted of a misdemeanor violation of this Act may act as a local governmental lobbyist, render consultation or advice to any registered client, or otherwise attempt to influence a governmental action for compensation for one year after such conviction.

**E. Joint and Several Liability (BMC 2.09.310)**

Should two or more persons be responsible for any violation, they may be jointly and severally liable. The client or employer of a local governmental lobbyist shall be jointly and severally liable for all violations of the Act committed by the local governmental lobbyist in connection with acts or omissions undertaken on behalf of that client or employer.

If a business, firm or organization registers or files local governmental lobbyist disclosures on behalf of its employees pursuant to Section 2.09.150, the business, firm or organization may be held jointly and severally liable for any failure to disclose its employees' lobbying activities.

## APPENDIX A: RESOURCE DIRECTORY

1. OPEN GOVERNMENT COMMISSION

2180 Milvia Street, Fourth Floor

Berkeley, CA 94704

(510) 981-6998

[fcpc@cityofberkeley.info](mailto:fcpc@cityofberkeley.info) <http://www.cityofberkeley.info/opengovernmentcommission/>

2. CITY CLERK

2180 Milvia Street, First Floor

Berkeley, CA 94704

(510) 981-6900

[elections@cityofberkeley.info](mailto:elections@cityofberkeley.info)

<http://www.cityofberkeley.info/clerk>

3. BERKELEY MUNICIPAL CODE

Lobbyist Registration and Regulations

Chapter 2.09

<https://www.codepublishing.com/CA/Berkeley/>

**APPENDIX B: FULL TEXT OF ORDINANCE**

**ORDINANCE NO. 7,629-N.S.**

**ADDING CHAPTER 2.09 TO THE BERKELEY MUNICIPAL CODE TO REQUIRE THE REGISTRATION AND REGULATION OF LOCAL GOVERNMENT LOBBYISTS AND AMENDING CHAPTER 2.07, REVOLVING DOOR RESTRICTIONS**

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

Section 1. That a new Chapter 2.09 is hereby added to the Berkeley Municipal Code to read as follows:

**Chapter 2.09**

**LOBBYIST REGISTRATION AND REGULATIONS**

**Sections:**

**Article 1. General Provisions**

- 2.09.010 Title for citations.
- 2.09.020 Findings.
- 2.09.030 Purpose.

**Article 2. Definitions and Interpretation of This Act**

- 2.09.040 Words and phrases.
- 2.09.050 Definitions.

**Article 3. Registration of Lobbyists**

- 2.09.060 Registration with the Open Government Commission.
- 2.09.070 Cessation of employment.
- 2.09.080 Lobbyist training.
- 2.09.090 Exceptions.
- 2.09.100 Failure to register.
- 2.09.110 Availability of information.
- 2.09.120 Filing under penalty of perjury.
- 2.09.130 Records.

**Article 4. Disclosure of Lobbying Activities and Audits**

- 2.09.140 Quarterly disclosure.
- 2.09.150 Registration and filing of disclosures by organizations.
- 2.09.160 Audits

**Article 5. Prohibitions**

- 2.09.170 No unregistered employment or activity.
- 2.09.180 Personal obligation of City officials prohibited.

- 2.09.190 Deception prohibited.
- 2.09.200 False appearances prohibited.
- 2.09.210 Prohibited representations.
- 2.09.220 Restrictions on payments and expenses benefiting local public officials.
- 2.09.230 Restriction on campaign consultants lobbying current and former clients.

**Article 6. Enforcement**

- 2.09.240 Rules and regulations.
- 2.09.250 Complaint, investigative procedures, and probable cause.
- 2.09.260 Notice and hearing on violations.
- 2.09.270 Violations – commission action.
- 2.09.280 Civil actions.
- 2.09.290 Civil penalties
- 2.09.300 Criminal violation.
- 2.09.310 Joint and several liabilities.
- 2.09.320 Effective date.
- 2.09.330 Severability.

**Article 1. General Provisions**

**2.09.010 Title.**

This chapter shall be known as the Berkeley Lobbyist Registration Act, hereafter "the Act."

**2.09.020 Findings.**

A. Democracy in our representative form of government requires that the public have an opportunity to know as much as possible what lobbying efforts are taking place that may affect decisions being made by our elected officials, City staff, boards, and commissions.

B. To the extent possible, it is the government's responsibility to balance the responsibility to ensure the health, safety, and general welfare of the public at large in a fiscally and environmental sustainable manner.

**2.09.030 Purpose.**

Therefore, the purpose of this ordinance is to codify certain existing practices, as well as to adopt new practices, to ensure that the public has an adequate opportunity to be informed of the City's activities and to communicate its concerns to its elected and appointed officials.

**Article 2. Definitions and Interpretation of This Act**

**2.09.040 Words and phrases.**

Words and phrases used in this Act shall have the same meanings and be interpreted in the same manner as words and phrases used in the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12) and the Political Reform Act of 1974, California

Government Code 81000 — 91014, hereafter the Political Reform Act, as amended and the regulations issued pursuant thereto, unless otherwise expressly provided or unless the context otherwise requires.

**2.09.050 Definitions.**

For the purposes of this Act, the following definitions shall be applicable:

A. "Campaign consultant" means any person or entity that receives or is promised economic consideration equaling \$1,000 or more in a calendar year for campaign consulting services. The term "campaign consultant" includes any person or entity that subcontracts with a campaign consultant to provide campaign consulting services, and that receives or is promised economic consideration equaling \$1,000 or more in a calendar year for providing campaign consulting services. The term "campaign consultant" does not include attorneys who provide only legal services, accountants who provide only accounting services, pollsters who provide only polling services, and treasurers who provide only those services which are required of treasurers by the Political Reform Act and the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12).

B. "Campaign consulting services" means participating in campaign management or developing or participating in the development of campaign strategy.

C. "Client" means the real party in interest for whose benefit the services of a local governmental lobbyist are actually performed. An individual member of an organization shall not be deemed to be a "client" solely by reason of the fact that such member is individually represented by an employee or agent of the organization as a regular part of such employee's or agent's duties with the organization as long as such member does not pay an amount of money or other consideration in addition to the usual membership fees for such representation.

D. "Committee" shall be defined as set forth in the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12).

E. "Contractor" means any party to an agreement in which the value of the consideration exceeds one thousand dollars (\$1,000), and, (1) The City is a party, or (2) the agreement or its effectiveness is in any way dependent or conditioned upon approval by the City Council or any board or commission, officer or employee of the City.

F. "Contribution" shall have the same meaning as set forth in the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12).

G. "Controlled committee" shall have the same meaning as set forth in the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12), but shall not include any state committees.

H. "Employee" shall have the same meaning as set out in Title 20 of the Code of Federal Regulations § 404.1007(b).

I. "Gift" shall be defined as set forth in the Political Reform Act, and the regulations adopted thereunder.

J. "Gift of travel" shall mean payment, advance, or reimbursement for travel, including transportation, lodging, and food and refreshment connected with the travel.

K. "Governmental action" means any discretionary administrative or legislative action of the City other than an action which is ministerial in nature.

L. "Influence" or "influencing" means contacting a City elected or appointed official or employee, either directly or indirectly, for the purpose of promoting, supporting, modifying, opposing, causing the delay or abandonment of conduct, or otherwise intentionally affecting the official actions.

M. "Local governmental lobbyist" means any individual who: (1) receives or is entitled to receive one thousand dollars (\$1,000) or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, to communicate directly or through agents with any elected or appointed City official or City employee, for the purpose of influencing any proposed or pending governmental action of the City; or (2) whose duties as a salaried employee, officer or director of any corporation, organization or association include communication directly or through agents with any elected or appointed City official or City employee, for the purpose of influencing any proposed or pending governmental action of the City. No person is a local governmental lobbyist by reason of activities described in Section 2.09.090. In case of any ambiguity, the definition of "local governmental lobbyist" shall be interpreted broadly.

N. "Payment" means a payment, distribution transfer, loan advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

O. "Person doing business with the City" means any person whose financial interests are materially affected by governmental action as defined by Section 2.09.050(K). It includes persons currently doing business with the City, planning to do business with the City, or having done business with the City within two years. For purposes of this Act a person's financial interests shall not be found to be materially affected by the issuance of any license or permit which does not require the exercise of discretion by City elected or appointed officials or employees.

P. "Public event" shall mean an event or gathering that any member of the public may attend, has been publicly announced and publicized in advance, and for which there is no admission cost or fee.

Q. "Public official" means an elected or appointed officer or employee or officially designated representative, whether compensated or not, of the United States or any of its agencies, the State of California, any political subdivision of the state, including cities, counties, districts, or any public corporation, agency or commission.

R. "Registered client" means any client of a local governmental lobbyist listed as part of the requirements of sections 2.09.060 and 2.09.140.

S. "State committee" shall mean a committee that makes contributions or expenditures to support or oppose candidates or measures voted on in state elections, or in more than one county.

### **Article 3. - Registration of Lobbyists**

#### **2.09.060 Registration with the Open Government Commission.**

A. No person shall act as local governmental lobbyist before registering as a local governmental lobbyist with the Open Government Commission, through the office of the City Clerk.

B. At the time of registering, the local governmental lobbyist shall file with the City Clerk, in writing:

1. His or her name, business address, e-mail address, and business telephone number.
2. The name, business address, and business telephone number of each client for whom the local governmental lobbyist attempts or receives compensation to influence any proposed or pending governmental action of the City.
3. The name, business address, and business telephone number of the local governmental lobbyist's employer, firm or business affiliation.

C. The local governmental lobbyist shall reregister annually during the month of January and at that time shall resubmit the required information.

D. Local governmental lobbyists shall amend any information submitted to the Open Government Commission through registration and quarterly disclosures within five business days of the changed circumstances that require correction or updating of such information.

E. At the time of initial registration, and during each annual registration, each local governmental lobbyist shall pay a fee of \$500.

F. Failure to pay the annual fee shall constitute a termination of a local governmental lobbyist's registration with the Open Government Commission. The Open Government

Commission is also authorized to establish additional processes for the termination of a local governmental lobbyist's registration.

G. The City Clerk shall waive all registration fees for any employee of a tax-exempt organization presenting proof of the organization's tax-exempt status under 26 U.S.C. Section 501(c)(3) or 501(c)(4), so long as they are acting in that capacity.

H. The City Clerk shall deposit all fees collected pursuant to this Section in the General Fund of the City of Berkeley.

**2.09.070 Cessation of employment.**

A local governmental lobbyist who has terminated all activities requiring registration shall notify the City Clerk of that fact and thereupon shall be relieved of any further obligations under this Act until such time as he or she commences activity requiring registration.

**2.09.080 Lobbyist training.**

A. Each local governmental lobbyist must complete a lobbyist training session offered by the Open Government Commission, through the Office of the Clerk, within 30 days of the local governmental lobbyist's initial registration. Thereafter, local governmental lobbyists shall engage in additional training sessions as required by the Open Government Commission, at its discretion.

B. The Open Government Commission shall make local governmental lobbyist training sessions available on its website.

C. On or before the deadline for completing any required local governmental lobbyist training session, a local governmental lobbyist must file a signed declaration with the Open Government Commission stating, under penalty of perjury, that the local governmental lobbyist has completed the required training session.

**2.09.090 Exceptions.**

The provisions of this Act shall not apply:

A. To a public official acting in his or her official capacity.

B. To the publication or broadcasting of news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge governmental action.

C. To a person specifically invited by the City Council any committee thereof, or by any board or commission, or any committee of a board or commission, or by any officer or employee of the City charged by law with the duty of conducting a hearing or making a decision, for the purpose of giving testimony or information in aid of the body or person extending the invitation.

D. To a person who, without extra compensation and not as part of, or in the ordinary course of, his or her regular employment, presents the position of his or her organization



when that organization has one or more of its officers, directors, employees or representatives already registered under the provisions of this Act.

E. To designated representatives of a recognized employee organization whose activities are limited to communicating with elected or appointed City officials or their representatives regarding (1) wages, hours and other terms and conditions of employment pursuant to the procedures set forth in Government Code Sections 3500—3510, or (2) the administration, implementation or interpretation of an existing employment agreement.

F. To persons whose only activity is to (1) submit a bid on a competitively bid contract, (2) respond to a request for proposal or qualifications, or (3) apply for grant funding or (4) negotiate the terms of a written contract or grant if selected pursuant to such bid or request for proposal or qualifications. This exception shall not apply to persons who attempt to influence the award or terms of a contract or grant with any elected or appointed official, unless their attempts are limited to speaking during public comment at a publicly noticed meeting.

G. To any individuals serving in their professional capacity (e.g. attorneys, architects, or engineers), who are employed by a local government lobbyist, and whose attempts to influence governmental action are limited to: (1) Publicly appearing at a public meeting, public hearing, or other official proceeding open to the public to represent or testify on behalf of a proposed development; (2) Preparing or submitting documents or writings in connection with the proposed development for use at a public meeting, public hearing, or other official proceeding open to the public; and (3) Contacting city employees or agents working under the direction of the city manager directly relating to (1) and (2) above, or contacting elected or appointed City officials directly relating to (1) and (2) above.

H. Persons employed by, or a member of, a labor union.

**2.09.100 Failure to Register.**

If the Open Government Commission determines that a person is subject to registration and he or she fails to register within seven days of that determination, he or she shall be barred from acting as a local governmental lobbyist except when appearing before the City Council or other board or commission at a noticed public meeting. Such debarment shall be in effect for three months from the date of such determination or until registration, whichever is later.

**2.09.110 Availability of information.**

All registration information shall be retained by the City Clerk for a period of five years from the date of filing, shall constitute part of the public records of the City, and shall be open to public inspection.

**2.09.120 Filing under penalty of perjury.**

All information required by this Act shall be filed with the City Clerk on forms prescribed by the Open Government Commission, and accompanied by a declaration by the local

governmental lobbyist that the contents thereof are true and correct under penalty of perjury.

**2.09.130 Records.**

A local governmental lobbyist shall retain, for a period of five years, all books, papers and documents necessary to substantiate the registration required to be made under this Chapter.

**Article 4. Disclosure of Lobbying Activities and Audits**

**2.09.140 Quarterly disclosure.**

For each calendar quarter in which a local governmental lobbyist was required to be registered, he or she shall file a quarterly report with the City Clerk, unless the local governmental lobbyist is a sole proprietorship or works for a lobbying firm with four or fewer employees, in which case they shall file annually. The reports shall be due no later than thirty (30) days after the end of the reporting period. The report shall contain the following information:

A. The item(s) of governmental action and the name and address of the client(s) on whose behalf the local governmental lobbyist sought to influence.

B. For each item of governmental action sought to be influenced, the name and title of each City employee, or elected or appointed City official with whom the local governmental lobbyist specifically met or communicated.

C. A brief narrative description (no longer than three sentences) of the position advocated by the local governmental lobbyist on behalf of the identified client.

D. If any local governmental lobbyist, or a registered client at the behest of a local governmental lobbyist, employs or requests, recommends or causes a client of the local governmental lobbyist to employ, and such client does employ, any City employee, or elected or appointed City official, in any capacity whatsoever, or a member of the immediate family of one of these individuals, the local governmental lobbyist shall disclose (1) the name of the person employed or hired, (2) a description of the services actually performed, and (3) the total payments made to the City employee or elected or appointed City official during the reporting period identified only by the following categories: less than \$250; between \$250 and \$1,000; greater than \$1,000 but less than \$10,000; greater than \$10,000.

E. If any elected City officeholder or candidate for elected City office employs or hires a local governmental lobbyist to provide compensated services to the officeholder or candidate, the local governmental lobbyist shall disclose (1) the name of the person who employed or hired the local governmental lobbyist, (2) a description of the services actually performed, and (3) the total payments made during the reporting period identified only by the following categories: less than \$250; between \$250 and \$1,000; greater than \$1,000 but less than \$10,000; greater than \$10,000.

F. If a local governmental lobbyist solicits any person to make a contribution to an elected City officeholder, candidate for City office or to any committee or campaign fund controlled by such officeholder or candidate, the local governmental lobbyist shall disclose the names of the persons whom the local governmental lobbyist solicited, and the officeholder or candidate for whose benefit each solicitation was made. A solicitation does not include a request for a contribution made:

1. in a mass mailing sent to members of the public;
2. in response to a specific request for a recommendation;
3. to a gathering which members of the public may attend; or
4. in a newspaper, on radio or television, or in any other mass media.

A local governmental lobbyist does not "solicit" solely because his or her name is printed with other names on stationary or a letterhead used to request contributions. If a local governmental lobbyist sources a donation from more than fifty individual members or employees of a corporation, union or other association that is a registered client of the local governmental lobbyist, or if the local governmental lobbyist makes a solicitation to all members or employees of a corporation, union or association that is a registered client of the local governmental lobbyist, the local governmental lobbyist may choose to disclose the name of the registered client instead of the names of the persons whom the lobbyist actually solicited.

#### **2.09.150 Registration and filing of disclosures by organizations.**

The Open Government Commission is authorized to establish procedures to permit the registration and filing of local governmental lobbyist disclosures by a business, firm, or organization on behalf of the individual local governmental lobbyists employed by those businesses, firms, or organizations.

#### **2.09.160 Audits**

At least once every year, the Open Government Commission shall initiate audits of at least 5% of registered local governmental lobbyists, at minimum one local governmental lobbyist, selected at random. At the request of the Open Government Commission, the City Clerk may assist in conducting these audits. This requirement shall not restrict the authority of the Open Government Commission or the City Clerk to undertake any other audits or investigations of a local governmental lobbyist authorized by law or regulation. Within ten business days of a request by the Open Government Commission or City Clerk, a local governmental lobbyist or anyone required to register as a local governmental lobbyist shall provide the requested documents required to be retained under this Chapter.

### **Article 5. Prohibitions**

#### **2.09.170 No unregistered employment or activity.**

A. A local governmental lobbyist shall not engage in any activity on behalf of a client as a local governmental lobbyist unless such local governmental lobbyist is registered and has listed such client with the City Clerk.

B. No person shall accept compensation for acting as a local governmental lobbyist except upon condition that he or she forthwith register as required by this Act.

**2.09.180 Personal obligation of City officials prohibited.**

Local governmental lobbyists, or clients shall abstain from carrying out any act with the express purpose and intent of placing any elected or appointed City official or City employee under personal obligation to such local governmental lobbyist, client, contractor or person.

**2.09.190 Deception prohibited.**

No local governmental lobbyist or client shall deceive or attempt to deceive a City employee, or elected or appointed City official as to any material fact pertinent to any pending or proposed governmental action.

**2.09.200 False appearances prohibited.**

No local governmental lobbyist or client shall attempt in any way to create a fictitious appearance of public favor or disfavor of any governmental action or to cause any communication to be sent to a city employee in the name of any fictitious person or in the name of any real person without the real person's consent.

**2.09.210 Prohibited representations.**

No local governmental lobbyist or client shall represent, either directly or indirectly, orally or in writing that such person can control or obtain the vote or action of any City employee, or elected or appointed City official.

**2.09.220 Restrictions on payments and expenses benefiting local public officials.**

A. No local government lobbyist or a registered client shall make any payment or incur any expense, including any gift of travel, that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals, in which the cumulative value of such payments or expenses exceeds \$240 during any calendar year. This \$240 limit may be adjusted every four years by the OGC to account for inflation. The payments and expenses specified in subsections 2.09.220(A)-(D) include gifts, honoraria and any other form of compensation but do not include:

1. gifts of food or refreshment worth \$25 or less per occasion, if the local governmental lobbyist is a 501 (c)(3) nonprofit organization, the gift of food or refreshment is offered in connection with a public event held by the 501 (c)(3) nonprofit organization, and the same gift of food or refreshment is made available to all attendees of the public event;
2. payments or expenses that, within thirty (30) days after receipt, are returned unused or are reimbursed;

3. gifts of food or beverage worth \$25 or less per occasion, if said gift is provided in the home of an individual local governmental lobbyist or individual local governmental lobbyist's registered client when the individual or member of the individual's family is present;
4. a pass or ticket to a fundraising event for a campaign committee or candidate, or for an organization exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code;
5. informational material;
6. campaign contributions not to exceed the limit imposed by the Berkeley Election Reform Act or state law, as applicable; and
7. salaries, consulting fees or other payments for services rendered or bargained for. No other exception to, or exclusion from, the definition of gift or honoraria contained in the Political Reform Act of 1974 as amended, and the regulations issued pursuant thereto, shall apply to this section.

For purposes of the gift limits imposed by subsections (A)-(C), gifts shall be aggregated set forth in California Code of Regulations, Title 2, Section 18945.1, as it may hereafter be amended.

B. No lobbyist or a lobbyist's registered client shall make any payment to a third-party for the purpose of making any payment or incurring any expense, including any gift of travel, that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals.

C. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from any lobbyist for the individual's personal benefit or for the personal benefit of a member of the immediate family of one of these individuals.

D. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from a third-party if the officer knows or has reason to know that the third-party is providing the payment or expense on behalf of a lobbyist.

**2.09.230 Restriction on campaign consultants lobbying current and former clients.**

A. No campaign consultant, individual who has an ownership interest in the campaign consulting business, or employee of the campaign consultant shall lobby any elected or appointed City official of the city who is a current or former client of the campaign consultant.

B. This prohibition shall not apply to:

1. an employee of a campaign consultant whose sole duties are clerical; or

2. an employee of a campaign consultant who did not personally provide campaign consulting services to the officer of the city with whom the employee seeks to communicate in order to influence local legislative or administrative action.

C. The exceptions in Subsection (B) shall not apply to any person who communicates with an officer of the city in his or her capacity as an employee of the campaign consultant who is prohibited by Subsection (A) from making the communication.

D. Whenever the following words or phrases are used in this Section, they shall be defined as follows:

1. "Current client" shall mean a person for whom the campaign consultant has been contracted to provide campaign consulting services. If such person is a committee as defined by Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12), the current client shall be any individual who controls such committee; any candidate that such committee was primarily formed to support; and any proponent or opponent of a ballot measure that the committee is primarily formed to support or oppose.

2. "Employee" shall mean an individual employed by a campaign consultant, but does not include any individual who has an ownership interest in the campaign consultant that employs them.

3. "Former client" shall mean a person for whom the campaign consultant has terminated all campaign consulting services within the past twenty-four (24) months.

## **Article 6. Enforcement**

### **2.09.240 Rules and regulations.**

The Open Government Commission may adopt, amend, and rescind rules, procedures, and regulations to carry out the purposes of this Chapter, and to govern the Commission's procedures to enforce this Chapter.

### **2.09.250 Complaint, investigative procedures, and probable cause.**

A. Any person who believes that a violation of any portion of this chapter has occurred may file a complaint with the Open Government Commission. The Open Government Commission may initiate an investigation of a possible violation of this chapter based on information brought before the commission, including information presented by staff.

B. After receiving a complaint or information regarding a possible violation of this chapter, the Open Government Commission shall decide whether to (1) refer to the secretary to investigate, to the extent the secretary has not done so; (2) dismiss the complaint; or (3) find probable cause that a violation of this chapter has occurred.

### **2.09.260 Notice and hearing on violations.**

After the Open Government Commission determines there is probable cause for believing that a provision of this Chapter has been violated and makes a good faith effort to give reasonable written notice to the person or persons involved in the allegation using the contact information with which they registered, it may hold a hearing to determine if a violation has occurred, and may determine an appropriate remedy if a violation is found. The hearing pursuant to this section shall be conducted in an impartial manner, consistent with the requirements of due process. A record shall be maintained of the proceedings,

and a report summarizing the facts, issues, and any remedial actions shall be issued by the commission following the conclusion of the hearing.

The commission shall conduct such hearings and proceedings with respect to determinations of probable cause pursuant to adopted procedures. All interested persons may participate in the hearing.

**2.09.270 Violations – commission action.**

If the Open Government Commission finds a violation of this Act, the Open Government Commission may: (1) Find mitigating circumstances and take no further action; (2) issue a public statement or reprimand, (3) impose a civil penalty in accordance with this Act, or (4) take other action as specified in 2.06.190(A)(1).

**2.09.280 Civil actions.**

If the commission has reason to believe that a violation of this chapter has occurred or is about to occur, it may also institute action at law or equity to enforce and compel compliance with the provision of this chapter. Any resident of the City who believes that a violation of this chapter has occurred, may institute such action at law or equity for injunctive relief and to compel compliance with the provisions of this chapter.

**2.09.290 Civil penalties.**

A. Except as otherwise specified in this Act, the Open Government Commission may impose penalties of up to one thousand dollars (\$1,000) for each violation or, if the violation was a prohibited payment, expense or gift under section 2.09.220, of up to three times the value of each prohibited payment, expense or gift.

B. If any civil penalty imposed by the Open Government Commission is not timely paid, the Open Government Commission shall refer the debt to the appropriate City agency or department for collection.

C. For local government lobbyists found to have repeatedly over more than one quarter, knowingly, or willfully violated the Act, the Open Government Commission may impose penalties of up to twenty-five thousand dollars (\$25,000) for any violation, using factors adopted by the Open Government Commission through its rules, regulations, or procedures.

**2.09.300 Criminal violation.**

A. Any person who knowingly or willfully violates the provisions of this Act is guilty of a misdemeanor.

B. The prosecution of any misdemeanor violation of this Act shall commence within four years after the date on which the alleged violation occurred.

C. No person convicted of a misdemeanor violation of this Act may act as a local governmental lobbyist, render consultation or advice to any registered client, or otherwise attempt to influence a governmental action for compensation for one year after such conviction.

**2.09.310 Joint and several liability.**

A. Should two or more persons be responsible for any violation under this Chapter, they may be jointly and severally liable.

B. The client or employer of a local governmental lobbyist shall be jointly and severally liable for all violations of this Chapter committed by the local governmental lobbyist in connection with acts or omissions undertaken on behalf of that client or employer.

C. If a business, firm or organization registers or files local governmental lobbyist disclosures on behalf of its employees pursuant to Section 2.09.150 the business, firm or organization may be held jointly and severally liable for any failure to disclose its employees' lobbying activities.

**2.09.320 Effective date.**

The effective date of this Act shall be January 1, 2020. The Act may be effective at an earlier date if administratively feasible.

**2.09.330 Severability.**

The provisions of this Chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Chapter, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this Chapter, or the validity of its application to other persons or circumstances.

Section 2. That Berkeley Municipal Code section 2.06.190 is amended as follows:

**2.06.190 Open Government Commission--Duties.**

A) There is hereby created the Open Government Commission, which shall have authority for oversight of this Chapter and Chapter 2.09, the Lobbyist Registration Act, as set forth in this Section. The Open Government Commission shall consist of the members of the Berkeley Fair Campaign Practices Commission established by Berkeley Municipal Code section 2.12.170 who shall be ex officio members of the Open Government Commission.

1) The Open Government Commission shall:

a) hear complaints by any person concerning alleged non-compliance with this Ordinance, the Brown Act, the Public Records Act, or the Lobbyist Registration Act, by the City or any of its legislative bodies, elected or appointed officials, officers or employees;

b) consider ways to informally resolve those complaints and make recommendations to the Council regarding such complaints;

c) seek advice from the City Attorney concerning those complaints;



d) advise the City Council of its opinion, conclusion or recommendation as to any complaint; and

e) take any action authorized by the Lobbyist Registration Act under Chapter 2.09.

To be considered by the Open Government Commission, complaints shall be submitted in writing using a form provided by the City, and must be submitted to the Secretary of the Commission no less than 14 days prior to the Commission meeting at which it will be considered.

2) In addition, the Commission may advise the City Council concerning the report prepared pursuant to subdivision (C), propose additional legislation or procedures that it deems advisable to ensure the City's compliance with this Ordinance, the Brown Act, the Public Records Act, and the Lobbyist Registration Act, and advise the City Council as to any other action or policy that it deems advisable to enhance open and effective government in Berkeley.

B) The power and authority of the Open Government Commission with respect to oversight of this Chapter shall be limited to the functions set forth in this Section, and the Commission shall not have any of the additional authority or powers set forth in Chapter 2.12 with respect to oversight or enforcement of this Chapter.

C) Each year, the City Manager shall prepare and submit to the Open Government Commission a report that contains at least the following information:

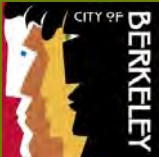
- 1) The number of Public Records Act requests received by the City;
- 2) The average length of time taken to respond to those requests;
- 3) The approximate number of pages produced in response to those requests;
- 4) The number and resolution of all written complaints received by the City concerning its compliance with the Public Records Act with respect to such requests;
- 5) The number and resolution of all complaints received by the City concerning its compliance with the Brown Act; and
- 6) Any other information the City Manager deems appropriate that relates to the City's compliance with this Ordinance, the Brown Act, the Public Records Act, the Lobbyist Registration Act, or open and effective government in Berkeley.

D) Notwithstanding anything to the contrary in Section 2.04.075 or Chapter 3.02, the appointment and tenure of members of the Commission shall be governed by Chapter 2.12.



# Tobacco litter in Berkeley: Summary of Tobacco Litter Public Opinion Poll and Tobacco Litter Audits 2018-2019

City of Berkeley Tobacco Prevention Program



Rebecca Day-Rodriguez, Health Services Program Specialist  
Tino Ratliff, Community Health Worker Specialist



# City of Berkeley Tobacco Prevention Program

- Local Lead Agency allocation through California Tobacco Control Program
- Tobacco Litter/Objective 1: The City of Berkeley will adopt and implement a legislated policy prohibiting improper disposal of tobacco product waste in parks, recreation areas, transit stops, and all sidewalks and will include fines to reduce tobacco waste in the community.
- Intervention activities include:
  - Billboard Advertising, Environmental Organization Collaboration
  - Key Informant Interviews
  - Midwest Academy Strategy Chart
  - Newspaper Advertising
  - Parks and Recreation Collaboration
  - Photovoice
  - Press release(s)
  - Public Intercept Surveys
  - Resolution Campaign
  - Tobacco Litter Survey
  - Toxic Tobacco Waste Education
  - Transit/Bus Stop Advertising
  - Voluntary Health Organization Collaboration

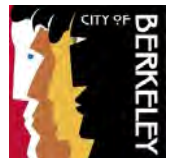
# Method of data collection

## Public Opinion Poll

- Total surveyed: 170 face to face surveys
- Survey Analytics program captured and summarized data through tablet/Ipod
- Staff: 2

## Tobacco Litter Audits

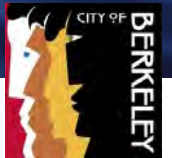
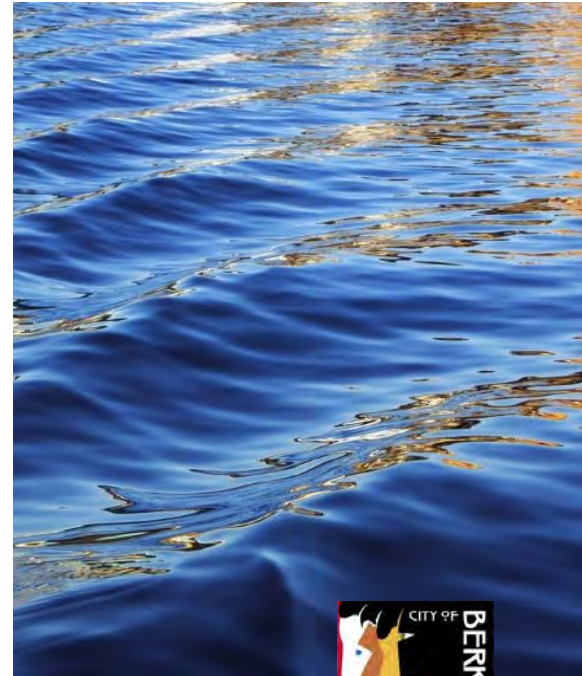
- Total surveyed: 17 sites, two visits per site
- Type of sites include commercial, parks, childcare centers, multi unit housing, schools, and transportation
- Staff: 3





# Tobacco Litter Public Opinion Poll

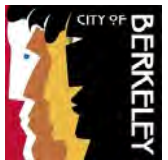
FY 19



# Tobacco Litter Public Opinion Poll Questions

1. Do you feel that tobacco waste is harmful to the environment?
2. Do you feel that tobacco waste presents a health risk to children and/or animals?
3. Do you think that tobacco waste (cigarette butts, filters, packaging) is a problem in Berkeley?
4. If yes, which locations do you notice high levels of tobacco waste (check as many that apply)?  
Parks – Commercial areas – Residential areas – Bus stops – ATMs – No response, N/A – Other (fill in)
5. Would you support fines associated with tobacco waste littering?

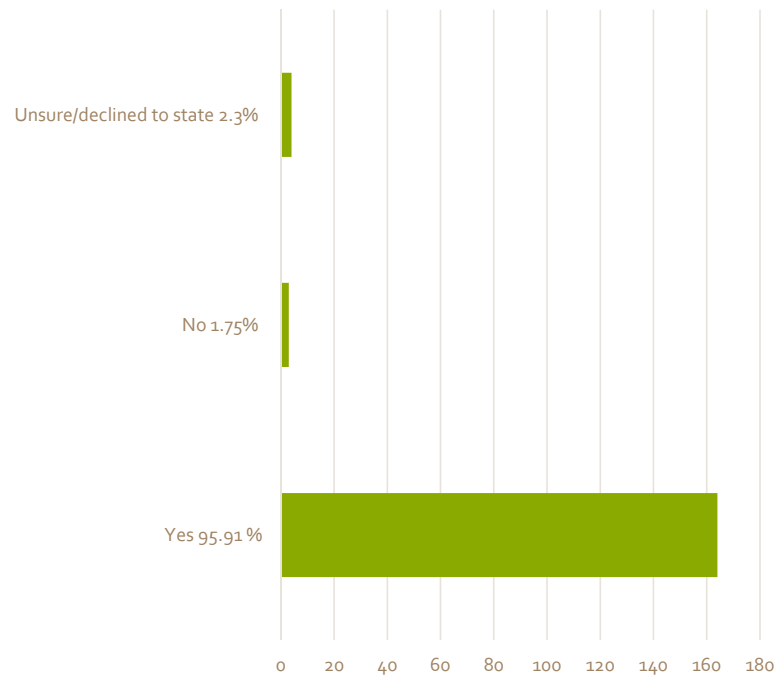
We also captured data best describes age, race/ethnicity, gender, sexual orientation and zip code.  
(Various options & decline to state for each.)



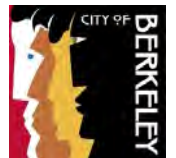
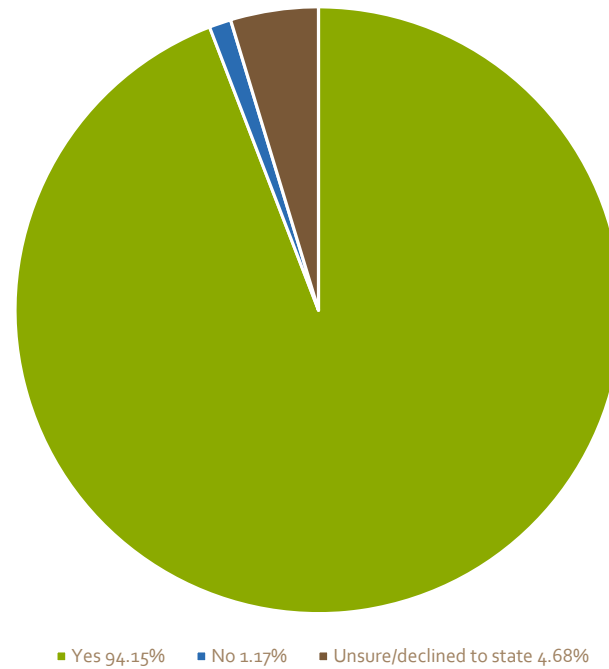


# Tobacco Litter Public Opinion Poll Highlights

Do you feel that tobacco waste presents a health risk to children and/or animals?



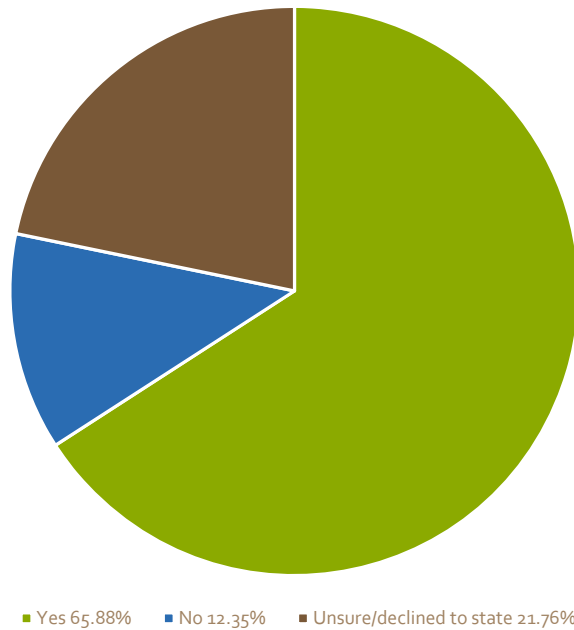
Do you feel that tobacco waste is harmful to the environment?



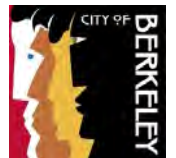
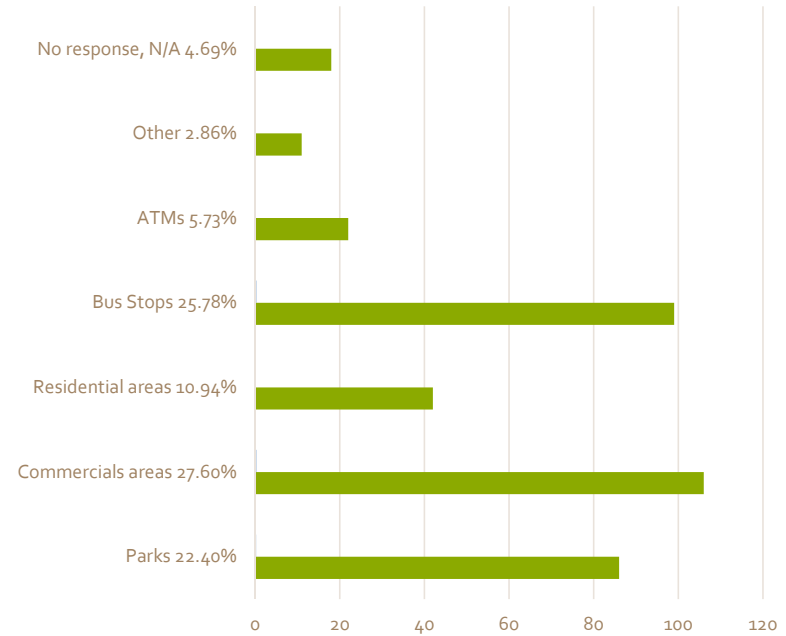


# Tobacco Litter Public Opinion Poll Highlights

Do you think that tobacco waste (cigarette butts, filters, packaging) is a problem in Berkeley?

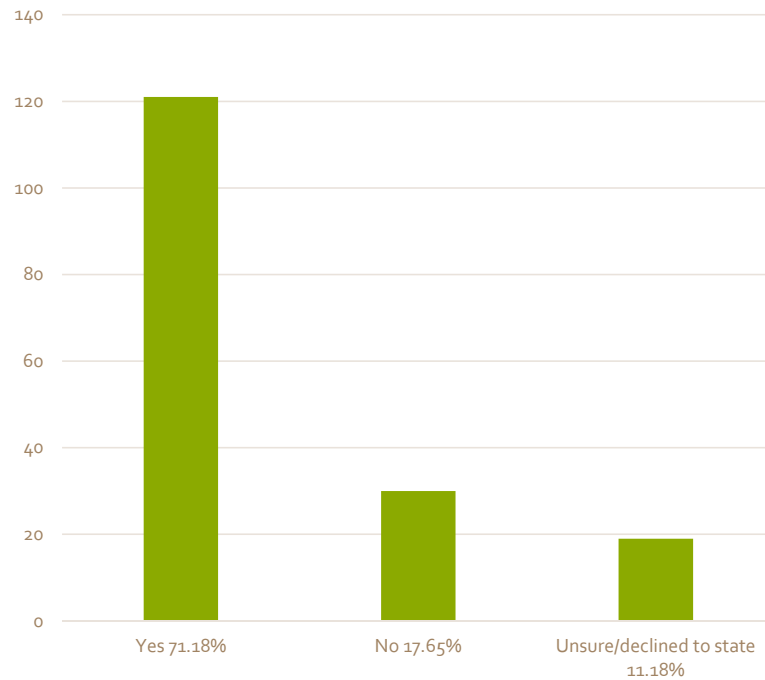


If yes, which locations do you notice high levels of tobacco waste (check as many that apply)?



# Tobacco Litter Public Opinion Poll Highlights

Would you support fines associated with tobacco waste littering?



## Ethnicity:

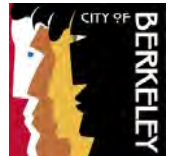
Decline to state	9
American Indian/Alaska Native	9
Asian	16
Black or African American	42
Hispanic/Latino	32
Native Hawaiian/Other Pacific Islander	1
Other ethnicity	12
White	66

## Age:

Decline to state	2
Under 18	0
18-29	51
30-39	36
40-49	18
50-59	14
60-65	30
Older than 65	18

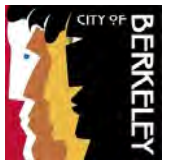
## Gender:

Decline to state	2
Male	90
Female	77
Transgender	1



## Tobacco Litter Public Opinion Poll Summary

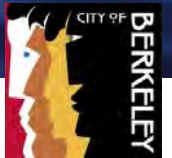
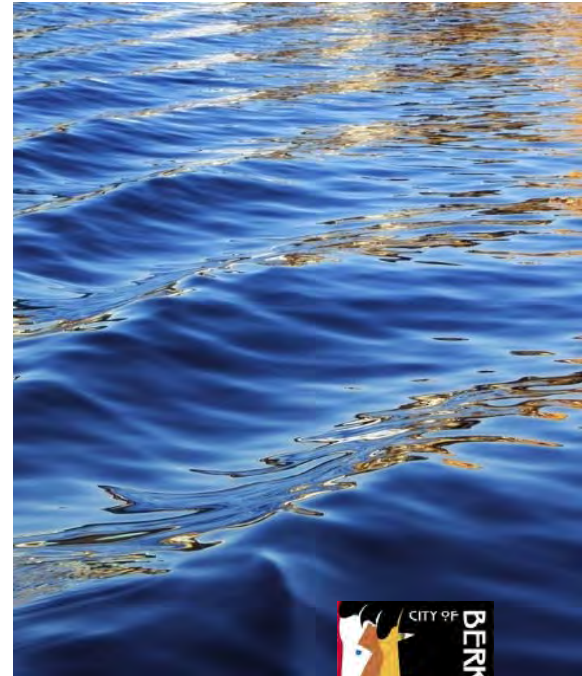
- Most of Berkeley residents polled felt tobacco waste presents a health risk to children and/or animals in Berkeley. (95.9%)
- Most Berkeley residents felt tobacco waste is harmful to the environment. (94.15%)
- Over 50% of Berkeley residents felt tobacco waste is a problem in Berkeley. (65.88%)
- 71% of Berkeley residents support fines associated with tobacco waste littering.
- Commercial areas were cited the most as the location having highest levels of tobacco waste.





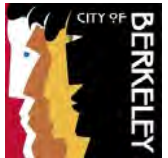
# Tobacco Litter Audits

Fall 2018 – Summer 2019



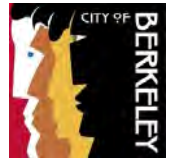
## Tobacco Litter Audit Sites FY 2019

- **International House**  
2299 Piedmont Ave.
- **Bus Stop**  
Allston and Shattuck
- **Parking Lot at Berkeley Marina**  
(Formerly His Lordship)
- **The Acme Bar**  
2115 San Pablo Ave
- **6th Street**  
(East side between chevron station at University and Hearst Ave.)
- **Tsunami Hot Dog Stand**  
(parking lot between Center and Addison on Milvia St.)
- **Berkeley City College**  
2050 Center St.
- **Language Studies International**  
2015 Center St.
- **BART Ashby Station**
- **BART North Berkeley**
- **Strawberry Creek Park**  
1260 Allston Way
- **Vera Casey Head Start**  
2246 Martin Luther King Jr. Way
- **YMCA**  
2009 10th St.
- **B-Tech Bus stop**
- **Oregon Park Senior Apartments**
- **Public Health Clinic**  
820 University
- **Westminister House**  
2398 Bancroft Way
- **76 Gas Station**  
849 University Ave.
- **Abel's Restaurant**  
2340 Telegraph Ave.
- **Raleigh's Bar & Grill**  
2438 Telegraph Ave.

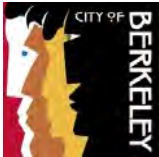
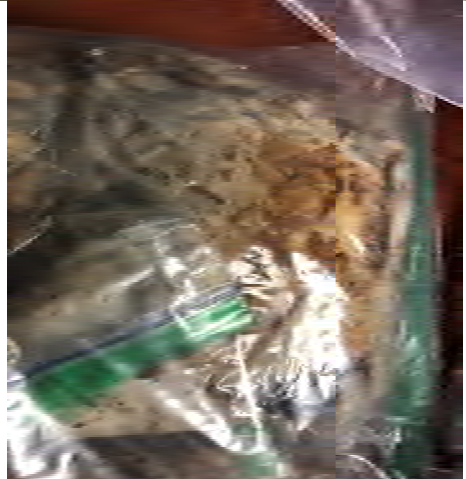
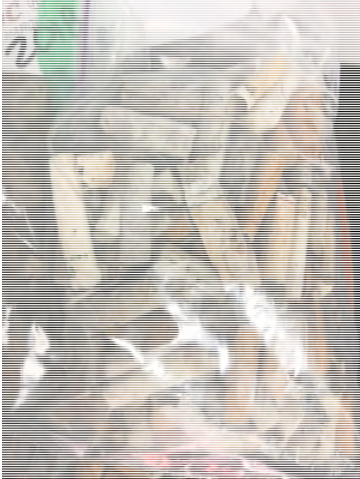


# Tobacco Litter Audit Site Tool

1. Date, time, day of the week
2. Location Name
3. Location Address
4. Type of location:
  - ✓ Park
  - ✓ Bus stop
  - ✓ Neighborhood
  - ✓ Commercial
  - ✓ ATM
  - ✓ Special 50-Foot Areas
  - ✓ Other (please specify)
5. Weather Conditions During Observation
6. Number of tobacco litter collected:
7. Number of No Smoking signs posted in survey area
8. Number of receptacles, including trash cans within survey area
9. Anyone and how many people smoking within the survey area

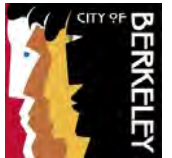


# Tobacco Litter Audit Photos



## Tobacco Litter Audit Summary

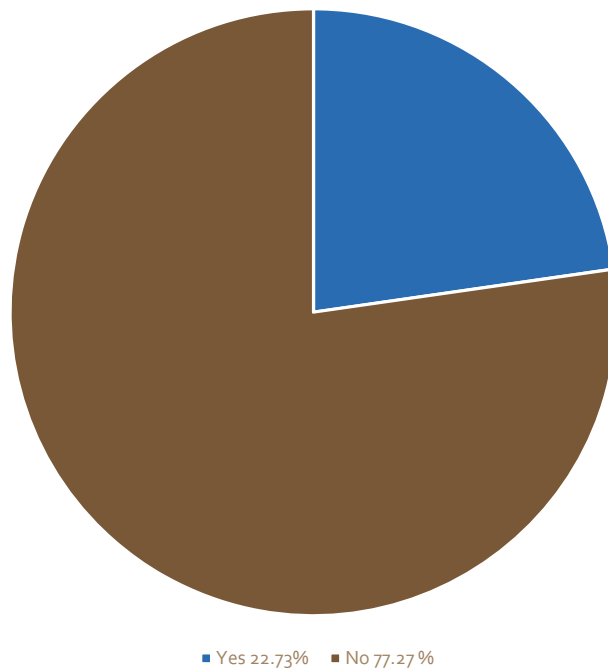
- **Highest amount of tobacco litter collected: Ashby BART station 320 pieces of tobacco litter**
- **Number of tobacco litter collected: 4,022**
- **Total average per site: 201**



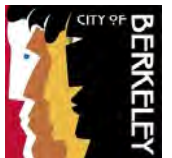
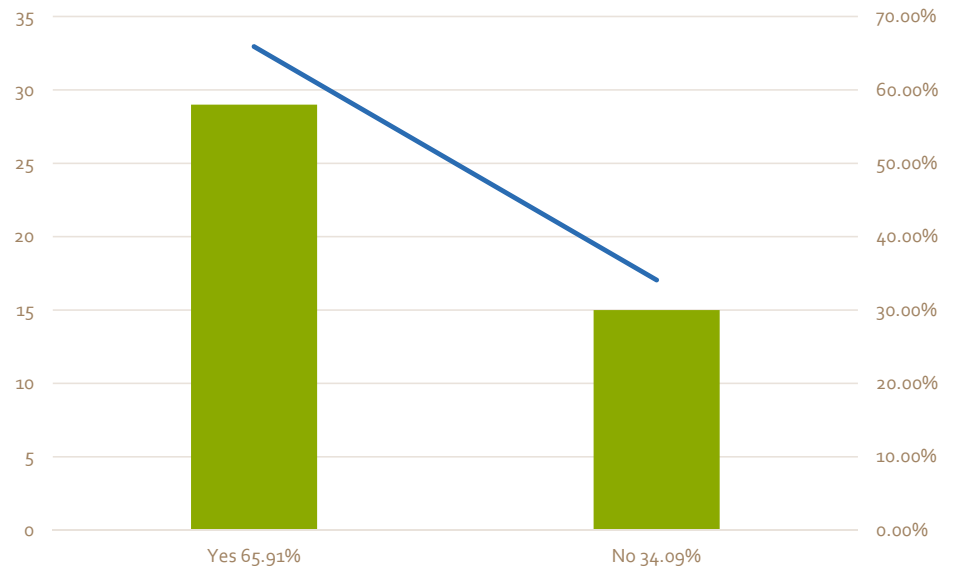


# Tobacco Litter Audit Summary

Did you observe anyone smoking within the survey area?

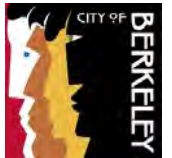


Trash receptacles, including trash cans within survey area:



## Things to Consider

- Enforcement-re-visit current enforcement and how enforcement can be strengthened in Berkeley
- Reminding Berkeley residents of current no smoking ordinances: For example, partnering with the Downtown Ambassador Program or Police Department to issue warning cards highlighting no smoking ordinances in Berkeley.
- Working with the Office of Economic Development and the Chamber of Commerce on effective and sustainable ways to dispose of tobacco litter.
- Increase signage in the areas where smoking is prohibited



Thank you for your time!

Questions or comments?

