



**BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE
SPECIAL MEETING**

MONDAY, SEPTEMBER 27, 2021

2:30 P.M.

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf

Alternate: Councilmember Lori Droste

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council Agenda & Rules Committee will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL <https://us02web.zoom.us/j/83342059740>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen.

To join by phone: Dial **1-669-900-9128 or 1-877-853-5257 (Toll Free)** and Enter Meeting ID: **833 4205 9740**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Agenda & Rules Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record. City offices are currently closed and cannot accept written communications in person.

AGENDA

Roll Call

Public Comment

Review of Agendas

1. **Approval of Minutes: September 13, 2021**
2. **Review and Approve Draft Agenda:**
 - a. 10/12/21 – 6:00 p.m. Regular City Council Meeting
3. **Selection of Item for the Berkeley Considers Online Engagement Portal**
4. **Adjournments In Memory**

Scheduling

5. **Council Worksessions Schedule**
6. **Council Referrals to Agenda Committee for Scheduling**
7. **Land Use Calendar**

Referred Items for Review

8. **Discussion Regarding Impact of COVID-19 (novel coronavirus) on Meetings of Legislative Bodies**
9. **Preliminary Analysis of Return to In-Person Meetings of City Legislative Bodies**

Unscheduled Items

10. **Strengthening and Supporting City Commissions: Guidance on the Development of Legislative Proposals**

Items for Future Agendas

- **Discussion of items to be added to future agendas**

Adjournment – Next Meeting Tuesday, October 12, 2021

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## **Additional items may be added to the draft agenda per Council Rules of Procedure.**

*Rules of Procedure as adopted by Council resolution, Article III, C3c - Agenda - Submission of Time Critical Items*

*Time Critical Items. A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by the City Manager, Auditor, Mayor or council member is received by the City Clerk after established deadlines and is not included on the Agenda Committee's published agenda.*

*If the Agenda Committee finds the matter to meet the definition of Time Critical, the Agenda Committee may place the matter on the Agenda on either the Consent or Action Calendar.*

*The City Clerk shall not accept any item past the adjournment of the Agenda Committee meeting for which the agenda that the item is requested to appear on has been approved.*

*Written communications addressed to the Agenda Committee and submitted to the City Clerk Department by 5:00 p.m. the Friday before the Committee meeting, will be distributed to the Committee prior to the meeting.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953 and applicable Executive Orders as issued by the Governor that are currently in effect. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.*



### **COMMUNICATION ACCESS INFORMATION:**

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.

\* \* \*

I hereby certify that the agenda for this special meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on September 23, 2021.



Mark Numainville, City Clerk

## **Communications**

*Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA, and are available upon request by contacting the City Clerk Department at (510) 981-6908 or [policycommittee@cityofberkeley.info](mailto:policycommittee@cityofberkeley.info).*



**BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE  
SPECIAL MEETING MINUTES**

**MONDAY, SEPTEMBER 13, 2021**

**2:30 P.M.**

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf

Alternate: Councilmember Lori Droste

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE**

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To join by phone: Dial **1-669-900-9128 or 1-877-853-5257 (Toll Free)** and Enter Meeting ID: **854 2992 7302**. If you wish to comment during the public comment portion of the agenda, press \*9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Agenda & Rules Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record. City offices are currently closed and cannot accept written communications in person.

**Roll Call: 2:33 p.m.**

**Present:** Wengraf, Hahn

**Absent:** Arreguin

Mayor Arreguin present at 3:04 p.m.

**Public Comment** – 4 speakers.

**Review of Agendas**

**1. Approval of Minutes: August 30, 2021**

**Action:** M/S/C (Hahn/Wengraf) to approve the minutes of 8/30/21.

**Vote:** Ayes – Wengraf, Hahn; Noes – None; Abstain – None; Absent – Arreguin.

**2. Review and Approve Draft Agenda:**

a. 9/28/21 – 6:00 p.m. Regular City Council Meeting

**Action:** M/S/C (Arreguin/Wengraf) to request that the author amend Item 25 to include a referral to the Parks and Waterfront Commission and refer the item to the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee.

**Vote:** All Ayes.

**Action:** M/S/C (Hahn/Wengraf) to approve the agenda of 9/28/21 with the revisions noted below.

**Vote:** All Ayes.

- *Item Added: Fire Department Grant (City Manager)*
- *Item Added: Public Safety Radio Lease (City Manager)*
- *Item 21 Predevelopment Application (Bartlett) – Revised item submitted; Councilmember Harrison added as a co-sponsor; Moved to Consent Calendar*
- *Item 22 Interim Regulations for Police Accountability Board (Commission) – Revised item submitted*
- *Item 23 Referral to Strengthen Public Health (Kesarwani) – Moved to Consent Calendar; Councilmembers Taplin, Droste, and Wengraf added as co-sponsors*
- *Item 24 Truck Weight Limit (Taplin) – Moved to Consent Calendar; Councilmembers Kesarwani and Wengraf added as co-sponsors*
- *Item 25 Native and Drought-Resistant Plants (Taplin) – Revisions requested by the Committee; Referred to the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee*
- *Item 26 Afghan Refugees (Taplin) – Moved to Consent Calendar; Councilmember Hahn added as a co-sponsor*
- *Item 27 Wildfire Prevention (Wengraf) – Moved to Consent Calendar; Councilmembers Harrison and Hahn added as a co-sponsor*
- *Item 28 Commercial Weight Limit (Wengraf) – Moved to Consent Calendar; revised item submitted; Councilmembers Taplin and Droste added as co-sponsors*

**Order of Action Items**

Item 18 ZAB Appeal

Item 19 ADU Ordinance

Item 20 Electric Micromobility Permit

Item 22 Interim Regulations for Police Accountability Board

**3. Selection of Item for the Berkeley Considers Online Engagement Portal**

- None Selected

**4. Adjournments In Memory**

- Professor Leon Litwack, UC Berkeley Professor

**Scheduling**

**5. Council Worksessions Schedule** – received and filed

**6. Council Referrals to Agenda Committee for Scheduling** – received and filed

**7. Land Use Calendar** – received and filed

**Referred Items for Review**

**8. Discussion Regarding Impact of COVID-19 (novel coronavirus) on Meetings of Legislative Bodies**

**Action:** 1 speaker. No action taken.

**9. Preliminary Analysis of Return to In-Person Meetings of City Legislative Bodies**

**Action:** 5 speakers. Staff provided an update of current legislative impacts on in-person/virtual meetings. Discussion held regarding requirements of new legislation, ability to hold hybrid meetings, physical spacing at the Boardroom dais, and improvements for public attendees on the Zoom.

**Unscheduled Items**

**10. Strengthening and Supporting City Commissions: Guidance on the Development of Legislative Proposals**

**Items for Future Agendas**

- Discussion of items to be added to future agendas
  - None

## Adjournment

**Action:** M/S/C (Hahn/Wengraf) to adjourn the meeting.

**Vote:** All Ayes.

Adjourned at 3:57 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on September 13, 2021.

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Mark Numainville  
City Clerk

## Communications

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## DRAFT AGENDA



## BERKELEY CITY COUNCIL MEETING

Tuesday, October 12, 2021  
6:00 PM

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI  
DISTRICT 2 – TERRY TAPLIN  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN  
DISTRICT 6 – SUSAN WENGRAF  
DISTRICT 7 – RIGEL ROBINSON  
DISTRICT 8 – LORI DROSTE

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE**

*Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.*

*Live audio is available on KPFB Radio 89.3. Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at <http://www.cityofberkeley.info/CalendarEventWebcastMain.aspx>.*

*To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <<INSERT URL HERE>>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.*

*To join by phone: Dial 1-669-900-9128 or 1-877-853-5257 (Toll Free) and enter Meeting ID: <<INSERT MEETING ID HERE>>. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.*

*Please be mindful that the teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.*

*To submit a written communication for the City Council's consideration and inclusion in the public record, email [council@cityofberkeley.info](mailto:council@cityofberkeley.info).*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.*

## Preliminary Matters

### Roll Call:

**Ceremonial Matters:** *In addition to those items listed on the agenda, the Mayor may add additional ceremonial matters.*

**City Manager Comments:** *The City Manager may make announcements or provide information to the City Council in the form of an oral report. The Council will not take action on such items but may request the City Manager place a report on a future agenda for discussion.*

**Public Comment on Non-Agenda Matters:** *Persons will be selected to address matters not on the Council agenda. If five or fewer persons wish to speak, each person selected will be allotted two minutes each. If more than five persons wish to speak, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.*

## Consent Calendar

*The Council will first determine whether to move items on the agenda for "Action" or "Information" to the "Consent Calendar", or move "Consent Calendar" items to "Action." Three members of the City Council must agree to pull an item from the Consent Calendar for it to move to Action. Items that remain on the "Consent Calendar" are voted on in one motion as a group. "Information" items are not discussed or acted upon at the Council meeting unless they are moved to "Action" or "Consent".*

*No additional items can be moved onto the Consent Calendar once public comment has commenced. At any time during, or immediately after, public comment on Information and Consent items, any Councilmember may move any Information or Consent item to "Action." Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.*

*For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.*

**Public Comment on Consent Calendar and Information Items Only:** *The Council will take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. Speakers will be entitled to two minutes each to speak in opposition to or support of Consent Calendar and Information Items. A speaker may only speak once during the period for public comment on Consent Calendar and Information items.*

*Additional information regarding public comment by City of Berkeley employees and interns: Employees and interns of the City of Berkeley, although not required, are encouraged to identify themselves as such, the department in which they work and state whether they are speaking as an individual or in their official capacity when addressing the Council in open session or workshops.*

## Recess Items

1. **Contract: Murray Building, Inc. for Cazadero Camp Jensen Dormitory Construction Project**

**From: City Manager**

**Recommendation:** Adopt a Resolution ratifying the action taken by the City Manager during recess: 1. Approving the plans and specifications for the Cazadero Camp Jensen Dormitory Project, Specification No. 21-11443-C; 2. Accepting the bid of Murray Building, Inc. as the lowest responsive and responsible bidder for the amount of \$1,329,000; and 3. Authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the Project in accordance with the approved plans and specifications with Murray Building, Inc. in an amount not to exceed \$1,461,900 which includes a 10% contingency.

**Financial Implications:** Camps Fund - \$1,461,900

Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

## Consent Calendar

2. **Council Office Expense Account**

**From: City Manager**

**Recommendation:** Rescind Resolution No. 65,540-N.S., and adopt a resolution to allocate for Mayor and Councilmember Office staff salaries and fringe benefits for Legislative Assistant position to be adjusted annually consistent with any increase provided to the SEIU Local 1021 Community Services Unit and part-Time Recreation Leaders Association (CSU-PTRLA) Unit.

**Financial Implications:** See report

Contact: Rama Murty, Budget Office, (510) 981-7000

3. **City Council Rules of Procedure and Order Revisions**

**From: City Manager**

**Recommendation:** Adopt a Resolution revising Appendix C of the City Council Rules of Procedure and Order to refine practices for holding public meetings via video conference technologies; clarifying the Council procedures for moving an item from the Action to Consent Calendar; removing Appendix D; and rescinding any preceding amendatory resolutions.

**Financial Implications:** None

Contact: Mark Numainville, City Clerk, (510) 981-6900

4. **Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on October 12, 2021**

**From: City Manager**

**Recommendation:** Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.

**Financial Implications:** Zero Waste Fund - \$750,000

Contact: Henry Oyekanmi, Finance, (510) 981-7300

## Consent Calendar

- 5. Purchase Order: Braun Northwest for Two 2022 North Star 155-1 Type 1 Ambulances**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in HGACBuy contract bid procedures, and authorizing the City Manager to execute a purchase order for two (2) 2022 North Star 155-1 Type 1 Ambulances with Braun Northwest, Inc. in an amount not to exceed \$517,000.  
**Financial Implications:** Measure FF - \$517,000  
Contact: Abe Roman, Fire, (510) 981-3473, Liam Garland, Public Works, (510) 981-6300
- 6. Purchase Order: Nicholas K Corp DBA “The Ford Store” San Leandro for Five Ford F-250 4X4 Pickup Trucks**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in Alameda County bid procedures and authorizing the City Manager to execute a purchase order for five (5) Ford F-250 4X4 Pickup Trucks with Nicholas K Corp DBA “The Ford Store” San Leandro in an amount not to exceed \$322,000.  
**Financial Implications:** Measure FF - \$322,000  
Contact: Abe Roman, Fire, (510) 981-3473, Liam Garland, Public Works, (510) 981-6300
- 7. Contract No. 32100181 Amendment: Alameda County Healthcare Services Agency**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32100181 with Alameda County Healthcare Services to increase the total contract amount by \$62,000 for a total contract amount not to exceed \$100,000 for the period of May 1, 2021 to July 31, 2024 for epidemiology and program evaluation services. The contract will serve the needs of the Public Health Division in providing the program evaluation required under the 3-year Prop 64 Cohort 2 grant funding that was awarded to the City of Berkeley in May 2021.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 8. Appointment of Fire Chief**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution confirming the appointment of Abraham Roman as the Fire Chief to be effective October 17, 2021 at an annual salary of \$268,990.  
**Financial Implications:** See report  
Contact: LaTanya Bellow, Human Resources, (510) 981-6800

## Consent Calendar

- 9. Classification and Salary: Establish Program Manager I and II Classifications**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution amending Resolution No. 68,709-N.S., Classification and Salary Resolution for Public Employees Union, Local One to include the classification of Program Manager I and II Classifications with an hourly salary range of \$51.7326 - \$62.4561 effective October 12, 2021.  
**Financial Implications:** See report  
Contact: LaTanya Bellow, Human Resources, (510) 981-6800
- 10. Transfer Tax Refund for 1685 Solano Avenue**  
**From: City Manager**  
**Recommendation:** Adopt a resolution authorizing the City Manager to grant a transfer tax refund of an estimated \$121,250 to the Bay Area Community Land Trust (BACLT) to support the acquisition and renovation of 1685 Solano Avenue and BACLT's operation of the property as affordable housing.  
**Financial Implications:** General Fund - \$121,250  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 11. Contract No. 112798-2 Amendment: Geographic Technologies Group for Additional Geographic Information System (GIS) Projects**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 112798-2 with Geographic Technologies Group (GTG) for Geographic Information System (GIS) professional services, for a total not to exceed \$100,000 and for a total contract value of \$499,411 from September 14, 2016 to June 30, 2023.  
**Financial Implications:** FY22 IT Cost Allocation - \$100,000  
Contact: Savita Chaudhary, Information Technology, (510) 981-6500
- 12. Protiviti Government Services: Using General Services Administration (GSA) Vehicle for Professional Services Purchase Orders**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to issue purchase orders with Protiviti Government Services for the purchase of professional services using the General Services Agency's (GSA) purchasing vehicle no. GS-35F-0280X for an amount not to exceed \$492,000 through September 30, 2022.  
**Financial Implications:** See report  
Contact: Savita Chaudhary, Information Technology, (510) 981-6500

## Consent Calendar

### 13. **Grant Application: Environmental Enhancement and Mitigation Project (EEMP) Proposal**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to submit an Environmental Enhancement and Mitigation (EEM) grant application to plant urban forest trees in the amount up to \$500,000; to accept the grant; to execute any resultant revenue agreements and amendments; and authorizing the implementation of the project and appropriation of funding for related expenses, subject to securing the grant.

**Financial Implications:** See report

Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

## Council Consent Items

### 14. **Budget Referral: Security Cameras in the Public Right Of Way at Intersections Experiencing Increased Violent Crime, and Environmental Safety Assessment for High Crime Areas**

**From: Councilmember Taplin (Author), Councilmember Kesarwani (Author)**

**Recommendation:** In order to deter gun violence and obtain evidence to solve criminal investigations, adopt the following recommendations: 1. Authorize the City Manager to install security cameras, prominent signage, and increased lighting in the public right-of-way at intersections experiencing a rise in violent crime, including appropriate arterial streets serving as entry into and exit out of the City of Berkeley; 2. Refer to the City Manager an environmental safety assessment of the high crime areas specifically in South and West Berkeley; 3. Refer costs for security cameras and lighting to the Annual Appropriations Ordinance (AAO) #1 budget process.

We note that the security camera footage would be used solely for the purpose of solving criminal investigations. The cameras are not intended and would not be used for any kind of surveillance purposes whatsoever. Key intersections entering and leaving Berkeley for security camera installation could include those listed below.

Arterial intersections along University, Ashby and Alcatraz in close proximity to gun violence in South and West Berkeley should be prioritized: 6th/University, 7th/Ashby, San Pablo Ave./Ashby, Sacramento/Alcatraz, Alcatraz/Adeline, Ashby/Telegraph. Gilman/6th, College/Alcatraz, Ashby/Domingo, Ashby/Claremont. Other locations within Berkeley may include the following: University/San Pablo, University/Sacramento, Sacramento/Ashby, George Florence Park, 10th/Bancroft, 8th/Channing, 8th/Addison.

**Financial Implications:** See report

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

## Council Consent Items

- 15. Infrastructure and Affordable Housing Finance Plan for Adeline Corridor**  
**From: Councilmember Bartlett (Author)**  
**Recommendation:** Refer to the November Annual Appropriation Ordinance an allocation of \$200,000 to fund a Consultant to design and implement an infrastructure and affordable housing finance strategy for the Adeline Corridor Plan that was adopted by the City Council on December 8, 2020. The proposed analysis should examine the feasibility of various infrastructure financing tools, such as an Enhanced Infrastructure Finance District (EIFD), Community Facilities District, Affordable Housing Authority, Community Revitalization and Investment Authority, pursuit of state and Federal grants, and other public and private financing tools. The project team should determine which financing mechanism(s) would be most appropriate to fund elements of the Adeline Corridor Plan, and future community-oriented projects. Upon identifying the appropriate funding tools, the consultant would then proceed with implementation based on further feedback from City Council and the community.  
**Financial Implications:** See report  
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130
- 16. Budget Referral: Allocate General Fund Revenues to Support Pilot Program Offering Free AC Transit on Sundays in Berkeley**  
**From: Councilmember Harrison (Author)**  
**Recommendation:** Refer to the November 2021 budget process approximately \$500,000 in General Fund Revenue toward fully subsidizing AC Transit fares originating from Berkeley on Sundays for at least one calendar year.  
**Financial Implications:** General Fund - \$500,000  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
- 17. Adopt a Resolution Denouncing Texas Anti-Abortion Law (SB 8) and Reaffirming Reproductive Freedom in Berkeley**  
**From: Councilmember Wengraf (Author)**  
**Recommendation:** Adopt a Resolution to denounce the Texas abortion law, Senate Bill (SB) 8, banning most abortions after six weeks of pregnancy. The resolution will also reaffirm the City of Berkeley's commitment to reproductive freedom.  
**Financial Implications:** None  
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160
- 18. Support for H.R. 3755 – Women’s Health Protection Act of 2021 (Chu)**  
**From: Councilmember Wengraf (Author)**  
**Recommendation:** Adopt a Resolution in support of H.R. 3755 – Women’s Health Protection Action of 2021 (Chu) and send copies to House Representatives Judy Chu and Barbara Lee; Senators Richard Blumenthal, Dianne Feinstein and Alex Padilla; Vice President Kamala Harris and President Joe Biden.  
**Financial Implications:** None  
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160

## Action Calendar

*The public may comment on each item listed on the agenda for action as the item is taken up. For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.*

*The Presiding Officer will request that persons wishing to speak use the "raise hand" function to determine the number of persons interested in speaking at that time. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.*

*Action items may be reordered at the discretion of the Chair with the consent of Council.*

## Action Calendar – Public Hearings

*Staff shall introduce the public hearing item and present their comments. This is followed by five-minute presentations each by the appellant and applicant. The Presiding Officer will request that persons wishing to speak use the "raise hand" function to be recognized and to determine the number of persons interested in speaking at that time.*

*Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.*

*Each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Councilmembers shall also submit a report of such contacts in writing prior to the commencement of the hearing. Written reports shall be available for public review in the office of the City Clerk.*

### 19. **ZAB Appeal: 1205 Peralta Avenue, Variance/Use Permit #ZP2020-0060**

#### **From: City Manager**

**Recommendation:** Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to deny Zoning Permit #ZP2020-0060 for a Variance to legalize the elimination of two off-street parking spaces by conversion of an existing 18 foot x 20 foot garage to habitable space, and a Use Permit to legalize the addition of three bedrooms on a lot that is non-conforming for density, lot coverage, setbacks, usable open space and parking.

**Financial Implications:** None

Contact: Jordan Klein, Planning and Development, (510) 981-7400



## Action Calendar – Old Business

20. **Amending the Berkeley Election Reform Act (BERA) Relating to Officeholder Accounts** *(Reviewed by the Agenda & Rules Committee) (Continued from September 14, 2021)*

**From: Agenda & Rules Committee: Mayor Arreguin, Councilmember Hahn, Councilmember Wengraf**

**Recommendation:**

Take one of the following actions: 1. Refer a proposal to the Fair Campaign Practices Commission (FCPC) amending the Berkeley Election Reform Act (BERA), BMC Chapter 2.12, and Lobbyist Registration Act, BMC Chapter 2.09, to enact “a reasonable set of limitations and rules” to regulate the maintenance of officeholder accounts, as developed and referred for consideration by the Agenda and Rules Committee; or 2. Refer a proposal to the FCPC amending BERA, BMC Chapter 2.12, to prohibit Officeholder Accounts, as originally proposed by the Fair Campaign Practices Commission.

*Policy Committee Recommendation: Send the item to Council with two proposed alternatives: 1) Councilmember Hahn’s proposal to regulate officeholder accounts, and 2) the Fair Campaign Practices Commission proposal to prohibit officeholder accounts; and to include the Commission’s analysis of regulating officeholder accounts in the item that goes to the full Council.*

**Financial Implications:** See report

Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150

## Action Calendar – Old Business

21. **Referral to the Zero Waste and Energy Commission (or Successor Commission) to Hold Joint Meetings to Conduct Community Outreach and Education Events with Regard to the Proposed Ordinance Regulating the Use of Carryout and Pre-checkout Bags and to Make Recommendations to the FITES Committee** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee) (Continued from September 14, 2021)*

**From: Councilmember Harrison (Author)**

**Recommendation:**

Refer to Berkeley's Zero Waste and Energy Commissions (or successor Commission) to hold joint meetings regarding the proposed Ordinance regulating the use of carryout and pre-checkout bags and promoting the use of reusable bags by December 31, 2021.

As part of the series of meetings, the Commissions should: 1. strive to conduct community/business outreach and education events to include, but not limited to the following entities: a. all stores and events that provide pre-checkout bags (e.g., grocery stores, convenience stores, food marts, and food vendors); b. all restaurants, take-out food stores, food trucks, permitted events, and any other commercial establishment not regulated by the state that provide carryout bags; and 2. make any recommendations with respect to any amendments and appropriate phasing to the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee.

*Policy Committee Recommendation: Make a positive recommendation to the City Council that the Council direct the Zero Waste and Energy Commission (or successor Commission) to hold joint meetings to conduct community outreach and education events and recommend proposed changes and appropriate phasing to the FITES Committee.*

**Financial Implications:** See report

Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

## Action Calendar – New Business

22. **Identifying Referrals for Removal**

**From: City Manager**

**Recommendation:** 1. Review the referrals marked as rescinded by the sponsoring Councilmember or District; 2. Consider the referrals identified by Councilmembers for further discussion; and 3. Approve the removal of referrals that have been marked as rescinded by the sponsoring Councilmember or District.

**Financial Implications:** None

Contact: Dee Williams-Ridley, City Manager, (510) 981-7000

## Action Calendar – New Business

**23. Proposed Ordinance Amending Paragraph ‘NN’ of Berkeley Municipal Code Section 19.48.020**

**From: City Manager**

**Recommendation:** 1. Adopt the first reading of an Ordinance (Attachment 1) which modifies the language of Paragraph ‘NN.’ of Berkeley Municipal Code Section 19.48.020 (“Amendments to the California Fire Code) by adopting a building standard which is more restrictive than that standard currently contained in the California Fire Code and which will expand the existing local code amendment that requires the installation of fire sprinklers in new structures and the retrofit fire sprinklers into existing structures that currently exists in Fire Zone 3 to include structures located in Berkeley Fire Zone 2;  
2. Adopt a Resolution (Attachment 2) setting forth findings of local conditions that require more stringent building standards than those provided by the 2019 California Fire Code and that amends Resolution number 69,178–N.S.; and  
3. In compliance with state law on adopting such more restrictive building standards, hold a public hearing following the first reading and before the second reading, and schedule the public hearing for October 26, 2021.

**Financial Implications:** See report

Contact: Abe Roman, Fire, (510) 981-3473

## Action Calendar – Policy Committee Track Items

**24. City Policy Regarding Scheduling City Meetings on Significant Religious Holidays**

**From: Mayor Arreguin (Author), Councilmember Wengraf (Author)**

**Recommendation:** Adopt a Resolution establishing an official City of Berkeley policy to avoid scheduling of meetings of the City Legislative Bodies (City Council, Commissions and Boards, Council Policy Committees, Task Forces) on any religious holiday that incorporates significant work restrictions and direct the City Manager to identify those holidays in consultation with community religious leaders.

**Financial Implications:** Staff time

Contact: Jesse Arreguin, Mayor, (510) 981-7100

**25. Letter to Senate Budget Committee Chair Sen. Skinner Regarding Berkeley Pier**

**From: Councilmember Taplin (Author), Mayor Arreguin (Co-Sponsor), Councilmember Robinson (Co-Sponsor)**

**Recommendation:** Send a letter to State Senator Nancy Skinner (D-Berkeley), Chair of the Senate Budget Committee, requesting state budget allocations for urgent infrastructure needs at the Berkeley Municipal Pier.

**Financial Implications:** None

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

## Action Calendar – Policy Committee Track Items

### 26. Adopt a Resolution in Support of a Direct Pay Provision for the 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit

**From: Councilmember Harrison (Author)**

**Recommendation:** Adopt a resolution in support of a Direct Pay Provision for the 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit. end copies of the resolution to Senators Feinstein and Padilla, Congresswoman Lee, Chairman Wyden, Chairman Neal, Ranking Member Crapo, and Ranking Member Brady.

**Financial Implications:** None

Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

## Public Comment – Items Not Listed on the Agenda

### Adjournment

**NOTICE CONCERNING YOUR LEGAL RIGHTS:** *If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply: 1) No lawsuit challenging a City decision to deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a use permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

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Communications to the City Council 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 the City Council, 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 to the City Clerk Department at 2180 Milvia Street. 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 City Clerk Department for further information.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be posted on the City's website at <http://www.cityofberkeley.info>. Agendas and agenda reports may be accessed via the Internet at <http://www.cityofberkeley.info/citycouncil>

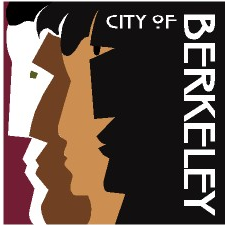
#### COMMUNICATION ACCESS INFORMATION:

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.



Captioning services are provided at the meeting, on B-TV, and on the Internet.

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CONSENT CALENDAR
Oct. 12, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin (Author), Councilmember Kesarwani (Author)

Subject: Budget Referral: Security Cameras in the Public Right Of Way at Intersections Experiencing Increased Violent Crime, and Environmental Safety Assessment for High Crime Areas

RECOMMENDATION

In order to deter gun violence and obtain evidence to solve criminal investigations, adopt the following recommendations:

1. Authorize the City Manager to install security cameras, prominent signage, and increased lighting in the public right-of-way at intersections experiencing a rise in violent crime, including appropriate arterial streets serving as entry into and exit out of the City of Berkeley;
2. Refer to the City Manager an environmental safety assessment of the high crime areas specifically in South and West Berkeley;
3. Refer costs for security cameras and lighting to the Annual Appropriations Ordinance (AAO) #1 budget process.

We note that the security camera footage would be used solely for the purpose of solving criminal investigations. The cameras are not intended and would not be used for any kind of surveillance purposes whatsoever.

Key intersections entering and leaving Berkeley for security camera installation could include those listed below. Arterial intersections along University, Ashby and Alcatraz in close proximity to gun violence in South and West Berkeley should be prioritized.

- 6th/University
- 7th/Ashby
- San Pablo Ave./Ashby
- Sacramento/Alcatraz
- Alcatraz/Adeline
- Ashby/Telegraph
- Gilman/6th
- College/Alcatraz
- Ashby/Domingo
- Ashby/Claremont

Other locations within Berkeley may include the following:

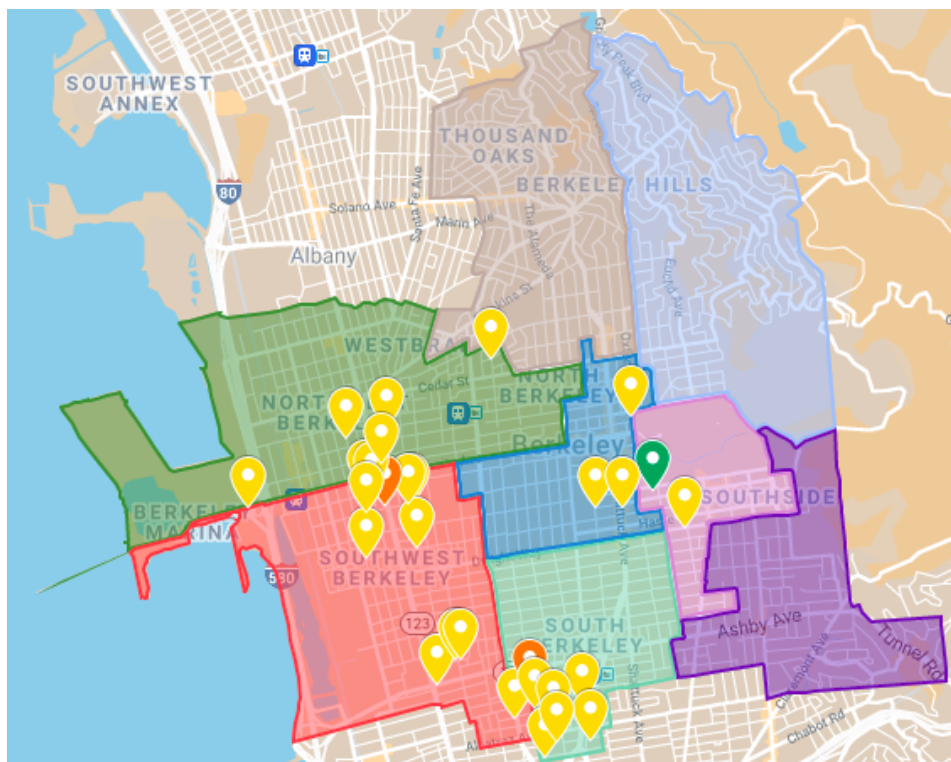
- University/San Pablo
- University/Sacramento
- Sacramento/Ashby
- George Florence Park
- 10th/Bancroft
- 8th/Channing
- 8th/Addison

FINANCIAL IMPLICATIONS

Approximately \$500,000 to \$1 million for purchasing security cameras including camera storage and maintenance, as well as signage installation and increased lighting. Estimated one-time costs to install cameras, signage and lighting are likely to range from \$75,000 to \$150,000 per intersection, plus \$40,000 annually for data, software and maintenance.

CURRENT SITUATION AND ITS EFFECTS

According to the Berkeley Police Department, there were 29 shootings in 2021 as of September 6, compared to 22 shootings by the same date in 2020. Only 10 of the investigations on those shootings have been closed with an identified suspect, and the Department has recovered 70 firearms this year so far. 22 of those firearms, including 4 rifles, were recovered during detective follow-up investigations.



*2021 Berkeley Gunfire Map*¹

On the morning of Saturday, September 4, 2021, West Berkeley residents reported 8-10 gunshots from two cars driving on 10th St past George Florence Park.² Panicked parents grabbed their children and ran for cover, but the park is fenced in on 3 sides, and is only open on the side of the street where the gunfire was identified. Police responded to the scene and found evidence of a second shooting just two blocks away at 9th and Allston. This follows recent shootings at 8th and Channing on August 20, and one that injured a man at San Pablo and Allston on August 14.³ Residents of this neighborhood are alarmed by the surge in gun violence and have urged the City to install security cameras in public spaces with high incidence of violent crime, along with other evidence-based policy responses, to ensure safer streets.

Shootings often involve suspects who flee the area of the crime in their vehicles. Police investigating the crime rely on private security cameras owned by residents and/or businesses in order to obtain video evidence. Installing high-quality cameras at major arterials would ensure access to videos and allow investigators to check the videos for suspects fleeing the crime area in their vehicle. High-quality images of suspect vehicles would provide valuable investigative leads. The City already urges private property owners with security cameras to register their cameras with the Berkeley Police Department to assist in criminal investigations, and property owners readily avail themselves of this resource. Valuable public safety resources should not be delegated entirely to the voluntary cooperation of private entities, particularly when violent gunfire has occurred in many public spaces including parks and major intersections.

Strategically placed cameras should be of sufficient quality to capture high resolution video. Cameras would not be equipped with Automated License Plate Readers (ALPR), and would not be monitored. The recordings would be an investigative resource which officers could access while investigating specific crimes and could assist in a reduction of crime. This would be an additional element of our Police Department's crime prevention strategies.

"Stationary security cameras affixed to City property or facilities" are not regulated under the Surveillance Technology Ordinance (c.f. BMC Section 2.99.020.1.i). As a result, stationary camera installation at major thoroughfares would be exempt from the requirements of BMC Chapter 2.99.

¹ Raguso, E. (2021). The 2021 Berkeley Gunfire Map. *Berkeleyside*. Retrieved Sept. 13, 2021 from <https://www.berkeleyside.org/2021/05/22/2021-berkeley-gunfire-map>

² Raguso, E. (Sept. 4, 2021). Police investigate daytime shoot-out in Berkeley on Saturday. *Berkeleyside*. Retrieved from <https://www.berkeleyside.org/2021/09/05/police-investigate-daytime-shoot-out-west-berkeley-saturday>

³ Raguso, E. (Aug. 14, 2021). Update: Man shot in Berkeley is expected to survive; roadway is open. *Berkeleyside*. Retrieved from <https://www.berkeleyside.org/2021/08/14/man-shot-berkeley-traffic-san-pablo-avenue>

Providing security cameras in the public right-of-way is a Strategic Plan Priority Project, advancing our goal to create a resilient, safe, connected, and prepared city.

BACKGROUND

A 2011 report⁴ from The Urban Institute’s Justice Policy Center noted that cameras can be an effective tool for preventing crimes and supporting investigations. These tools appear fiscally prudent both as tools for investigations, and with the installation and maintenance of security cameras being less costly than the costs associated with crimes that may take place without them.

Berkeley’s Police Department has been conducting Crime Prevention Through Environmental Design (CPTED) assessments for neighborhoods throughout the City over the past several years. These assessments include recommendations such as: increased lighting, maintenance of properties, landscaping and signage that can be used to deter criminal behavior.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

CONTACT PERSON

Councilmember Terry Taplin	Council District 2	510-981-7120
Councilmember Rashi Kesarwani	Council District 1	510-981-7110

⁴ La Vigne, N. G., et al. (2011). Evaluating the use of public surveillance cameras for crime control and prevention. *Washington, DC: US Department of Justice, Office of Community Oriented Policing Services. Urban Institute, Justice Policy Center, 1-152.*



CONSENT CALENDAR
October 12, 2021

To: Honorable Mayor and Members of the City Council
 From: Councilmember Ben Bartlett
 Subject: Infrastructure and Affordable Housing Finance Plan for Adeline Corridor

RECOMMENDATION

Refer to the November Annual Appropriation Ordinance an allocation of \$200,000 to fund a Consultant to design and implement an infrastructure and affordable housing finance strategy for the Adeline Corridor Plan that was adopted by the City Council on December 8, 2020.

The proposed analysis should examine the feasibility of various infrastructure financing tools, such as an Enhanced Infrastructure Finance District (EIFD), Community Facilities District, Affordable Housing Authority, Community Revitalization and Investment Authority, pursuit of state and Federal grants, and other public and private financing tools. The project team should determine which financing mechanism(s) would be most appropriate to fund elements of the Adeline Corridor Plan, and future community-oriented projects. Upon identifying the appropriate funding tools, the consultant would then proceed with implementation based on further feedback from City Council and the community.

CURRENT SITUATION

The Adeline Corridor Plan was passed in December of 2020. To support equitable development within the Berkeley Community, we must support the development of small businesses and accessible housing options for low-income communities.

This proposal is a response to the COVID-19 Pandemic and the devastating effects it has had on our community. According to a recent census, 56% of California small businesses experienced large negative effects from the pandemic¹ and the inequity in income growth throughout the United States has been exasperated by COVID-19². The Adeline Corridor Plan is important to fight against the economic effects this epidemic has had on our low and middle-income communities. To combat k-shaped economic recovery³, and hastening exits of longtime residents from the Adeline corridor, it is all the more important that we achieve our goal of developing the Adeline Corridor. To more efficiently achieve our goals, we must find new avenues for funding the Adeline Corridor Plan.

¹ <https://www.ppic.org/blog/the-economic-toll-of-covid-19-on-small-business/#:~:text=Fifty%2Dsix%20percent%20of%20California,face%20the%20most%20severe%20setbacks.>

² <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0249121#sec004>

³ <https://apnorc.org/projects/despite-signs-of-economic-recovery-the-most-economically-vulnerable-americans-face-serious-financial-challenges/>

The barrier to equitably developing the Adeline Corridor is funding. To combat the crisis in funding, we propose that a Consultant be hired to design and implement a financial plan to ensure the success of the Adeline Corridor Plan while also ensuring the success of future community-oriented projects. The Adeline Corridor Plan was adopted last year and requires a significant amount of funding. That is why creating a specialized project team into our plans will be instrumental in realizing the plan as outlined below, empowering economic development, and above all else, supporting our cultural heritage.

The Adeline Corridor Plan intends to⁴:

- Increase individual affordable housing units
- Increase pedestrian and bike lane safety
- Develop the Ashby BART station
- Create a Business Improvement District (BIPD)
- Redesign Adeline Street
- Strengthen community assets
- Protect the Berkeley Flea Market
- Increase constituent's access to resources
- Improve the tree line along walkways
- Build equitable green space
- Promotion of Public Art

The project team will assess the financial feasibility of an Enhanced Infrastructure Financing District (EIFD), Community Facilities District, Affordable Housing Authority, Community Revitalization and Investment Authority, pursuit of state and federal grants, and other public and private financing tools, that would support the Adeline Corridor Plan.

An EIFD could provide for projects that contribute to economic development, including affordable housing. Therefore, to effectively leverage our taxes in favor of improving our community, we would like to invite the council to consider funding a Consultant to assess the efficiency and practicality of an EIFD for the funding of the Adeline Corridor Project. For example, an EIFD could contribute to the economic development of Berkeley by providing funding that will facilitate the commencement of work on the Adeline Corridor Plan. Furthermore, an EIFD could be helpful because as outlined by the Adeline Corridor Plan, 50% of all housing developments for the next 20 years along the corridor must remain affordable for the lowest incomes and highest needs.⁵ Therefore, an EIFD could account for the funding that would be accrued from higher housing revenue that is being forfeited through the current plan's commitment to low and middle-income housing availability.

Additionally, the project would use green construction to build mixed-use buildings, structured parking, commercial and civic spaces on the ground floor, and new public

⁴ <https://www.cityofberkeley.info/council3/adeline/>

⁵ <https://www.cityofberkeley.info/council3/adeline/>

space surrounding Ashby BART station⁶. In combination with green planning, the Adeline Corridor Plan will redesign Adeline Street from the Oakland border north to Derby Street, creating more public open spaces out of paved space, reducing crossing distances, and making the street more comfortable for pedestrians and cyclists⁷.

Furthermore, the Adeline Corridor Plan intends to support capital improvements that strengthen existing institutions such as the Berkeley Flea Market, the South Berkeley Farmers Market, and the annual Juneteenth Festival, as well as future institutions such as the African American Holistic Resource Center⁸.

BACKGROUND

EIFDs were formed through expanding on Tax Increment Financing (TIF), which freezes property tax revenue from a designated area at a base level. In the following years, this revenue is separated from other property tax revenue and can be leveraged to improve the designated area or repay bonds issued against the anticipated TIF revenue⁹. A funding leveraging system like this will be instrumental for our goal of developing the projected 1,450 residential units and 65,000 square feet of commercial space through 2040¹⁰.

An EIFD is a type of tax increment financing that allows the city to utilize tax revenue to fund community-orientated economic development projects (i.e. Infrastructure, Affordable Housing, mixed-use development and sustainable development, Transit-oriented development, Parks and Open Space, etc). An EIFD is ideal for the Adeline Corridor Plan due to its flexible design. EIFDs can be used on a single street, in a neighborhood, or throughout an entire city¹¹. The flexibility of EIFDs opens a pathway to funding long-term development projects. It operates similar to an Infrastructure Financing District (IFD), with the key differences being expanding capabilities of what can be financed¹², extending project timelines, and improving public engagement requirements¹³. Finally, an EIFD is ideal due to the precision and flexibility it offers to funding allocation. Through an EIFD we can fund a public square and individual affordable housing units within one category of financing district.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

West Sacramento formed the first EIFD encompassing approximately 4,144 acres—about 25% of the city—in 2017¹⁴. The EIFD is expected to finance multiple projects,

⁶ <https://www.cityofberkeley.info/council3/adeline/>

⁷ <https://www.cityofberkeley.info/council3/adeline/>

⁸ <https://www.cityofberkeley.info/council3/adeline/>

⁹ <https://scag.ca.gov/post/enhanced-infrastructure-financing-district-eifd>

¹⁰ https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Land_Use_Division/2020_12_08_ADOPTED_ACSP_2.pdf

¹¹ <https://www.cacities.org/Policy-Advocacy/Hot-Issues/New-Tax-Increment-Tools>

¹² https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1145

¹³

https://leginfo.legislature.ca.gov/faces/billPdf.xhtml?bill_id=201920200AB116&version=20190AB11698AMD

¹⁴ <https://www.keysermarston.com/post/west-sacramento-adopts-states-first-eifd>

including sidewalk and streetscape improvements, parks, recreational facilities and open spaces, childcare facilities, affordable housing, bridges, and more¹⁵. West Sacramento chose to utilize EIFDs as a tool to restore the city's ability to bond against future revenue to finance infrastructure investments¹⁶. Thus, the EIFD allows for more efficient lot development, which in turn, creates community revenue gains sooner than possible without the tax leveraging program.

Recently, Sacramento has begun development of Aggie Square utilizing an EIFD. In October of 2020, a city council item noted the intention to develop the Aggie Square project. Aggie Square intends to create a public-private partnership between the University of California Davis (UC) and Wexford Science and Technology (Wexford)¹⁷. In February of 2021, Sacramento released a plan which outlines preliminary costs at Phase 1. The city estimates this development would add approximately \$5 billion annually and 25,000 ongoing jobs to the 6-county region by the time Aggie Square construction is finalized¹⁸. The formation of the EIFD was pursued because it was deemed necessary for financing the construction of public infrastructure and development that serves the Aggie Square project and the surrounding community while providing significant community-wide benefits¹⁹.

Another example we intend to follow is LA county's city of La Verne, which established its own EIFD in 2017. The city expects to establish a new light rail station by 2026²⁰. The development includes approximately 1,700 residential units, a 150-bed hotel, and 100,000 square feet of retail space²¹. Not only will the EIFD project enhance the aesthetics of the city, but it will also improve functionality through dedicated bikeways, and increasing community walkability. In La Verne's 2020 summary, the total cost of renovation is estimated to be about 33 million with project improvements to highways, pedestrian safety, lighting, landscaping, a pedestrian bridge, pipelines, and sewers²². On the city's website, they explain that the idea is that by having the improvements in place sooner, it will spur development to occur faster, which in turn will help to pay for more of the identified projects²³.

¹⁵ <https://www.cityofwestsacramento.org/government/departments/administrative-services/eifd-formation>

¹⁶ https://live-terner-center-for-housing-innovation.pantheon.berkeley.edu/wp-content/uploads/2020/10/Enhanced_Infrastructure_Financing_Districts_West_Sacramento.pdf

¹⁷ https://sacramento.granicus.com/MetaViewer.php?view_id=22&clip_id=4752&meta_id=603641

¹⁸ <http://www.cityofsacramento.org/-/media/Corporate/Files/CMO/Major-Projects/Aggie-Square-EIFD-DRAFT-IFP-020221.pdf>

¹⁹ https://sacramento.granicus.com/MetaViewer.php?view_id=22&clip_id=4752&meta_id=603641

²⁰ <https://www.sfchronicle.com/opinion/article/How-one-small-city-could-show-way-for-California-13960717.php>

²¹ <https://www.cityoflaverne.org/index.php/documents/community-development/1602-eifd-la-verne-amended-and-restated-ifp/file>

²² <https://www.cityoflaverne.org/index.php/documents/community-development/1602-eifd-la-verne-amended-and-restated-ifp/file>

²³ <https://www.cityoflaverne.org/index.php/home/bulletins/287-socalgas-requests-regulatory-approval-to-replenish-natural-gas-supply-at-aliso-canyon-storage-facility>

Similarly, San Francisco is currently employing an IFD (Infrastructure Financing District) to improve infrastructure on Treasure Island and Yerba Buena Island. The crucial difference between an IFD and an EIFD is that an EIFD enables project timelines to be extended from 30 years to 45 years²⁴. This IFD will be used to develop 300 acres of open space, transit facilities, streets, geotechnical improvements, sea level rise adaptations, over 2,000 affordable houses, and amidst other communally beneficial projects²⁵. This financing plan was ideal for this project because it allows for an acceleration of development activity, as verified by consultants²⁶.

As made clear from locales across our state, by financing development plans, EIFDs can have an economically and culturally transformative impact on our communities. Additionally, and EIFD will better support our community due to the biannual financial and performance audits required within the program, unlike IFDs, which have no such requirements²⁷.

HISTORICAL CONTEXT

To expand on our legacy, we must also acknowledge our past. Before the existence of Adeline Street, Berkeley was inhabited by the Lisjan Ohlone people. They are a community native to the East Bay and were displaced by European and Mexican settlers beginning in the early 1800s. While the history of the Ohlone tribe is long, it is important to realize that they are still a thriving community today.

After the displacement of indigenous peoples and the acquisition of California, there were decades of growth within our south Berkeley community throughout the 1900s. In response to the San Francisco Earthquake of 1906, thousands fled into Berkeley and Oakland, which caused the small community surrounding the Lorin Railroad Station to grow exponentially. Along with this experience, Adeline Street became a thriving commercial and residential suburb.

South Berkeley—by the 1930s—became one of the most racially diverse districts in the Bay Area. This is directly correlated with the implementation of racially discriminatory real estate practices throughout the Bay Area that kept property ownership concentrated in the hands of white households. Practices like these continue to impact the generational wealth of Black and Brown constituents today²⁸.

Moving into the 1960s, racial inequality came to the forefront of the discussion around the development of the San Francisco Area Rapid Transit System (BART), as it intended to build upon the existing streetcar tracks. However, those plans would separate—and effectively segregate—the largely white east Adeline neighborhood from the African-American neighborhood to the west.

²⁴ <https://cceda.com/wp-content/uploads/EIFD-Resource-Guide-Feb-20161.pdf>

²⁵ <https://sftreasureisland.org/sites/default/files/CAB%20IFD-CFD%20Summary%2002%2007%2017.pdf>

²⁶ <https://sftreasureisland.org/sites/default/files/CAB%20IFD-CFD%20Summary%2002%2007%2017.pdf>

²⁷ https://edacademy.org/wp-content/uploads/2018/03/03.16.18_915-1015_TreasureIsland.pdf

²⁸ <https://www.pewresearch.org/fact-tank/2017/11/01/how-wealth-inequality-has-changed-in-the-u-s-since-the-great-recession-by-race-ethnicity-and-income/>

Through fighting back against these policies, the community made a landmark decision. Constituents voted to raise their taxes upwards of 20 million dollars²⁹ to pay for two BART stations to be built underground, one of these being the Ashby BART³⁰.

Utilizing an EIFD, we can work to continue the legacy built around Ashby BART station. The Adeline Corridor Project intends to bring financial justice to our community by ensuring economic growth for our diverse district three community.

CONSULTATION/OUTREACH OVERVIEW

The EIFD Plan should include a fiscal impact analysis to demonstrate that the EIFD will not have an adverse impact on the city's general fund. In other words, the analysis must show that the cost of providing services to the district area and the entire city can still be supported by the general fund if all or a portion of the property tax increment is diverted to the district³¹.

RATIONALE FOR RECOMMENDATION

An EIFD could provide funding for the Adeline Corridor project, allow for community support/input, and ensure the means of funding for our infrastructure projects. Securing an EIFD for Adeline Street will enable us to investigate the long-term benefits of EIFDs and expand our repertoire of funding avenues for future development concepts.

ALTERNATIVES TO CONSIDER

If unable to secure additional funding, an alternate solution is allowing district members to vote to increase their taxes. Through this vote, citizens would vote to leverage their own taxes as a method to ensure efficient project building. A vote like this would parallel the 1960s vote constituents participated in to ensure the BART stations did not segregate our communities. This would continue District Three's historic commitment to racial equity.

FISCAL IMPACTS OF RECOMMENDATION

\$250,000 in funding.

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510-981-7131

²⁹<https://www.mercurynews.com/2019/09/15/the-dramatic-surprising-and-sometimes-irreverent-history-of-bart-revealed-in-live-podcast-taping/>

³⁰ <https://www.bart.gov/about/history/history2>

³¹ <https://www.cityofwestsacramento.org/government/departments/administrative-services/eifd-formation>



Kate Harrison
Councilmember District 4

CONSENT CALENDAR
October 12, 2021

To: Honorable Mayor and Members of the City Council
 From: Councilmember Harrison
 Subject: Budget Referral: Allocate General Fund Revenues to Support Pilot Program Offering Free AC Transit on Sundays in Berkeley

RECOMMENDATION

Refer to the November 2021 budget process approximately \$500,000 in General Fund Revenue toward fully subsidizing AC Transit fares originating from Berkeley on Sundays for at least one calendar year.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

Reliable and low-cost shared mobility is necessary to reach the city's equity and climate goals. Fundamental social interactions and services, including but not limited to education, healthcare, commerce, socializing, recreation, and entertainment, require the conveyance of humans from one location to another. Berkeley is equipped with a robust, relatively low-cost, low-carbon, and unionized public bus transit system (AC Transit), connecting to many urban hubs through a larger system of regional public transit infrastructure. AC Transit also provides Berkeley with a ready-made means of accelerating its carbon emissions reduction strategy through mode shifting away from passenger vehicles. Even when powered by diesel, bus trips are significantly less carbon-intensive than gasoline-powered passenger vehicles; even greater climate benefits will be realized as zero-emission busses come on line.

The City has an opportunity to increase use of busses, particularly amongst those that do not commonly ride the bus, by working with AC Transit leadership to pilot fareless Sunday bus trips originating in Berkeley. Berkeley fully subsidizes passenger vehicle parking on Sundays and transit should not be placed at a disadvantage.

This proposal follows AC Transit's successful promotion of the American Rescue Plan Act (ARPA) funded 'Fare-Free Fridays' program during September 2021, and would support public transportation and local businesses which have faced steep declines in utilization and patrons amidst the COVID-19 pandemic. The details of the program are part of ongoing discussions and coordination with Alameda-Contra Costa Transit District (AC Transit) staff and leadership.

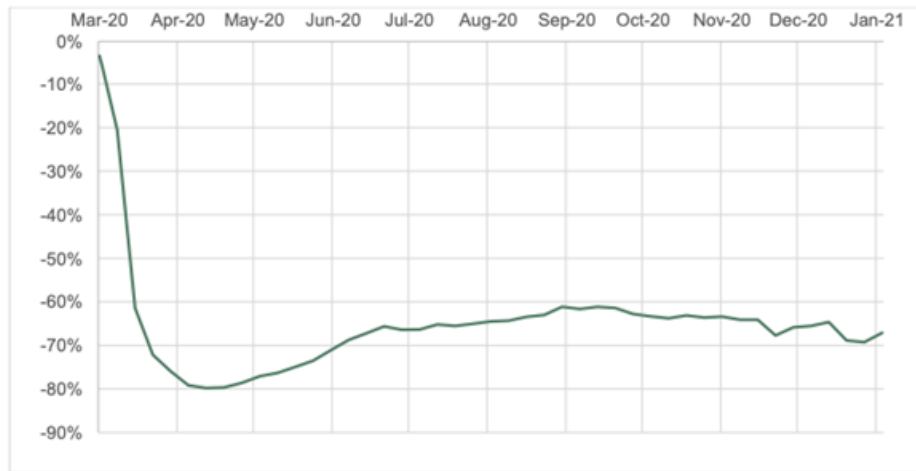
AC Transit busses reduce air pollution, frequent key urban locations, are relatively accessible to disabled persons, observe COVID-19 safety protocols, support commerce, and are outfitted with bicycle storage.

The federal government has empowered Berkeley to transfer ARPA funds to local agencies such as AC Transit. It is in the public interest for the City of Berkeley to support AC Transit and the Berkeley community by exploring and funding increased accessibility and utilization of public transit amidst the COVID-19 pandemic and the climate emergency through a year-long pilot of free Sunday bus rides.

BACKGROUND

According to data from the National Transit Database, monthly public transit ridership is 65% lower than before the pandemic.¹ Because of the COVID-19 pandemic, public transit has been forced to reduce its hours and accessibility, and many people shifted to driving personal vehicles as their main mode of transportation. Even as schools and businesses begin to reopen following increased vaccination and masking policies, public transit ridership remains extremely low.

Figure 2 Public Transit Ridership Losses and Projections



Source: APTA Ridership Trends Dashboard powered by Transit, January 2021.²

¹“The Impact of the COVID-19 Pandemic on Public Transit Funding Needs in the U.S.” Evidence-Based Practice (EBP), January 2021, <https://www.apta.com/research-technical-resources/research-reports/the-impact-of-the-covid-19-pandemic-on-public-transit-funding-needs-in-the-u-s/>.

² <https://transitapp.com/APTA>.

More generally, transit ridership in the U.S. has been steadily declining since 2014.³ The COVID crisis both demands and provides an opportunity for bringing the community back to public transport systems. Implementing free public transit on Sundays can help change the trajectory of Berkeley's ridership levels.

A pilot free transit program will have a positive environmental impact. We are facing a grave climate emergency, requiring municipalities to rapidly transition to a zero-carbon economy by 2030.⁴ Berkeley has struggled to rein in its transportation emissions, which as of 2018 accounted for 59% of greenhouse gas emissions and only fell 6% below 2000 levels.⁵

Even when powered by diesel fuel, public bus transit trips are significantly less carbon intensive than passenger vehicle miles, and will continue to fall each year as AC Transit completes its Zero Emissions Bus Rollout Plan by 2040 with 100 percent of all transit new bus purchases being zero emissions by 2029.⁶ According to national data from 2010, a single occupancy vehicle trip generates 0.96 pounds of carbon dioxide per passenger mile whereas a bus generates only 0.18 when fully occupied and 0.64 at average occupancy, representing a 33 to 81% decrease in carbon intensity per mile.⁷

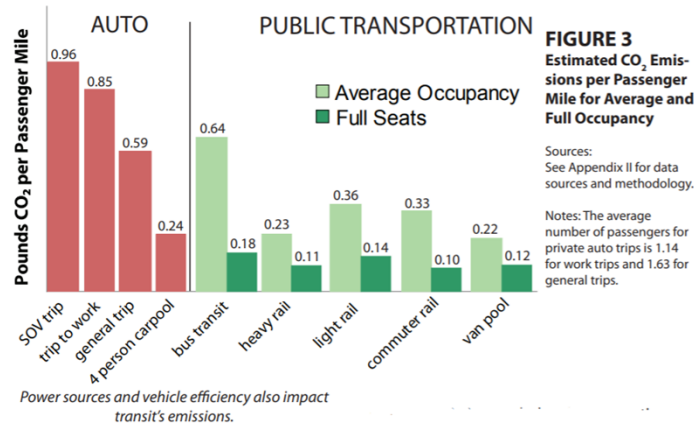
³ National Academies of Sciences, Engineering, and Medicine 2020. Analysis of Recent Public Transit Ridership Trends. Washington, DC: The National Academies Press. <https://doi.org/10.17226/25635>.

⁴ The City of Berkeley has historically shown its commitment to tackling climate change through the 2006 Berkeley ballot Measure G, 2009 Climate Action Plan, and the 2018 Climate Emergency Declaration. See also, "Endorsing the Declaration of a Climate Emergency", Resolution No. 68,486-N.S., June 2018 https://www.cityofberkeley.info/uploadedFiles/Council_2/Level_3_-_General/Climate%20Emergency%20Declaration%20-%20Adopted%2012%20June%202018%20-%20BCC.pdf

⁵ 2020 Climate Action Plan and Resilience Update, Office of Energy and Sustainability, July 21, 2020, https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-21_Special_Item_05_Climate_Action_Plan_pdf.aspx.

⁶ Zero-Emissions Bus Rollout Plan, AC Transit, Version 1, 2021, https://www.actransit.org/sites/default/files/2021-03/AC%20Transit%20ZEB%20Rollout%20Plan_06102020.pdf.

⁷ Public Transportation's Role in Responding to Climate Change, U.S. Dept. of Transportation, January 2010, <https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/PublicTransportationsRoleInRespondingToClimateChange2010.pdf>.



Source: Public Transportation’s Role in Responding to Climate Change, 2010.⁸

Scientists and researchers have warned that recovery and “stimulus” funds distributed by governments in the wake of the COVID-19 pandemic must be expended on climate mitigation efforts in order to meet the extremely small carbon budgets agreed to as part of the 2015 Paris Agreement to limit global warming to “well below” 2 degrees.⁹

Across the nation cities are taking action through the implementation of free transit systems. The goal of these transit services is affordable mobility for all, whether through free bus systems, shuttles, railways, etc. In particular the establishment of pilot programs and COVID-19 recovery efforts across the country have demonstrated the need for a push to free public transit. In March 2021, Connecticut Governor Ned Lamont directed CTtransit to provide free, statewide bus service to the public every weekend in order to combat the economic losses incurred during the ongoing pandemic.¹⁰ Similarly, thanks to the leadership of grassroots movements and Supervisor Dean Preston, during the pandemic the San Francisco Mayor agreed to adopt free transit for youth under 19 years old across MUNI for a minimum of one year.¹¹ Programs such as this aim to not only boost ridership but also to increase the accessibility of transportation to youth, low-income commuters, and

⁸ *Id.*

⁹ H. Damon Matthews, and Kasia Tokarska, “New Research Suggests 1.5C Climate Target Will Be out of Reach without Greener COVID-19 Recovery Plans.” *The Conversation*, 10 Aug. 2021, theconversation.com/new-research-suggests-1-5c-climate-target-will-be-out-of-reach-without-greener-covid-19-recovery-plans-151527.

¹⁰ “Governor Lamont Implements Free Weekend Bus Service During Summer Months in Connecticut as Part of Ongoing COVID-19 Recovery Efforts”, State of Connecticut, March 2021 <https://portal.ct.gov/Office-of-the-Governor/News/Press-Releases/2021/03-2021/Governor-Lamont-Implements-Free-Weekend-Bus-Service-During-Summer-Months>

¹¹ Mayor London Breed and Supervisor Myrna Melgar Announce Expansion of Free Muni for All Youth Program, Monday, July 12, 2021, <https://sfmayor.org/article/mayor-london-breed-and-supervisor-myrna-melgar-announce-expansion-free-muni-all-youth>.

seniors with disabilities. Before the pandemic, Lawrence Massachusetts launched a two-year free bus transit pilot program daily on its three primary bus routes in September 2019 and saw an impressive 24% increase in ridership. Other cities have seen an increase as high as 60%. Similar experiments are underway in Kansas City, Olympia Washington, and Boston. According to the New York Times, 100 cities worldwide provide free public transit.¹²

According to a Health Affairs study, certain groups, including “women, young adults (those ages 25–29), Black workers, and low-income workers,” disproportionately rely on public transportation for commuting and mobility, and public transportation has clear benefits for public health and health equity. At the same time “[l]ack of access to public transportation can disproportionately harm older people and people with disabilities... [and] can also contribute to existing racial and economic disparities by decreasing mobility and forcing individuals to depend on costly car ownership.”¹³

Currently, U.C. Berkeley students and Berkeley City employees enjoy unlimited AC Transit EasyPasses, incentivizing ridership on public transit.

Notably, the City of Berkeley does not charge for parking on Sundays, which encourages use of single-occupancy vehicles. Offering free public transit within Berkeley on Sundays can stimulate positive and COVID-safe social interactions by providing access to local businesses, open space and other public venues. It is also good for the economy. Figure ES-2 suggests that transport policies which make alternative modes of transportation such as public transit more accessible strongly correlate with enhanced commercial activity.¹⁴

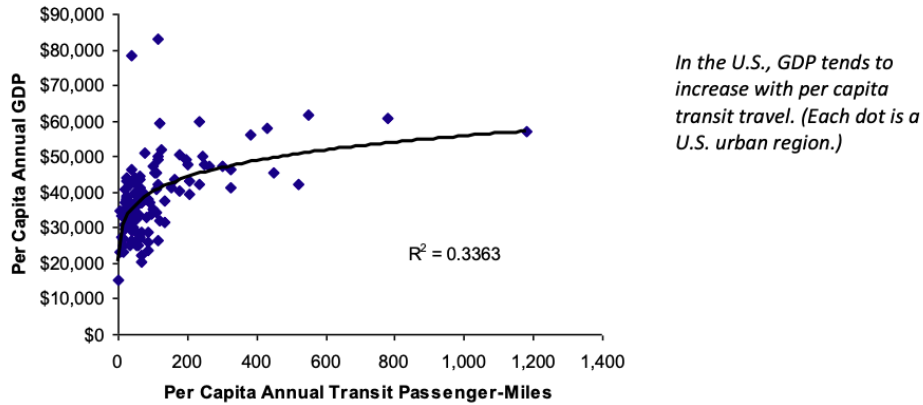
¹² Barry, Ellen, and Greta Rybus, “Should Public Transit Be Free? More Cities Say, Why Not?” The New York Times, The New York Times, 14 Jan. 2020, www.nytimes.com/2020/01/14/us/free-public-transit.html.

¹³ Public Transportation in the US: A Driver of Health and Equity, Wendy Heaps, Erin Abramsohn, Elizabeth Skillen, July 29, 2021, <https://www.healthaffairs.org/doi/10.1377/hpb20210630.810356/full/>.

¹⁴ In a study conducted by the American Public Transport Association, researchers examined three cities: Silicon Beach, CA; Austin, TX; and Durham, NC, to analyze the impact of increased public transportation on local economic growth. The study found that “public transportation investments will yield a 2 to 1 return while helping to generate income for local businesses, its workers and their neighborhoods” APTA also stated that “87% of trips on transit directly benefit the local economy”. “Public Transportation Supports Knowledge and Innovation Districts”, American Public Transportation Association <https://www.apta.com/research-technical-resources/research-reports/public-transit-knowledge/>; “2021 PUBLIC TRANSPORTATION FACT BOOK”, American Public Transportation Association, 2021

<https://www.apta.com/wp-content/uploads/APTA-2021-Fact-Book.pdf>.

Figure ES-2 Per Capita GDP and Transit Ridership (VTPI 2009)



Source: "Evaluating Transportation Economic Development Impacts", 2018 ¹⁵

The City also receives sales and business license revenue from such commerce. However, consistent with its climate goals, the City’s aim in expanding transit *must not* be to increase economic growth for growth’s sake, but to enhance community access to the provision of basic human needs.

Supporting AC Transit operations also means supporting an “essential” and unionized transit workforce as well as the local maintenance and local manufacturing/assembly of busses.

Ahead of submission of this item, Councilmember Harrison’s office and AC Transit have discussed some potential preliminary logistical and fiscal aspects of launching such a pilot program, as well as discussed strategies to prioritize increasing transit ridership. Fortunately, AC Transit received significant funding from the Coronavirus Aid, Relief, and Economic Security (CARES) and ARPA to help stabilize massive fare losses, but ultimately these funds are temporary.

Meanwhile, the City of Berkeley has received approximately \$66 million over two years from the American Rescue Plan Act. It must expend these funds no later than December, 2024. Section 603(c)(3) of the American Rescue Plan Act allows local governments to transfer funds to other agencies such as AC Transit to assist with the recovery from the COVID-19 pandemic and to improve equity measures including access to transportation:

“TRANSFER AUTHORITY. — A metropolitan city... receiving a payment from funds made available under this section may transfer funds to ... a public benefit corporation involved in

¹⁵ “Evaluating Transportation Economic Development Impacts”, Victoria Transport Policy Institute, 2018 https://vtpi.org/econ_dev.pdf

the transportation of passengers or cargo, or a special-purpose unit of State or local government.”¹⁶

The City of Berkeley is considered a metropolitan city and AC Transit likely qualifies as a special-purpose unit of local government.¹⁷ Alternatively, the Council could fund the program through excess equity. While the Transportation Network Company tax may provide funding in subsequent years, the Council has already indicated support in this first year for using these funds for priority protected bikeways and quick-build transit projects.¹⁸ AC Transit leadership has repeatedly expressed the significance of Berkeley’s interest in funding such quick-build improvements.

It is in the public interest to allocate General Funds towards the AC Transit pilot program in order to boost ridership rates, expand access to local goods and services, and to reduce transportation-based carbon emissions. This item proposes an allocation of \$500,000 to support this program and to support possible increased demand resulting from COVID-19 recovery efforts or demand stimulated as a result of this pilot. Implementation of any Berkeley pilot would be subject to approval by the AC Transit Board.

A successful pilot initiative could inspire potential subsequent efforts to expand free transit on a more permanent and frequent basis and thereby further reduce emissions and expand mobility equity.

FINANCIAL IMPLICATIONS

The item would have a net \$500,000 impact on the General Fund.

ENVIRONMENTAL SUSTAINABILITY

Reducing carbon emissions at an emergency and equitable pace is a necessary step to meet the goals of the Climate Action Plan and Climate Emergency Declaration.

¹⁶ American Rescue Plan Act, U.S. Congress, January 3, 2021, <https://www.congress.gov/117/bills/hr1319/BILLS-117hr1319enr.pdf>.

¹⁷ 41 CFR § 105-50.001-4 Special-purpose unit of local government. Special-purpose unit of local government means any special district, public-purpose corporation, or other strictly limited-purpose political subdivision of a State, but shall not include a school district.

¹⁸ Budget Referral: Allocate Transportation Network Companies User’s Tax Proceeds and other General Fund Revenues to Support Tier 1 Protected Bicycle Lanes, Crossings, Demonstration Paving Projects, and/or Quick-build Public Transit Projects Under the Street Repair Program, Councilmember Harrison, March 9, 2021, https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-09_Supp_1_Reports_Item_21_Rev_Harrison_pdf.aspx.

Budget Referral: Allocate General Fund Revenues to Support Pilot
Program Offering Free AC Transit on Sundays in Berkeley

CONSENT CALENDAR
October 12, 2021

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, 510-981-7140



Susan Wengraf
Councilmember District 6

CONSENT CALENDAR
October 12, 2021

To: Honorable Mayor and Members of the City Council
From: Councilmember Wengraf
Subject: Adopt a Resolution Denouncing Texas Anti-Abortion Law (SB 8) and Reaffirming Reproductive Freedom in Berkeley

RECOMMENDATION

Adopt a resolution to denounce the Texas abortion law, Senate Bill (SB) 8, banning most abortions after six weeks of pregnancy. The resolution will also reaffirm the City of Berkeley's commitment to reproductive freedom.

FINANCIAL IMPLICATIONS

None.

BACKGROUND

A Texas law, known as Senate Bill (SB) 8, banning most abortions after about six weeks of pregnancy went into effect on September 1, 2021 after the Supreme Court formally denied a request from Texas abortion providers to freeze the new law. The law prohibits abortion once a fetal heartbeat can be detected, which is often before a woman is aware of her pregnancy. SB 8 is nearly a complete ban on abortions and is one of the most restrictive in the United States and the entire developed world. The law bars state officials from actually enforcing it, a design intended to make it difficult to challenge in the courts. Usually a lawsuit aiming to block such a law as unconstitutional names state officials as defendants. Instead, the Texas law deputizes private citizens – including those from outside Texas – to sue clinics and anyone who performs an abortion or “aids and abets” a procedure.

Plaintiffs who have no connection to the patient or the clinic may sue and recover legal fees, as well as \$10,000 if they are successful. The law allows doctors, staff, and anyone else involved to be potential defendants; however, patients cannot be sued. Teenagers, who often don't realize they are pregnant until later in a pregnancy, low-income people, who may need to find \$550 to cover the cost of the procedure, and people of color and undocumented immigrants are some of the most vulnerable individuals who will be impacted by this law, disproportionately. With a 5-4 vote the Supreme Court refused to block SB 8.

The Supreme Court's decision not to block the unconstitutionally restrictive law appears in direct opposition to past precedents. The Biden Administration is suing Texas over

the new state law, arguing that it was enacted “in open defiance of the Constitution” and asking a judge to quickly declare the law invalid. The case filed by the Department of Justice will likely reach the Supreme Court, but without any additional court action at this point, the law remains in effect.

Opposition to Texas’s SB 8 and similar anti-abortion legislation that serves to eliminate a woman’s right to choose and hinder the availability of reproductive healthcare is in line with the City’s longstanding values and legislative priorities. In addition to denouncing the anti-abortion law in Texas, the proposed resolution declares the City of Berkeley as a safe harbor for reproductive freedom.

The City of Berkeley has a well-established record of supporting women’s rights and reproductive health. In 1985, the City of Berkeley adopted a resolution in support of Roe v Wade. The City has continually supported state and federal legislation protecting and advancing reproductive rights, access to healthcare, and funds for preventative health care services. As opponents of reproductive freedom continue their attempts to strike down decades of precedent, Berkeley has an opportunity to be a model of a city committed to the defense of reproductive freedoms. Ensuring access to autonomy in reproductive decisions and access to care will enhance our residents’ quality of life.

ENVIRONMENTAL SUSTAINABILITY

The right to reproductive freedom and choice is compatible with our goals for environmental sustainability.

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

Attachments:

1: Resolution

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

DENOUNCING TEXAS ANTI-ABORTION LAW (SB 8) AND REAFFIRMING
REPRODUCTIVE FREEDOM IN BERKELEY

WHEREAS, a Texas law, known as Senate Bill (SB) 8, banning most abortions after about six weeks of pregnancy went into effect on September 1, 2021 after the Supreme Court formally denied a request from Texas abortion providers to freeze the new law; and

WHEREAS, the law prohibits abortion once a fetal heartbeat can be detected, which is often before a woman knows that she is pregnant, effectively amounting to a nearly complete ban on abortions in the state; and

WHEREAS, rather than naming state officials as defendants, the Texas law deputizes private citizens – including those from outside Texas – to sue clinics and anyone who performs an abortion or “aids and abets” a procedure. Plaintiffs who have no connection to the patient or the clinic may sue and recover legal fees, as well as \$10,000 if they are successful; and

WHEREAS, the Supreme Court refused to block the Texas law, with the 5-4 conservative majority saying the abortion providers who had challenged the law in an emergency application to the court had not made their case in the face of “complex and novel” procedural questions; and

WHEREAS, the law will have unequal consequences on women and people of child-bearing age in Texas, with certain vulnerable populations facing potentially dire consequences, including teenagers, low-income people, people of color and undocumented immigrants; and

WHEREAS, autonomy and agency in reproductive matters are central to secure gender, economic, and racial equity in all aspects of life; and

WHEREAS, in 1969 the California Supreme Court recognized that the U.S. Constitution protects the fundamental right to choose whether to carry a pregnancy to term or seek an abortion; and

WHEREAS, in 2002, California enacted the Reproductive Privacy Act, which prevents the state from interfering with the right to choose between carrying a pregnancy to term or to obtain an abortion; and

WHEREAS, the City of Berkeley has a well-established record of supporting women’s rights and reproductive health for all; and

WHEREAS, in 1985, the City of Berkeley officially declared its support of reproductive rights and commemorated Roe v. Wade and the City has continually taken action to support state and federal legislation protecting and advancing reproductive rights, access to healthcare, and funds for preventative health care services.

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of Berkeley hereby denounces SB 8, the Texas law banning most abortions after six weeks of pregnancy, and denounces the Supreme Court's decision not to block this restrictive law.

BE IT ALSO RESOLVED, that the City of Berkeley will defend and advocate for health equity and reproductive freedom, so that every resident in our community may have safe access to the reproductive services they need.



Susan Wengraf
Councilmember District 6

CONSENT CALENDAR
October 12, 2021

To: Honorable Mayor and Members of the City Council
From: Councilmember Wengraf
Subject: Support for H.R. 3755 – Women’s Health Protection Act of 2021 (Chu)

RECOMMENDATION

Adopt a Resolution in support of H.R. 3755 – Women’s Health Protection Action of 2021 (Chu) and send copies to House Representatives Judy Chu and Barbara Lee; Senators Richard Blumenthal, Dianne Feinstein and Alex Padilla; Vice President Kamala Harris and President Joe Biden.

FINANCIAL IMPLICATIONS

None.

BACKGROUND

The constitutional right of women to safe abortion services is essential to the health, safety and progress of our nation. Abortion access allows pregnant people to make their own deeply personal decisions about their future.

Ever since the Supreme Court’s landmark ruling on Roe v Wade on January 22, 1973, protecting a pregnant woman’s liberty to choose to have an abortion without excessive government interference, anti-abortion advocates have worked to obstruct access to abortion services. They have used violence and blockades, restrictions on insurance coverage and lawsuits to overturn the ruling.

H.R. 3755 would legislate protection of a pregnant person’s ability to determine whether to continue or end a pregnancy and to protect a health care provider’s ability to provide abortion services throughout the country. Congressional action is necessary to put an end to over-reaching regulations, to federally protect access to abortion services for everyone regardless of where they live, and to protect the ability of health care providers to provide these services in a safe and accessible manner.

The City of Berkeley has a well-established record of supporting women’s rights and reproductive health. In 1985, the City of Berkeley adopted a resolution in support of Roe v Wade. The City has continually supported state and federal legislation protecting and advancing reproductive rights, access to healthcare, and funds for preventative health care services.

ENVIRONMENTAL SUSTAINABILITY

The right to reproductive freedom and choice is compatible with our goals for environmental sustainability.

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

Attachments:

1: Resolution

2: [H.R. 3755](#)

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

SUPPORT FOR H.R. 3755 – WOMEN’S HEALTH PROTECTION ACT OF 2021 (Chu)

WHEREAS, Abortion services are essential to health care and access to those services is central to people’s ability to participate equally in the economic and social life of the United States. Abortion access allows people who are pregnant to make their own decisions about their pregnancies, their families, and their lives; and

WHEREAS, Ever since the Supreme Court’s landmark ruling on Roe v Wade on January 22, 1973, protecting a pregnant woman’s liberty to choose to have an abortion without excessive government restriction, anti-abortion advocates have worked to obstruct access to abortion services; and

WHEREAS, The City of Berkeley has a well-established record of supporting women’s rights and reproductive health. In 1985, the City of Berkeley adopted a resolution in support of Roe v Wade. The City has continually supported state and federal legislation protecting and advancing reproductive rights, access to healthcare, and funds for preventative health care services; and

WHEREAS, H.R. 3755 would legislate protection of a pregnant person’s ability to determine whether to continue or end a pregnancy and to protect a health care provider’s ability to provide abortion services; and

WHEREAS, Congressional action is necessary to put an end to harmful restrictions, to federally protect access to abortion services for everyone regardless of where they live, and to protect the ability of health care providers to provide these services in a safe and accessible manner.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that we declare to the United States Congress and the President and Vice President of the United States full support of H.R. 3755.

BE IT FURTHER RESOLVED that we ask our Congressional Representatives to work with their colleagues to ensure passage of H.R.3755. Lives and justice depend on it.

Shown Here:
Introduced in House (06/08/2021)

117TH CONGRESS
1ST SESSION

H. R. 3755

To protect a person’s ability to determine whether to continue or end a pregnancy, and to protect a health care provider’s ability to provide abortion services.

IN THE HOUSE OF REPRESENTATIVES

JUNE 8, 2021

Ms. CHU (for herself, Mr. ALLRED, Ms. BARRAGÁN, Mr. BERA, Mr. BLUMENAUER, Ms. BLUNT ROCHESTER, Ms. BONAMICI, Mr. BROWN, Ms. BROWNLEY, Ms. BUSH, Mr. CARBAJAL, Mr. CÁRDENAS, Mr. CARSON, Mr. CASE, Mr. CASTEN, Ms. CASTOR of Florida, Mr. CICILLINE, Ms. CLARK of Massachusetts, Ms. CLARKE of New York, Mr. CLEAVER, Mr. COHEN, Mr. CONNOLLY, Mr. COOPER, Mr. COURTNEY, Mr. CRIST, Mr. CROW, Mr. DANNY K. DAVIS of Illinois, Ms. DEAN, Mr. DEFAZIO, Ms. DEGETTE, Ms. DELAURO, Ms. DELBENE, Mr. DELGADO, Mrs. DEMINGS, Mr. DESAULNIER, Mr. DEUTCH, Mr. DOGGETT, Mr. MICHAEL F. DOYLE of Pennsylvania, Ms. ESCOBAR, Mrs. FLETCHER, Mr. FOSTER, Ms. LOIS FRANKEL of Florida, Mr. GALLEG0, Ms. GARCIA of Texas, Mr. GARCÍA of Illinois, Mr. GOMEZ, Mrs. HAYES, Mr. HIMES, Ms. HOULAHAN, Ms. JACKSON LEE, Ms. JACOBS of California, Ms. JAYAPAL, Mr. JOHNSON of Georgia, Mr. JONES, Mr. KAHELE, Ms. KELLY of Illinois, Mr. KILMER, Mrs. KIRKPATRICK, Mr. KRISHNAMOORTH1, Ms. KUSTER, Mr. LARSEN of Washington, Mr. LARSON of Connecticut, Mrs. LAWRENCE, Mrs. LEE of Nevada, Ms. LEE of California, Mr. LEVIN of Michigan, Mr. LEVIN of California, Mr. LIEU, Mr. LOWENTHAL, Mrs. CAROLYN B. MALONEY of New York, Mr. SEAN PATRICK MALONEY of New York, Ms. MATSUI, Ms. MCCOLLUM, Mr. MCEACHIN, Mr. MCNERNEY, Mr. MEEKS, Ms. MENG, Ms. MOORE of Wisconsin, Mr. MORELLE, Mr. MOULTON, Mr. NADLER, Mrs. NAPOLITANO, Mr. NEGUSE, Ms. NEWMAN, Ms. NORTON, Mr. O’HALLERAN, Ms. OCASIO-CORTEZ, Ms. OMAR, Mr. PAYNE, Ms. PINGREE, Mr. POCAN, Ms. PRESSLEY, Mr. PRICE of North Carolina, Mr. RASKIN, Miss Rice of New York, Ms. ROSS, Mr. RYAN, Mr. SARBANES, Ms. SCANLON, Ms. SCHAKOWSKY, Mr. SCHIFF, Mr. SCHRADER, Mr. SHERMAN, Mr. SIREs, Mr. SMITH of Washington, Mr. SOTO, Ms. SPEIER, Mr. STANTON, Ms. STRICKLAND, Mr. SWALWELL, Ms. TLAIB, Mr. TONKO, Mr. TORRES of New York, Mr. TRONE, Ms. UNDERWOOD, Mr. VARGAS, Ms. VELÁZQUEZ, Ms. WASSERMAN SCHULTZ, Ms. WATERS, Mr. WELCH, Ms. WILD, Ms. WILLIAMS of Georgia, Ms. WILSON of Florida, Mr. PERLMUTTER, Ms. TITUS, Mr. AUCHINCLOSS, Mr. ESPAILLAT,

Mrs. WATSON COLEMAN, Mr. BUTTERFIELD, Mr. MCGOVERN, Mr. TAKANO, Mr. KEATING, Mr. COSTA, Mr. HUFFMAN, Mr. CASTRO of Texas, Ms. DAVIDS of Kansas, Mr. CARTWRIGHT, Mr. LAWSON of Florida, Mr. SCHNEIDER, Ms. SEWELL, Mr. RUPPERSBERGER, Mr. KIM of New Jersey, Ms. ADAMS, Mr. YARMUTH, Mr. BRENDAN F. BOYLE of Pennsylvania, Ms. SÁNCHEZ, Mr. EVANS, Mr. LYNCH, Mrs. TRAHAN, Mr. PASCRELL, Mr. NEAL, Mr. SUOZZI, Mr. PANETTA, Mr. PETERS, Mr. THOMPSON of California, Ms. LOFGREN, Mrs. MCBATH, Ms. SCHRIER, Mr. HORSFORD, Mr. KIND, Mrs. BEATTY, Mr. KHANNA, Mr. HIGGINS of New York, Mr. GREEN of Texas, Ms. JOHNSON of Texas, Mr. RUIZ, Mrs. MURPHY of Florida, Mr. PAPPAS, Mr. GOTTHEIMER, Mr. MRVAN, Ms. MANNING, Mr. GRIJALVA, and Mr. BEYER) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To protect a person’s ability to determine whether to continue or end a pregnancy, and to protect a health care provider’s ability to provide abortion services.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Women’s Health Protection Act of 2021”.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Abortion services are essential to health care and access to those services is central to people’s ability to participate equally in the economic and social life of the United States. Abortion access allows people who are pregnant to make their own decisions about their pregnancies, their families, and their lives.

(2) Since 1973, the Supreme Court repeatedly has recognized the constitutional right to terminate a pregnancy before fetal viability, and to terminate a pregnancy after fetal viability where it is necessary, in the good-faith medical judgment of the treating health care professional, for the preservation of the life or health of the person who is pregnant.

(3) Nonetheless, access to abortion services has been obstructed across the United States in various ways, including blockades of health care facilities and associated violence, prohibitions of, and restrictions on, insurance coverage; parental involvement laws (notification and consent); restrictions that shame and stigmatize people seeking abortion services; and medically

unnecessary regulations that neither confer any health benefit nor further the safety of abortion services, but which harm people by delaying, complicating access to, and reducing the availability of, abortion services.

(4) Reproductive justice requires every individual to have the right to make their own decisions about having children regardless of their circumstances and without interference and discrimination. Reproductive Justice is a human right that can and will be achieved when all people, regardless of actual or perceived race, color, national origin, immigration status, sex (including gender identity, sex stereotyping, or sexual orientation), age, or disability status have the economic, social, and political power and resources to define and make decisions about their bodies, health, sexuality, families, and communities in all areas of their lives, with dignity and self-determination.

(5) Reproductive justice seeks to address restrictions on reproductive health, including abortion, that perpetuate systems of oppression, lack of bodily autonomy, white supremacy, and anti-Black racism. This violent legacy has manifested in policies including enslavement, rape, and experimentation on Black women; forced sterilizations; medical experimentation on low-income women’s reproductive systems; and the forcible removal of Indigenous children. Access to equitable reproductive health care, including abortion services, has always been deficient in the United States for Black, Indigenous, and other People of Color (BIPOC) and their families.

(6) The legacy of restrictions on reproductive health, rights, and justice is not a dated vestige of a dark history. Presently, the harms of abortion-specific restrictions fall especially heavily on people with low incomes, BIPOC, immigrants, young people, people with disabilities, and those living in rural and other medically underserved areas. Abortion-specific restrictions are even more compounded by the ongoing criminalization of people who are pregnant, including those who are incarcerated, living with HIV, or with substance-use disorders. These communities already experience health disparities due to social, political, and environmental inequities, and restrictions on abortion services exacerbate these harms. Removing medically unjustified restrictions on abortion services would constitute one important step on the path toward realizing Reproductive Justice by ensuring that the full range of reproductive health care is accessible to all who need it.

(7) Abortion-specific restrictions are a tool of gender oppression, as they target health care services that are used primarily by women. These paternalistic restrictions rely on and reinforce harmful stereotypes about gender roles, women’s decision-making, and women’s need for protection instead of support, undermining their ability to control their own lives and well-being. These restrictions harm the basic autonomy, dignity, and equality of women, and their ability to participate in the social and economic life of the Nation.

(8) The terms “woman” and “women” are used in this bill to reflect the identity of the majority of people targeted and affected by restrictions on abortion services, and to address squarely the targeted restrictions on abortion, which are rooted in misogyny. However, access to abortion services is critical to the health of every person capable of becoming pregnant. This Act

is intended to protect all people with the capacity for pregnancy—cisgender women, transgender men, non-binary individuals, those who identify with a different gender, and others—who are unjustly harmed by restrictions on abortion services.

(9) Since 2011, States and local governments have passed nearly 500 restrictions singling out health care providers who offer abortion services, interfering with their ability to provide those services and the patients’ ability to obtain those services.

(10) Many State and local governments have imposed restrictions on the provision of abortion services that are neither evidence-based nor generally applicable to the medical profession or to other medically comparable outpatient gynecological procedures, such as endometrial ablations, dilation and curettage for reasons other than abortion, hysteroscopies, loop electrosurgical excision procedures, or other analogous non-gynecological procedures performed in similar outpatient settings including vasectomy, sigmoidoscopy, and colonoscopy.

(11) Abortion is essential health care and one of the safest medical procedures in the United States. An independent, comprehensive review of the state of science on the safety and quality of abortion services, published by the National Academies of Sciences, Engineering, and Medicine in 2018, found that abortion in the United States is safe and effective and that the biggest threats to the quality of abortion services in the United States are State regulations that create barriers to care. These abortion-specific restrictions conflict with medical standards and are not supported by the recommendations and guidelines issued by leading reproductive health care professional organizations including the American College of Obstetricians and Gynecologists, the Society of Family Planning, the National Abortion Federation, the World Health Organization, and others.

(12) Many abortion-specific restrictions do not confer any health or safety benefits on the patient. Instead, these restrictions have the purpose and effect of unduly burdening people’s personal and private medical decisions to end their pregnancies by making access to abortion services more difficult, invasive, and costly, often forcing people to travel significant distances and make multiple unnecessary visits to the provider, and in some cases, foreclosing the option altogether. For example, a 2018 report from the University of California San Francisco’s Advancing New Standards in Reproductive Health research group found that in 27 cities across the United States, people have to travel more than 100 miles in any direction to reach an abortion provider.

(13) An overwhelming majority of abortions in the United States are provided in clinics, not hospitals, but the large majority of counties throughout the United States have no clinics that provide abortion.

(14) These restrictions additionally harm people’s health by reducing access not only to abortion services but also to other essential health care services offered by many of the providers targeted by the restrictions, including—

(A) screenings and preventive services, including contraceptive services;

(B) testing and treatment for sexually transmitted infections;

(C) LGBTQ health services; and

(D) referrals for primary care, intimate partner violence prevention, prenatal care and adoption services.

(15) The cumulative effect of these numerous restrictions has been to severely limit the availability of abortion services in some areas, creating a patchwork system where access to abortion services is more available in some States than in others. A 2019 report from the Government Accountability Office examining State Medicaid compliance with abortion coverage requirements analyzed seven key challenges (identified both by health care providers and research literature) and their effect on abortion access, and found that access to abortion services varied across the States and even within a State.

(16) International human rights law recognizes that access to abortion is intrinsically linked to the rights to life, health, equality and non-discrimination, privacy, and freedom from ill-treatment. United Nations (UN) human rights treaty monitoring bodies have found that legal abortion services, like other reproductive health care services, must be available, accessible, affordable, acceptable, and of good quality. UN human rights treaty bodies have likewise condemned medically unnecessary barriers to abortion services, including mandatory waiting periods, biased counseling requirements, and third-party authorization requirements.

(17) Core human rights treaties ratified by the United States protect access to abortion. For example, in 2018, the UN Human Rights Committee, which oversees implementation of the ICCPR, made clear that the right to life, enshrined in Article 6 of the ICCPR, at a minimum requires governments to provide safe, legal, and effective access to abortion where a person’s life and health is at risk, or when carrying a pregnancy to term would cause substantial pain or suffering. The Committee stated that governments must not impose restrictions on abortion which subject women and girls to physical or mental pain or suffering, discriminate against them, arbitrarily interfere with their privacy, or place them at risk of undertaking unsafe abortions. Furthermore, the Committee stated that governments should remove existing barriers that deny effective access to safe and legal abortion, refrain from introducing new barriers to abortion, and prevent the stigmatization of those seeking abortion.

(18) UN independent human rights experts have expressed particular concern about barriers to abortion services in the United States. For example, at the conclusion of his 2017 visit to the United States, the UN Special Rapporteur on extreme poverty and human rights noted concern that low-income women face legal and practical obstacles to exercising their constitutional right to access abortion services, trapping many women in cycles of poverty. Similarly, in May 2020, the UN Working Group on discrimination against women and girls, along with other human rights experts, expressed concern that some states had manipulated the COVID–19 crisis to restrict access to abortion, which the experts recognized as “the latest example illustrating a pattern of restrictions and retrogressions in access to legal abortion care across the country” and

reminded U.S. authorities that abortion care constitutes essential health care that must remain available during and after the pandemic. They noted that barriers to abortion access exacerbate systemic inequalities and cause particular harm to marginalized communities, including low-income people, people of color, immigrants, people with disabilities, and LGBTQ people.

(19) Abortion-specific restrictions affect the cost and availability of abortion services, and the settings in which abortion services are delivered. People travel across State lines and otherwise engage in interstate commerce to access this essential medical care, and more would be forced to do so absent this Act. Likewise, health care providers travel across State lines and otherwise engage in interstate commerce in order to provide abortion services to patients, and more would be forced to do so absent this Act.

(20) Health care providers engage in a form of economic and commercial activity when they provide abortion services, and there is an interstate market for abortion services.

(21) Abortion restrictions substantially affect interstate commerce in numerous ways. For example, to provide abortion services, health care providers engage in interstate commerce to purchase medicine, medical equipment, and other necessary goods and services. To provide and assist others in providing abortion services, health care providers engage in interstate commerce to obtain and provide training. To provide abortion services, health care providers employ and obtain commercial services from doctors, nurses, and other personnel who engage in interstate commerce and travel across State lines.

(22) It is difficult and time and resource-consuming for clinics to challenge State laws that burden or impede abortion services. Litigation that blocks one abortion restriction may not prevent a State from adopting other similarly burdensome abortion restrictions or using different methods to burden or impede abortion services. There is a history and pattern of States passing successive and different laws that unduly burden abortion services.

(23) When a health care provider ceases providing abortion services as a result of burdensome and medically unnecessary regulations, it is often difficult or impossible for that health care provider to recommence providing those abortion services, and difficult or impossible for other health care providers to provide abortion services that restore or replace the ceased abortion services.

(24) Health care providers are subject to license laws in various jurisdictions, which are not affected by this Act except as provided in this Act.

(25) Congress has the authority to enact this Act to protect abortion services pursuant to—

(A) its powers under the commerce clause of section 8 of article I of the Constitution of the United States;

(B) its powers under section 5 of the Fourteenth Amendment to the Constitution of the United States to enforce the provisions of section 1 of the Fourteenth Amendment; and

(C) its powers under the necessary and proper clause of section 8 of Article I of the Constitution of the United States.

(26) Congress has used its authority in the past to protect access to abortion services and health care providers’ ability to provide abortion services. In the early 1990s, protests and blockades at health care facilities where abortion services were provided, and associated violence, increased dramatically and reached crisis level, requiring Congressional action. Congress passed the Freedom of Access to Clinic Entrances Act (Public Law 103–259; 108 Stat. 694) to address that situation and protect physical access to abortion services.

(27) Congressional action is necessary to put an end to harmful restrictions, to federally protect access to abortion services for everyone regardless of where they live, and to protect the ability of health care providers to provide these services in a safe and accessible manner.

(b) PURPOSE.—It is the purpose of this Act—

(1) to permit health care providers to provide abortion services without limitations or requirements that single out the provision of abortion services for restrictions that are more burdensome than those restrictions imposed on medically comparable procedures, do not significantly advance reproductive health or the safety of abortion services, and make abortion services more difficult to access;

(2) to promote access to abortion services and women’s ability to participate equally in the economic and social life of the United States; and

(3) to invoke Congressional authority, including the powers of Congress under the commerce clause of section 8 of article I of the Constitution of the United States, its powers under section 5 of the Fourteenth Amendment to the Constitution of the United States to enforce the provisions of section 1 of the Fourteenth Amendment, and its powers under the necessary and proper clause of section 8 of article I of the Constitution of the United States.

SEC. 3. DEFINITIONS.

In this Act:

(1) ABORTION SERVICES.—The term “abortion services” means an abortion and any medical or non-medical services related to and provided in conjunction with an abortion (whether or not provided at the same time or on the same day as the abortion).

(2) GOVERNMENT.—The term “government” includes each branch, department, agency, instrumentality, and official (and other person acting under color of law) of the United States or a State.

(3) HEALTH CARE PROVIDER.—The term “health care provider” means any entity or individual (including any physician, certified nurse-midwife, nurse practitioner, and physician assistant) that—

(A) is engaged or seeks to engage in the delivery of health care services, including abortion services, and

(B) if required by law or regulation to be licensed or certified to engage in the delivery of such services—

(i) is so licensed or certified, or

(ii) would be so licensed or certified but for their past, present, or potential provision of abortion services permitted by section 4.

(4) MEDICALLY COMPARABLE PROCEDURE.—The term “medically comparable procedures” means medical procedures that are similar in terms of health and safety risks to the patient, complexity, or the clinical setting that is indicated.

(5) PREGNANCY.—The term “pregnancy” refers to the period of the human reproductive process beginning with the implantation of a fertilized egg.

(6) STATE.—The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and each territory and possession of the United States, and any subdivision of any of the foregoing.

(7) VIABILITY.—The term “viability” means the point in a pregnancy at which, in the good-faith medical judgment of the treating health care provider, based on the particular facts of the case before the health care provider, there is a reasonable likelihood of sustained fetal survival outside the uterus with or without artificial support.

SEC. 4. PERMITTED SERVICES.

(a) GENERAL RULE.—A health care provider has a statutory right under this Act to provide abortion services, and may provide abortion services, and that provider’s patient has a corresponding right to receive such services, without any of the following limitations or requirements:

(1) A requirement that a health care provider perform specific tests or medical procedures in connection with the provision of abortion services, unless generally required for the provision of medically comparable procedures.

(2) A requirement that the same health care provider who provides abortion services also perform specified tests, services, or procedures prior to or subsequent to the abortion.

(3) A requirement that a health care provider offer or provide the patient seeking abortion services medically inaccurate information in advance of or during abortion services.

(4) A limitation on a health care provider’s ability to prescribe or dispense drugs based on current evidence-based regimens or the provider’s good-faith medical judgment, other than a limitation generally applicable to the medical profession.

(5) A limitation on a health care provider’s ability to provide abortion services via telemedicine, other than a limitation generally applicable to the provision of medical services via telemedicine.

(6) A requirement or limitation concerning the physical plant, equipment, staffing, or hospital transfer arrangements of facilities where abortion services are provided, or the credentials or hospital privileges or status of personnel at such facilities, that is not imposed on facilities or the personnel of facilities where medically comparable procedures are performed.

(7) A requirement that, prior to obtaining an abortion, a patient make one or more medically unnecessary in-person visits to the provider of abortion services or to any individual or entity that does not provide abortion services.

(8) A prohibition on abortion at any point or points in time prior to fetal viability, including a prohibition or restriction on a particular abortion procedure.

(9) A prohibition on abortion after fetal viability when, in the good-faith medical judgment of the treating health care provider, continuation of the pregnancy would pose a risk to the pregnant patient’s life or health.

(10) A limitation on a health care provider’s ability to provide immediate abortion services when that health care provider believes, based on the good-faith medical judgment of the provider, that delay would pose a risk to the patient’s health.

(11) A requirement that a patient seeking abortion services at any point or points in time prior to fetal viability disclose the patient’s reason or reasons for seeking abortion services, or a limitation on the provision or obtaining of abortion services at any point or points in time prior to fetal viability based on any actual, perceived, or potential reason or reasons of the patient for obtaining abortion services, regardless of whether the limitation is based on a health care provider’s degree of actual or constructive knowledge of such reason or reasons.

(b) OTHER LIMITATIONS OR REQUIREMENTS.—A health care provider has a statutory right to provide abortion services, and may provide abortion services, and that provider’s patient has a corresponding right to receive such services, without a limitation or requirement that—

(1) is the same as or similar to one or more of the limitations or requirements described in subsection (a); or

(2) both—

(A) expressly, effectively, implicitly, or as implemented singles out the provision of abortion services, health care providers who provide abortion services, or facilities in which abortion services are provided; and

(B) impedes access to abortion services.

(c) FACTORS FOR CONSIDERATION.—Factors a court may consider in determining whether a limitation or requirement impedes access to abortion services for purposes of subsection (b)(2)(B) include the following:

(1) Whether the limitation or requirement, in a provider’s good-faith medical judgment, interferes with a health care provider’s ability to provide care and render services, or poses a risk to the patient’s health or safety.

(2) Whether the limitation or requirement is reasonably likely to delay or deter some patients in accessing abortion services.

(3) Whether the limitation or requirement is reasonably likely to directly or indirectly increase the cost of providing abortion services or the cost for obtaining abortion services (including costs associated with travel, childcare, or time off work).

(4) Whether the limitation or requirement is reasonably likely to have the effect of necessitating a trip to the offices of a health care provider that would not otherwise be required.

(5) Whether the limitation or requirement is reasonably likely to result in a decrease in the availability of abortion services in a given State or geographic region.

(6) Whether the limitation or requirement imposes penalties that are not imposed on other health care providers for comparable conduct or failure to act, or that are more severe than penalties imposed on other health care providers for comparable conduct or failure to act.

(7) The cumulative impact of the limitation or requirement combined with other new or existing limitations or requirements.

(d) EXCEPTION.—To defend against a claim that a limitation or requirement violates a health care provider’s or patient’s statutory rights under subsection (b), a party must establish, by clear and convincing evidence, that—

(1) the limitation or requirement significantly advances the safety of abortion services or the health of patients; and

(2) the safety of abortion services or the health of patients cannot be advanced by a less restrictive alternative measure or action.

SEC. 5. APPLICABILITY AND PREEMPTION.

(a) IN GENERAL.—

(1) Except as stated under subsection (b), this Act supersedes and applies to the law of the Federal Government and each State government, and the implementation of such law, whether statutory, common law, or otherwise, and whether adopted before or after the date of enactment of this Act, and neither the Federal Government nor any State government shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law that conflicts with any provision of this Act, notwithstanding any other provision of Federal law, including the Religious Freedom Restoration Act of 1993 ([42 U.S.C. 2000bb et seq.](#)).

(2) Federal statutory law adopted after the date of the enactment of this Act is subject to this Act unless such law explicitly excludes such application by reference to this Act.

(b) LIMITATIONS.—The provisions of this Act shall not supersede or apply to—

(1) laws regulating physical access to clinic entrances;

(2) insurance or medical assistance coverage of abortion services;

(3) the procedure described in section 1531(b)(1) of title 18, United States Code; or

(4) generally applicable State contract law.

SEC. 6. EFFECTIVE DATE.

This Act shall take effect immediately upon the date of enactment of this Act. This Act shall apply to all restrictions on the provision of, or access to, abortion services whether the restrictions are enacted or imposed prior to or after the date of enactment of this Act, except as otherwise provided in this Act.

SEC. 7. LIBERAL CONSTRUCTION.

(a) **LIBERAL CONSTRUCTION.**—In interpreting the provisions of this Act, a court shall liberally construe such provisions to effectuate the purposes of the Act.

(b) **RULE OF CONSTRUCTION.**—Nothing in this Act shall be construed to authorize any government to interfere with a person’s ability to terminate a pregnancy, to diminish or in any way negatively affect a person’s constitutional right to terminate a pregnancy, or to displace any other remedy for violations of the constitutional right to terminate a pregnancy.

SEC. 8. ENFORCEMENT.

(a) **ATTORNEY GENERAL.**—The Attorney General may commence a civil action for prospective injunctive relief on behalf of the United States against any government official that is charged with implementing or enforcing any limitation or requirement that is challenged as a violation of a statutory right under this Act. The court shall hold unlawful and set aside the limitation or requirement if it is in violation of this Act.

(b) **PRIVATE RIGHT OF ACTION.**—

(1) **IN GENERAL.**—Any individual or entity, including any health care provider, aggrieved by an alleged violation of this Act may commence a civil action for prospective injunctive relief against the government official that is charged with implementing or enforcing the limitation or requirement that is challenged as a violation of a statutory right under this Act. The court shall hold unlawful and set aside the limitation or requirement if it is in violation of this Act.

(2) **HEALTH CARE PROVIDER.**—A health care provider may commence an action for prospective injunctive relief on its own behalf and/or on behalf of the provider’s patients who are or may be adversely affected by an alleged violation of this Act.

(c) **EQUITABLE RELIEF.**—In any action under this section, the court may award appropriate equitable relief, including temporary, preliminary, or permanent injunctive relief.

(d) **COSTS.**—In any action under this section, the court shall award costs of litigation, as well as reasonable attorney fees, to any prevailing plaintiff. A plaintiff shall not be liable to a defendant for costs in any non-frivolous action under this section.

(e) **JURISDICTION.**—The district courts of the United States shall have jurisdiction over proceedings under this Act and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided for by law.

(f) **ABROGATION OF STATE IMMUNITY.**—A State shall not be immune under the Eleventh Amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity)

are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

SEC. 9. SEVERABILITY.

If any provision of this Act, or the application of such provision to any person, entity, government, or circumstance, is held to be unconstitutional, the remainder of this Act, or the application of such provision to all other persons, entities, governments, or circumstances, shall not be affected thereby.



Agenda & Rules Committee

ACTION CALENDAR

October 12, 2021

(Continued from September 14, 2021)

To: Honorable Members of the City Council
 From: Agenda & Rules Policy Committee: Mayor Jesse Arreguin and Councilmembers Sophie Hahn and Susan Wengraf
 Subject: Amending the Berkeley Election Reform Act (BERA) Relating to Officeholder Accounts

RECOMMENDATION

Take one of the following actions:

1. Refer a proposal to the Fair Campaign Practices Commission (FCPC) amending the Berkeley Election Reform Act (BERA), BMC Chapter 2.12, and Lobbyist Registration Act, BMC Chapter 2.09, to enact “a reasonable set of limitations and rules” to regulate the maintenance of officeholder accounts, as developed and referred for consideration by the Agenda and Rules Committee; or
2. Refer a proposal to the FCPC amending BERA, BMC Chapter 2.12, to prohibit Officeholder Accounts, as originally proposed by the Fair Campaign Practices Commission.

Pursuant to BMC Section 2.12.051.A, BERA may be amended by the “double green light” process. This process requires that the amendment first be adopted by a two-thirds vote of the FCPC and then adopted by a two-thirds vote of the City Council, following a public hearing. This item would submit a proposal to the FCPC for its consideration. If adopted by a two-thirds vote of the FCPC, the item would return to the Council for final adoption.

POLICY COMMITTEE RECOMMENDATION

On March 29, 2021, the Agenda & Rules Policy Committee adopted the following action:¹ M/S/C (Wengraf/Arreguin) to send the item to Council with two proposed alternatives: 1) Councilmember Hahn’s proposal to regulate officeholder accounts [with modifications brought forward by Committee members], and 2) the Fair Campaign Practices Commission proposal to prohibit officeholder accounts; and to include the Commission’s analysis of regulating officeholder accounts in the item that goes to the full Council. Vote: All Ayes.

¹ https://www.cityofberkeley.info/uploadedFiles/Clerk/City_Council/2021/03_Mar/Documents/03-29%20Minutes%20-%20Agenda%20Committee.pdf

BACKGROUND

On February 4, 2020, the Fair Campaign Practices Commission (FCPC) submitted a recommendation to Council to adopt an ordinance amending the Berkeley Election Reform Act (BERA), BMC Chapter 2.12, to prohibit Officeholder Accounts.² Council took action to refer a discussion on Officeholder Accounts and Council District (D-13) Accounts to the Agenda & Rules Committee, to “consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the FCPC.”³

The Agenda & Rules Committee considered this referral with input from FCPC commissioners. The FCPC and Open Government Commission (OGC)⁴ also submitted subsequent recommendations to Council related to this process, which were included as part of the discussion regarding officeholder and D-13 accounts. The OGC submitted a recommendation that a special temporary joint advisory committee be created consisting of members of the OGC and Council to review the practice of councilmembers making donations to community organizations from their D-13 accounts. This proposal was referred directly to the Agenda & Rules Committee on August 31, 2020. On January 11, 2021, the FCPC and OGC jointly submitted a proposal to the Council clarifying the desire to create a joint subcommittee of FCPC-OGC members and members of the Council to consider both regulation of officeholder accounts as well as D-13 account grant practices and expressing willingness to consider either prohibition or regulation of officeholder accounts. D-13 account grant practices have since been addressed separately by Council.⁵

The Agenda & Rules Committee discussed the question of officeholder accounts at multiple meetings in early 2021 with input from three FCPC-OGC commissioners (Chair Brad Smith, Vice Chair Jedidiah Tsang and Commissioner Patrick O’Donnell). On March 29, 2021, the Agenda & Rules Committee took action to send this item to Council with two proposed alternatives: 1) a proposal to regulate officeholder accounts in a manner based on existing regulation of campaign committees, and 2) the Fair

² https://www.cityofberkeley.info/Clerk/City_Council/2020/02_Feb/Documents/2020-02-04_Special_Item_02_Amendments_to_the_Berkeley_pdf.aspx

³ https://www.cityofberkeley.info/Clerk/City_Council/2020/02_Feb/Documents/02-04_Special_Annotated_Agenda_pdf.aspx

⁴ The OGC is composed of the same membership as the FCPC and the two bodies meet concurrently. The FCPC has jurisdiction over BERA while the OGC has broad authority to make recommendations to Council regarding “open and effective government.” (BMC § 2.06.190.A.2.) Therefore, proposals regarding the prohibition or regulation of officeholder accounts in BERA have been presented by the FCPC, while recommendations regarding D-13 accounts have been offered by the OGC.

⁵ On February 8, 2021, the Agenda & Rules Committee took action to make a positive recommendation to the City Council on part two of the Commission recommendation to prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members. The Council approved this recommendation on March 9, 2021.

Campaign Practices Commission proposal to prohibit officeholder accounts. The Committee's action also required the Commission's analysis of regulating officeholder accounts to be included in the item that goes to the full Council.⁶

Officeholder accounts are currently allowed in the City of Berkeley, subject only to limitations provided in State Law. The Agenda & Rules Committee's proposal to regulate officeholder accounts would establish local rules that mirror and adapt Berkeley's existing, voter-approved regulations for campaign committees, including regulation of donations and reporting requirements, and narrow the uses for which officeholder account funds can be used.

Officeholder accounts are accounts an elected official can open, and raise funds for, to pay for expenses related to the office they hold.⁷ They are not campaign accounts, and cannot be used for campaign purposes. The types of expenses officeholder accounts can be used for include research, conferences, events attended in the performance of government duties, printed newsletters, office supplies, travel related to official duties, and similar expenses. Cities can place limits on officeholder accounts, as Oakland has done.⁸ Under State law, officeholder accounts must be registered as official committees, and adhere to strict public reporting requirements, like campaign accounts. These reporting requirements provide full transparency to the public about sources and uses of funds in officeholder accounts.

The FCPC's recommendation to outlaw officeholder accounts in Berkeley was set aside by the City Council on when it referred on February 4, 2020 to the Agenda & Rules Committee to "consider a reasonable set of limitations and rules for such [officeholder] accounts and bring back recommendations to the full Council."⁹ Some members of the FCPC who participated in the Agenda & Rules Committee discussion continued to advocate for the original proposal to outlaw Officeholder Accounts, so the Committee acted to send both the Council-requested "reasonable set of limitations" and the FCPC's original recommendation back to the Council for consideration.

FISCAL IMPACTS

Regulating the maintenance of officeholder accounts by councilmembers and the Mayor would have a moderate impact on staff time.

CONTACT INFORMATION

Agenda & Rules Policy Committee: Jesse Arreguin, Mayor, (510) 981-7100;
Councilmember Sophie Hahn, District 5, 510-682-5905 (cell); and Susan Wengraf,
Councilmember, District 6, (510) 981-7160.

⁶ https://www.cityofberkeley.info/uploadedFiles/Clerk/City_Council/2021/03_Mar/Documents/03-29%20Minutes%20-%20Agenda%20Committee.pdf

⁷ <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter5/18531.62.pdf>

⁸ <http://www2.oaklandnet.com/w/OAK052051>

⁹ https://www.cityofberkeley.info/Clerk/City_Council/2020/02_Feb/Documents/02-04_Special_Annotated_Agenda_pdf.aspx

ATTACHMENTS

1. Officeholder Accounts Proposal As Forwarded to the City Council by the Agenda Committee on March 29, 2021
2. Proposed Ordinance Amending the Berkeley Election Reform Act and Lobbyist Registration Act to Regulate Officeholder Committees
3. Fair Campaign Practices Commission Proposal to Prohibit Officeholder Accounts,
https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/03-29_Agenda_Committee_Agenda_Packet.aspx

Officeholder Accounts As Forwarded to the City Council by the Agenda Committee on March 29, 2021

This set of terms is presented as a basis to discuss a potential amendments to the Berkeley Election Reform Act (“BERA”) (BMC Ch. 2.12) to regulate the maintenance of officeholder accounts by elected officials in Berkeley. The proposal following elements are proposed for discussion by the Agenda Committee:

General Requirements and Donation Limits

1. **Amend BERA to expressly permit the creation of officeholder accounts** by elected officials in Berkeley
2. Officeholder accounts would **be subject to the same donor requirements as campaign accounts under BERA:**
 - a. May only receive donations from natural persons.
 - b. Per-person donation limit set the same as the contribution limit under BERA (currently \$250; if BERA changes, so would these limits – idea is for them to always be parallel)
 - c. Etc. – All requirements and limitations on who can give, how much, and how donations can be made would be “by reference” to BERA and thus identical over time.
3. Officeholder accounts would be **subject to the same registration and reporting regime as campaign accounts under BERA**. State law currently requires Officeholder Accounts to report using the same forms as campaign accounts; this proposal would also incorporate the reporting requirements of BERA – for example lower thresholds for initial reporting, lower amounts reported, etc.
4. **Cumulative annual donations, not including an officeholder’s own donations to their officeholder account would be capped at fixed amounts**. Suggest the amount be set at the approximate cost of producing and mailing one newsletter to constituents, although use of funds would not be limited to that use (see below). Amount should be indexed.
5. As with campaign accounts, **an officeholder’s own donations to their officeholder account would not be subject to any limits** but would be reported. An officeholder would also still be allowed to spend their own money on officeholder expenses without using an officeholder account. This is a First Amendment issue that can’t be infringed upon.

Complete Separation from Campaign Accounts and Expenditures

1. An officeholder would **not be allowed to simultaneously maintain an officeholder account and a campaign account of any kind:**
 - a. A winning candidate taking office would be required to close their campaign account before opening an officeholder account.

- b. An incumbent officeholder running for re-election or running for any other elected position – local, state, or federal – would be required to close their officeholder account before opening a campaign account.
- 2. An officeholder could not redesignate their officeholder account as a campaign account or use any officeholder funds to pay campaign expenses, ever.
- 3. Officeholder account funds could not be transferred to or from a candidate committee account for any elective office, local, state or federal.
- 4. “Extra” funds in an officeholder account could be used only for a legitimate officeholder expense, refunded to donors on a pro rata basis, or donated to the City’s General Fund.

Impermissible and Permissible Uses of Officeholder Funds

- 5. **Officeholder accounts would not be used for the following** expenditures:
 - a. Expenditures in connection with an election for any city, county, regional, state, or federal elective office or ballot measure
 - b. Campaign consulting, research, polling, and similar expenditures related to any campaign
 - c. Membership in athletic, social, fraternal, veteran, or religious organizations
 - d. Supplemental compensation for employees for performance of their ordinary duties
 - e. Any expenditure that would violate BERA or state law
- 6. **Officeholder accounts would only be used for the following** expenditures (list likely needs to be honed/expanded – this list reflects narrowing and adaptation of the Oakland ordinance, which is overly broad):
 - f. Office equipment, furnishings, and office supplies
 - g. Officeholder communications not related to a campaign, including but not limited to:
 - i. Mailings, newsletters, and other communications, whether by electronic or traditional media
 - ii. Websites and communications by all media including email, publication, and social media
 - iii. Email and address management
 - iv. Professional/consulting services and/or staff time related to communications.
 - h. Registration, travel, lodging, meals, and related expenses for attending an activity which supports a legislative or governmental purpose, including activities which involve international travel, including but not limited to:
 - i. Conferences, meetings, receptions, sister-city visits, and other events
 - ii. Membership and participation in programs for civic, service, or professional organizations
 - iii. Educational, training, and professional development courses and events

when incurred by the officeholder, their staff, or a community representative of the officeholder (but not a family member or an individual whose organization or who themselves is subject to registration under the City's Lobbyist Ordinance)

- i. Fundraising for the officeholder account.
- j. Consulting, research, surveys, photographic or similar services not related to a campaign.
- k. Expressions of congratulations, appreciation or condolences to constituents or other persons the officeholder communicates/works with in their official capacity.
- l. Salaries or other compensation for consultants/staff working on officeholder activities, including for time spent by regular staff on officeholder activities separate/different from their ordinary duties.
- m. Tax liabilities and other official fees/costs incurred by the officeholder account.
- n. Accounting, legal, and other professional services provided to the officeholder account.
- o. Attorneys' fees and other costs related to administrative procedures, litigation, or other processes arising from the officeholder's activities, duties, or status as an elected officer.

Termination of Account on Leaving Office (+ Not running for any office)

- 1. An officeholder would be **required to terminate their account within 90 days after leaving office.**
- 2. An officeholder **could not make expenditures after their last day in office** except to pay outstanding officeholder debts, repay donations on a pro rata basis, or donate remaining funds to the City's general fund.
- 3. Officeholders running for another office, local, state, or federal, would be required to close their officeholder account before opening a campaign account (see above).

Enforcement

- 1. Violations of the officeholder account rules **would be subject to all enforcement provisions under BERA**, including enforcement by the Fair Campaign Practices Commission ("FCPC").

ORDINANCE NO. -N.S.

AMENDING THE BERKELEY ELECTION REFORM ACT AND
LOBBYIST REGISTRATION ACT TO REGULATE OFFICEHOLDER
COMMITTEES

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

Section 1. That Berkeley Municipal Code section 2.09.220 is amended to read as follows:

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 or officeholder contributions not to exceed the limits 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.

Section 2. That Berkeley Municipal Code section 2.12.100 is amended to read as follows:

Section 2.12.100 Contribution.

A. "Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or in opposition to the nomination or election of one or more candidates or the qualification for the ballot or voter approval of one or more measures. The term "contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies and similar fund-raising events; a candidate's own money or property used on behalf of his or her candidacy; the granting to a candidate or committee of discounts or rebates not available to the general public; and payments for the services of any person serving on behalf of a candidate or committee, when such payments are not made from contributions the candidate or committee must otherwise report under the terms of this chapter. The term "contribution" further includes any transfer, gift, loan, advance, deposit, forgiveness of indebtedness, payment of a debt by a third party, pledge, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, received directly or indirectly by a

committee from another committee. The term "contribution" shall not include a gift of service or labor, but shall include service or labor for which a payment is made, nor shall the term "contribution" include a gift of the use of personal or real property where the value of such use is not in excess of fifty dollars, nor shall it include food and beverages the value of which for any one event is no more than fifty dollars.

B. In the case of an officeholder committee, "contribution" means a monetary payment to an officeholder committee to be used for expenses associated with holding City office as provided in Article 9 of this Chapter.

Section 3. That Berkeley Municipal Code section 2.12.130 is amended to read as follows:

Section 2.12.130 Expenditure.

A. "Expenditure" means a payment, pledge or promise of payment of money or anything of value or other obligation, whether or not legally enforceable, for goods, materials, services or facilities in aid of or in opposition to the nomination or election of one or more candidates or the qualification for the ballot or adoption of one or more measures. The term "expenditure" includes any transfer, payment, gift, loan, advance, deposit, pledge, contract, agreement or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly by one committee to another committee. "Expenditure" also includes the forgiving of a loan or the repayment of a loan by a third party.

B. In the case of an officeholder committee, "expenditure" means payment of money by an officeholder committee for expenses associated with holding elective office in the City of Berkeley as provided in Article 9 of this Chapter.

Section 4. That Berkeley Municipal Code section 2.12.157 is added to read as follows:

Section 2.12.157 Officeholder committee.

"Officeholder committee" means a committee established by an Elective Officer of the City of Berkeley, as defined in Article V Section 8 of the Charter of the City of Berkeley, to receive contributions and make expenditures associated with holding elective office in the City of Berkeley as provided in Article 9 of this chapter.

Section 5. That Berkeley Municipal Code Section 2.12.545 is amended to read as follows:

Section 2.12.545 Cost of living adjustments.

The Commission shall adjust the dollar amounts specified in Sections 2.12.167, 2.12.500.A.3, 2.12.505.B and 2.12.530.B.3.b and 2.12.602 for cost of living changes pursuant to Section 2.12.075 in January of every odd-numbered year following Council implementation. Such adjustments shall be rounded to the nearest ten dollars (\$10) with respect to Sections 2.12.167, 2.12.500.A.3 and 2.12.530.B.3.b and one thousand dollars (\$1,000) with respect to Sections 2.12.505.B and 2.12.602.

Section 6. That Article 9 of Chapter 2.12 of the Berkeley Municipal Code is added to read as follows

Article 9. Officeholder Committees

Section. 2.12.600 Regulation of officeholder committees.

- A. Elective Officers (the “officeholder” or “officeholders”) shall each be permitted to establish one officeholder committee, as defined in Section 2.12.157.
- B. Nothing in this section shall require an officeholder to open an officeholder committee or, if they have established an officeholder committee, to contribute to their officeholder committee to spend personal funds on their own officeholder expenses.
- C. Expenditures of an officeholder’s personal funds for their own officeholder expenses which are not contributed to an officeholder committee are not reportable under this chapter.

Section 2.12.602 Cumulative contribution limits

- A. For each Elected Officer representing a district within the City of Berkeley, total contributions to an officeholder committee from all contributors other than the officeholder shall not exceed five thousand dollars (\$5,000) in the aggregate per calendar year.
- B. For citywide Elected Officers, total contributions to an officeholder committee from all contributors other than the officeholder shall not exceed in the aggregate per calendar year an amount equal to four times the maximum allowed for elected officers representing districts, as provided in Section 2.12.602.A

Section 2.12.604 Prohibited officeholder expenditures

An officeholder committee shall not make expenditures for the following purposes:

- A. Expenditures in connection with an election for any city, county, regional, state or federal elective office or in connection with a ballot measure.
- B. Expenditures for campaign consulting, research, polling, photographic or similar services for election to city, county, regional, state or federal elective office.
- C. Membership in any athletic, social, fraternal, veterans or religious organization.
- D. Supplemental compensation for officeholder staff for performance of duties required or expected of the person in the regular course or hours of their employment as a City official or employee.
- E. Any expenditure that would violate any provision of the Berkeley Election Reform Act (BMC Chapter 2.12.) or the California Political Reform Act (Cal. Gov. Code § 81000 et seq.), including but not limited to the gift laws pertaining to travel payments, advancements and reimbursements under Government Code section 89506 and provisions related to permissible expenditures which serve legislative or governmental purposes under Government Code sections 89512 through 89519.

Section 2.12.606 Permissible officeholder expenditures

An officeholder committee may make expenditures only for the following purposes:

- A. Expenditures for fundraising for the officeholder committee.
- B. Expenditures for office equipment, furnishings and office supplies used for governmental or legislative purposes.
- C. Expenditures for compensation of staff, consultants, or other persons employed by the officeholder for time spent on officeholder activities, provided that such expenditures are not prohibited by Section 2.12.604.D.
- D. Expenditures for research, surveys, photographic, or similar services, provided such services are only for officeholder purposes.
- E. Expenditures for attendance, travel, lodging, meals and other related expenses which serve a legislative or governmental purpose by the officeholder and members of the officeholder's City staff or others employed by the officeholder to perform duties related to officeholder activities. Such permissible expenditures shall include but not be limited to:
 - 1. Expenditures for attendance at conferences, meetings, receptions, and other events occurring within or outside of the United States, including but not limited to registration or other attendance fees, travel, lodging, food, and

incidentals;

2. Expenditures for membership and participation in programs for civic, service, or professional organizations, if such membership bears a reasonable relationship to a governmental or legislative purpose; and
 3. Expenditures for educational courses or events reasonably related to a governmental or legislative purpose.
- F. Expenditures for constituent and community communications, including but not limited to:
1. Mailings, newsletters and other paper, electronic, or other communications which provide information related to community events, an officeholder's governmental duties, an officeholder's position on a particular matter, or any other matter of public concern or interest;
 2. An officeholder's website and social media;
 3. Email and address list management.
- G. Expenditures for expressions of congratulations, appreciation or condolences sent to constituents, employees, governmental officials, or other persons with whom the officeholder communicates in their official capacity.
- H. Expenditures for payment of tax liabilities incurred as a result of permissible officeholder committee transactions.
- I. Expenditures for accounting, legal, professional, administrative, and similar services provided to the officeholder committee.
- J. Expenditures for attorneys' fees and other costs related to litigation, administrative procedures, or other processes arising directly from the officeholder committee's activities or the officeholder's activities, duties, or status as an elected officer.

Section 2.12.608 Prohibitions on transfer or reallocation of funds

The following restrictions apply to the transfer or reallocation of officeholder funds:

- A. No funds may be contributed, redesignated, or transferred to an officeholder committee from any campaign committee for any city, county, regional, state, or federal elective office or ballot measure, or any other political committee.
- B. No funds may be contributed, redesignated, or transferred from an officeholder

committee to any candidate or campaign committee for any city, county, regional, state, or federal elective office or ballot measure, or any other political committee.

- C. No officeholder committee may be redesignated as a campaign committee for any city, county, regional, state, or federal elective office or ballot measure.
- D. No campaign committee for any city, county, regional, state, or federal elective office or ballot measure may be redesignated as an officeholder committee.

Section 2.12.610 Prohibition on simultaneously maintaining officeholder and campaign committees

- A. An officeholder may not simultaneously maintain an officeholder committee and a campaign committee for any city, county, regional, state or federal elective office.
- B. A candidate who is elected to any elective office in Berkeley must terminate their campaign committee before opening an officeholder committee.
- C. An officeholder must terminate any open officeholder committee prior to filing a Statement of Organization or equivalent initial filing for a campaign committee for any city, county, regional, state, or federal elective office.

For officeholders filing a Statement of Organization with the City Clerk to form a campaign committee for a City of Berkeley office, the Clerk shall provide notice of the need to close any open officeholder committee prior to accepting the campaign committee Statement of Organization.

Section 2.12.612 Termination of officeholder committees upon leaving office

- A. An officeholder who does not file a Statement of Organization or equivalent initial filing to seek a subsequent city, county, regional, state, or federal elective office shall terminate their officeholder committee within 90 days of leaving office.
- B. Following the date of leaving office, an officeholder shall not make any new expenditures from their officeholder committee except for the following purposes:
 - 1. Paying for legitimate, outstanding officeholder expenses accrued on or prior to the date of leaving office.
 - 2. Repaying contributions to contributors to the officeholder committee on a pro rata basis.
 - 3. Donating funds to the City's general fund.

2.12.615 Limits and requirements for contributions and expenditures

- A. The limit on cumulative contributions to an officeholder committee by a person other than the officeholder in a calendar year shall be the same as the limit on contributions to a candidate with respect to a single election under Section 2.12.415. Contributions to a candidate shall not be counted against the limit on contributions to an officeholder committee in the same calendar year.
- B. Officeholder committees shall be subject to the limits on contributions from organizations and entities to candidates and committees under Section 2.12.440.
- C. Nothing in this Article shall limit the amount an officeholder may contribute to their own officeholder committee or spend on officeholder expenses either through or not through an officeholder committee.
- D. All requirements and prohibitions for campaign contributions and expenditures under Sections 2.12.300, 2.12.305, 2.12.310, 2.12.315, and 2.12.320 shall apply to officeholder committees.

2.12.645 Officeholder Committee Treasurer

Each officeholder committee shall appoint a committee treasurer and shall comply with all requirements for campaign committee treasurers under section 2.12.245.

2.12.650 Officeholder expenditure and contribution account – Establishment required – Procedure for use

An officeholder committee treasurer shall establish and manage a checking account. All provisions of Section 2.12.250 regarding the establishment and use of campaign accounts shall also apply to the establishment and use of officeholder committee checking accounts, unless otherwise provided in this Article.

2.12.655 Statement of organization – Committee required to file.

- A. Every officeholder committee shall file with the City Clerk a statement of organization before accepting contributions.
- B. The date on which an officeholder committee is formed by filing a statement of organization shall determine the officeholder committee's obligation to file statements and reports required by this chapter.

2.12.660 Statement of organization – information required

The statement of organization required by Section 2.12.655 shall include:

- A. The name, street address and telephone number of the officeholder committee;
- B. The name of the officeholder;
- C. The full name, street address and telephone number of the treasurer and other principal officers;
- D. The elected office held by the officeholder;
- E. The account number and name of the bank at which the checking account, required by Section 2.12.650, is maintained; if the information required by this section is unavailable at the time of filing the statement of organization, the filer shall promptly submit an amended statement after such information becomes available;
- F. The cash on hand at the time of filing the statement of organization;
- G. Such other information as shall be required by the rules or regulations of the commission consistent with the purposes and provisions of this chapter.

Section 2.12.665 Statement of organization--Change of information--Amendment required.

Whenever there is a change in any of the information contained in the statement of organization, an amendment shall be filed within ten days to reflect the change.

Section 2.12.670 Officeholder statements – filing requirements

- A. Each officeholder committee statement shall be filed in accordance with the filing dates prescribed by state law for campaign committee statements. If state law does not establish the filing dates for campaign statements, the commission shall set the necessary filing dates.

Section 2.12.675 Officeholder statements - Verification

- A. Reports and statements required by this Article shall be subject to the filing requirement of Sections 2.12.025, 2.12.030, 2.12.032, 2.12.033, 2.12.035, 2.12.040, 2.12.045 and 2.12.050.
- B. An officeholder shall verify his or her officeholder statement. The verification shall be in accordance with the provisions of Section 2.12.025 except that it shall state that they have made reasonable inquiry into the truthfulness and completeness of such officeholder statement and that to the best of their knowledge, the treasurer of the officeholder committee used all reasonable diligence in the preparation of the committee's statement. This section does not relieve the treasurer of any officeholder committee from the obligation to verify each officeholder statement filed pursuant to Section 2.12.025.

Section 2.12.680 Officeholder Statement – Information required

Officeholder committee statements required by this article shall include all applicable information required for campaign committee statements by Section 2.12.280.

Section 2.12.685 Enforcement

Violations of this article involving the unlawful use of officeholder committees are subject to the enforcement procedures and penalties in Article 7 of this chapter.

MEMORANDUM

DATE: March 29, 2021

TO: Mayor Jesse Arreguin and Councilmembers Sophie Hahn and Susan Weingraf, Members of the Council Agenda and Rules Committee

FROM: Brad Smith, Patrick O'Donnell and Jedidiah Tsang, Delegation from the Fair Campaign Practices and Open Government Commissions

SUBJECT: Officeholder Accounts

Two main approaches have been considered regarding local Officeholder Accounts in California. The first, adopted by the City of San Jose, would prohibit these accounts. The second, adopted by the city of Oakland, would permit these accounts but regulate them.

For the reasons discussed below, the FCPC previously recommended that Officeholder Accounts be prohibited (Exhibit 3). However, the Council decided in February 2020 not to approve the FCPC's recommendation and referred the issue of Officeholder Accounts, along with concomitant issues related to D-13 accounts, to the Council's Agenda and Rules Committee.

The Fair Campaign Practices and Open Government Commissions have been studying Officeholder and D-13 Accounts since 2019. At its regular meeting on November 21, 2019, the FCPC voted without opposition to recommend amendments to the Berkeley Election Reform Act (BERA) that would prohibit Officeholder Accounts. The FCPC's recommendation was presented to the City Council at a February 4, 2020 special meeting. (A copy of the Report to Council is attached as Exhibit 3.)

Although the Council did not approve the FCPC's recommendations at that time and is considering alternatives that would allow for regulated Officeholder Accounts, a discussion in which the FCPC is glad to participate, the FCPC continues to believe that the prohibition of such accounts may ultimately be the preferable solution.

Briefly, our reasons for recommending prohibiting Officeholder Accounts are as follows:

1. Donations to an elected official's Officeholder Account may put that contributor in a more favorable light with the elected official than might otherwise be the case.
2. The City of San Jose has prohibited Officeholder Accounts (Section 12.06.810) since January 2008, providing as a rationale "to prevent the perception by the public that such contributions may give rise to undue or improper influence over elected officials" (Section 12.06.1100).

3. There are a number of permissible expenditures that could be made from Officeholder Accounts, now made from the Councilmember's discretionary council office budget (D-13 account), that put the elected official in a favorable light. Such expenditures include contributions to nonprofit organizations and newsletters mailed to constituents related to events, information or an officeholder's position on matters before the Council. We are not arguing these expenditures should be prohibited, only not paid for by funds collected in Officeholder Accounts.

4. As evidenced by contributions to nonprofit organizations from the Councilmember's D-13 accounts, which in total increased from \$50,938 in FY 2017 to \$113,526 in FY2018, enough funds are now available to Councilmembers to cover office expenses. It stretches the imagination to see donations to nonprofit organizations as an "office expense." If not enough funds are available for office expenses, the allocation to the D-13 accounts should be increased by the Council rather than relying on funds solicited from donors for an Officeholder Account.

5. Members of the FCPC are concerned about the amount of staff time required to track paperwork required for the administration of Officeholder Accounts and to assist in the enforcement process.

6. Members of the FCPC have discussed concerns that Councilmembers from wealthier areas of the City will have an easier time of raising funds for Officeholder Accounts.

7. Finally, we note the Officeholder Account has been rarely used in Berkeley, only once in the last several years that we are aware of.

While we look forward to a good, frank discussions and careful consideration of the alternative of permitting and regulating Officeholder Accounts, we respectfully request that Council members continue to consider that a prohibition of these accounts may, in the end, be the preferable approach.

Exhibit 1. Although the FCPC continues to support prohibition, it has prepared a draft version of an ordinance that would allow for regulated Officeholder Accounts. This draft identifies the issues that a regulated approach, if pursued, would need to address.

Exhibit 2. RESOLUTION NO. 67,992-N.S. (City Council Expenditures and Reimbursement Policies), referred to in the proposed language for changes to BERA to regulate Officeholder Accounts.

Exhibit 3. Language for amending the Berkeley Election Reform Act to prohibit Officeholder Accounts included in the FCPC submission to the City Council of February 4, 2020.

[DRAFT]

[Annotations are in RED. These include ISSUES for discussion and RECOMMENDATIONS of the three FCPC members participating in the joint meetings.]

ORDINANCE NO. -N.S.

AMENDING THE BERKELEY ELECTION REFORM ACT TO REGULATE OFFICEHOLDER ACCOUNTS

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

Section 1. That the Berkeley Municipal Code section 2.12.157 is added to read as follows:

Section 2.12.157 Officeholder Account.

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

Section 2. That Article 9 of Chapter 2.12 of the Berkeley Municipal Code is added to read as follows

Article 9. Officeholder Accounts

Section. 2.12.600 Regulation of Officeholder Accounts.

A. The Mayor and Council members (the “officeholder” or “office holders”) shall each be permitted to establish one Officeholder Account, as defined in section 2.12.157.

ISSUE: What limitations should be placed on which public officials may be authorized to open Officeholder Accounts? Currently, Berkeley law is silent on this issue, as it is generally with respect to matters relating to Officeholder Accounts. Should the authorization to have Officeholder Accounts be limited to the Mayor and Council members?

State law applies to “elected state officeholder[s],” which includes the Governor, members of the state senate and assembly, and “other statewide elected official[s] other than the Governor.” (Gov. Code sec.85316(b)(1).)

RECOMMENDATION: Amendments to BERA authorizing Officeholder Accounts should be limited to the offices of Mayor and members of the City Council. Extending the authorization more broadly appears to other city officeholders at this time appears to be fiscally unnecessary and would impose significant burdens on the clerk’s office and the FCPC, which would be responsible for compliance with reporting requirements and the enforcement of the laws relating to Officeholder Accounts. If Berkeley’s experience with Officeholder Accounts proves to be positive, BERA could be amended in the future to expand the categories of elected officials authorized to establish Officeholder Accounts.

B. All donations deposited into an Officeholder Account shall be deemed to be held in trust solely for expenses associated with holding the office currently held by the elected city

officer. For the purpose of this section, “donation” means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, in support of the office currently held by an elected official.

ISSUE: This draft uses the term “donation” throughout new section 2.12.600 instead of “contribution.” The use of the term “donation” in the proposed new section of the BERA reflects that funds made for Officeholder Accounts are different from campaign contributions; prevents making all the legal provisions applicable to campaign fund arguably applicable to officeholder donations; and avoids confusion in how the funds for this specific purpose are treated.

RECOMMENDATION: Include the new definition of “donation” in this section and use it – and related terms such as “donor” – consistently throughout, instead of using the term “contribution” in the new section on Officeholder Accounts.

C. Only a natural person who is a resident of the City may make a donation to an Officeholder Account.

ISSUE: To prevent undue influence in election campaigns, BERA currently contains limitations on who may make contributions to such campaigns. Proposed new paragraph C. would provide a similar limitation for donations to Officeholder Accounts. Specifically, like the limitation similar in the Berkeley Elections Reform Act (BERA sec. 2.12.167.), it would limit donations to Officeholder Accounts to natural persons residing in Berkeley.

There is a need for an express provision on this subject to be included in the proposed amendments. As currently written, neither of the BERA limitations relating to campaign contributions would apply by their own terms to donations to Officeholder Accounts nor would a cross-reference work.

The limitation in the Berkeley Election Reform Act to natural person residing in Berkeley is part of the definition of “qualifying contribution” to be eligible for public financing (BERA sec. 2.12.167); and so would not apply to Officeholder Accounts. The limitation in BERA section 2.12.440 prohibits “contributions” by any “proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, including non-profit corporations, or labor union”; but such contributions are prohibited only to “any candidate or committee (supporting or opposing any candidate)” and so would not apply to Officeholder Accounts. Cross-references to these sections would be confusing since by their own terms the referenced sections apply only to campaign contributions, and not to donations to Officeholder Accounts.

RECOMMENDATION: The proposed language that would expressly limit the persons eligible to make donations to “natural persons who are residents of the City of Berkeley” should be adopted. This will avoid undue influence by entities and persons outside Berkeley whose donations might improperly influence officeholders.

D. Donations to an Officeholder Account must be made by a separate check or other separate written instrument. Single donations may not be divided between the Officeholder Account and any candidate committee or other entity.

E. No donor shall make, and no elected officer shall receive from a donor, a donation or donations under this section totaling more than fifty [or two-hundred and fifty] dollars (\$50.00 [or \$250.00]) per person for the calendar year. "Donor" means a natural person who is a resident of the City who makes a donation as defined in paragraph B.

ISSUE: Any regulated scheme for Officeholder Accounts should include a limit on the amount of that each individual is permitted to donate each year. The amount of the individual donations permitted each year is an issue that the Council and the FCPC need to decide, as well as the manner in which this limit is prescribed.

The California state statute on Officeholder Accounts provides explicit limits on the amount that a person is permitted to make for each officeholder per calendar year (e.g., \$3,000 for Senate and Assembly members and \$20,000 for Governor). (Gov. Code sec. 85316(b)(1)(A)-(B).)

The proposed draft amendments to the BERA, above, currently provide for a limit on donations in the range of \$50-\$250; the exact amount is an issue to be determined. Assuming the amount chosen is \$250, this amount could be explicitly placed in the ordinance, as the draft does. Alternatively, the amount might be specified by cross-reference to the maximum campaign amount permitted under BERA (e.g., by a cross-reference stating the amounts of any individual annual donation shall not exceed the amount of a campaign contribution permitted for a single election under BERA section 2.12.415).]

RECOMMENDATION: An explicit amount should be included in the new section of BERA on Officeholder Accounts. This will make the officeholder section—including the exact amount of the donation limit—clear and easy to understand. If in the future the campaign limits under BERA are increased and it makes sense also to increase the amount of the permitted annual individual donations to Officeholder Accounts to a similar (or other) amount, the permissible amount of the donations can be revised at that time.

F. For the office of Mayor, total donations to an Officeholder Account from all donors shall not exceed ten thousand dollars (\$10,000.00) in the aggregate per calendar year. For each member of the City Council, total donations to an Officeholder Account from all donors shall not exceed five thousand dollars (\$5,000.00) in the aggregate per calendar year.

ISSUE: Any regulated scheme for Officeholder Accounts should also include a limit on the total amount of donations from all donors that can be contributed to an officeholder each year. The amount of the total "cap" is an issue that the Council and the FCPC need to decide.

RECOMMENDATION: The total aggregate donations permitted to be made to specific officeholders in Berkeley should be proportional to their offices' size, scope, and needs.

G. All donations received for, and expenditures made from, an Officeholder Account during a calendar year shall be reported at least annually on the date or dates prescribed by the FCPC and the report shall be made available to the public promptly thereafter. The FCPC shall adopt or designate a form or forms for the purpose of reporting the information about each elected officer's Officeholder Account. The forms shall be filed electronically. The information on the form or forms shall be verified by the officeholder. The information that shall be included in the Officeholder Account report shall include the following:

1. The name of the officeholder and the office held;
2. The reporting period covered by the report;
3. A description of all receipts and expenditures.
4. The full name of each donor from whom a donation or donations has been received together with their street address, occupation, and the name of their employer, if any, or the principal place of business if they are self-employed; the amount which they donated; the date on which the each donation was received during the period covered by the report; and the cumulative amount that the donor donated. Loans received shall be set forth in a separate schedule and the foregoing information shall be stated with regard to each lender, together with the date and amount of the loan, and if the loan has been repaid, the date of the payment and by whom paid;
5. The full name and street address of each person to whom an expenditure or expenditures have been made, together with the amount of each separate expenditure to each person during the period covered by the report; a description of the purpose for which the expenditure was made; and the full name and street address of the person receiving the expenditure.
6. Under the heading "receipts," the total amount of donations received, and under the heading "expenditures," the total amount of expenditures made during the reporting period and cumulative amount of such totals;
7. The balance of cash and cash equivalents, including the amounts in the officeholder bank account, at the beginning and end of each period covered by the report.

ISSUE: The amended BERA provisions on Officeholder Accounts (Section 2.12.600.G.1-7, above), like those for campaign statements (see BERA sec. 2.12.200 A.-K.), would specify the information that must be disclosed. In new section 2.12.600, the provisions have been tailored to address donations, donors, donors' names and addresses, and so forth. Having these requirements specified in the ordinance will provide the legal foundation for the information requested about Officeholder Accounts on statements or forms. Also, having these requirements in the ordinance will make it possible for the City more easily to add or modify the information required on statements.

Subsection G. also provides that the FCPC shall adopt or designate a form or forms for the purpose of reporting the information about each elected officer's Officeholder Account. This would permit, but not require, the City to require officeholders to use California Form 460 or 470 to comply with the reporting requirements. This flexibility is important so that the City will be able to exercise its discretion as to what information needs to be reported about donations to, and expenditures from, Officeholder Accounts.

Finally, this section provides that the commission shall prescribe the time for filing the forms and that the forms shall be verified and filed electronically. These provisions will improve the effectiveness of the reporting on Officeholder Accounts.

RECOMMENDATION: Section G. should be adopted as proposed for the reasons stated above.

H. Expenditures from an Officeholder Account may be made only for lawful officeholder

purposes, and may not be used for any of the purposes prohibited in subsections J. and K. of this section.

ISSUE: This provision clarifies the intent of these amendments—that they authorize “true” Officeholder Accounts whose purpose is strictly limited to lawful officeholder purposes—and are not intended for any other broader purposes. This approach should help officeholders avoid the pitfalls of running afoul of campaign finance laws (as warned against in past opinions by the Berkeley City Attorney).

RECOMMENDATION: Section H. should be adopted as proposed for the reasons stated above.

I. Allowable expenses from an Officeholder Account are limited to expenses for travel, meals, and lodging incurred in connection with the following types of activities:

1. Communicating with representatives of local, regional, state and national governments on City policy positions;
2. Attending educational seminars designed to improve officials’ skill and information levels, provided that a brief report of such seminar shall be made by the Mayor and Council at a subsequent Council meeting;
3. Participating in local, regional, state and national organizations of cities whose activities affect the City’s interests;
4. Recognizing service to the City (for example, thanking a longtime employee with a retirement gift or celebration of normal value and cost);
5. Attending City events; or events sponsored by organizations or entities whose activities affect the City’s interests where the primary purpose of the event is to discuss subjects which relate to City business;
6. Implementing City approved policies; and
7. Meals where the primary purpose of the meal is to conduct City-related business (other than simply meeting constituents) as long as the amount of such meal does not exceed the daily maximum set forth in city, state, and federal standards for when meal reimbursement may be allowed.

J. Expenditures from an Officeholder Account shall not be used for any of the following types of activities:

- 1 The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;
3. Family expenses, including partner’s expenses when accompanying the official on agency-related business, as well as children or pet-related expenses;
4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage, and or golf related expenses); or other recreational and cultural events;
5. Alcoholic beverages;
6. Non-mileage personal automobile expenses, including repairs, traffic, citations, insurance or gasoline; and
7. Personal losses incurred while on City Business.

RECOMMENDATION: Sections I. and J. should be based on the list of Authorized Activities and Unauthorized Expenses in Sections IIA. and B. of the City Council Expenditure and Reimbursement Policies, Resolution No. 67,992—N.S. (“Policies”). The lists identified in the Policies are thoughtful, carefully prepared lists of which expenses are permissible or impermissible for officeholders under current law. The policies were unanimously adopted

by the Berkeley City Council on May 30, 2017. For the purposes of the proposed ordinance on Officeholder Accounts, the lists in the Policies are more appropriate for adoption than the lists developed by the Oakland City Council that appear to be based largely on state laws relating to on campaign expenditures.

I. Prohibitions:

1. No funds may be contributed or transferred from an Officeholder Account to any candidate or committee, as defined in sections 2.12.085 and 2.12.095 of this chapter, including to any committee in which the officeholder is a candidate. An officeholder may not redesignate his or her Officeholder Account as a committee for a future term of the same office or redesignate his or her Officeholder Account funds to be used as campaign funds by his or her committee for a future term of the same office.

2. No funds may be used from an Officeholder Account to pay any campaign expenses.

3. An officeholder may not transfer or contribute funds from any other committee he or she controls to the Officeholder Account.

ISSUE: These prohibitions make it clear that funds from an Officeholder Account may never be used for any type of campaign purposes. This is consistent with the ordinance's intent that Officeholder Accounts be strictly limited to officeholder purposes. The provision also makes it explicit that these strictly officeholder funds cannot be redesignated as funds for a future campaign.

L. Once an officeholder's term of office ends or she or he leaves that office, whichever is earlier, the former officeholder may use his or her Officeholder Account funds only for the following purposes:

1. Paying for legitimate, outstanding officeholder expenses.

2. Repaying contributions to donors to the Officeholder Accounts.

3. Making a donation to a bona fide charitable, educational, civic, religious or similar tax-exempt, non-profit organization if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

M. The officeholder shall terminate the Officeholder Account within 90 days of the date that the officeholder's term of office ends or he or she leaves that office, whichever is earlier. The FCPC may for good cause extend the termination date. The disposition of all funds from the closed Officeholder Account, including the identification of all persons and entities that have received funds from the account and the amounts distributed, shall be described on a form prescribed by the FCPC. The officeholder must verify and file the form electronically no later the date prescribed for the termination of the Officeholder Account or an approved extension thereof.

N. All funds from a closed Officeholder Account not properly disposed of within the 90 day period prescribed above, or an approved extension thereof, shall be deposited in the City's General Fund.

ISSUES: Several issues exist with respect to the termination of Officeholder Accounts.

Draft sections 2.12.600 L.-N., above, propose procedures for terminating Officeholder Accounts in Berkeley based, in large part, on the state regulations on terminating Officeholder Accounts and committees (see Regulations of the Fair Political Practices Commission, Cal. Code of Reg., sec. 18531.63(g)).

The proposed provisions include the main options for disposing of Officeholder Account funds listed in the regulations (i.e., paying legitimate expenses, returning funds to donors, and making donations to bona fide organizations). However, the provision in the state regulations (sec. 18531.63(g)(2)) allowing for redesignation of Officeholder Accounts as accounts for a future campaign has been omitted because the Berkeley ordinance would authorize only strict Officeholder Accounts, prohibit the use of those accounts for any campaign purposes, and prohibit the redesignation of those accounts for use by campaign committees.

The proposed provisions, though, are incomplete: they do not address what should happen to an Officeholder Account if an incumbent wins re-election? Maybe it would be appropriate, under certain circumstances, for an incumbent who is elected to a new term of office, to redesignate a previous Officeholder Account for use in the officeholder's new term of office (as envisaged in the state regulations (see sec. 18531.63(g)(3)). Alternatively, as suggested at a previous joint meeting, perhaps it might be better for incumbents to terminate their Officeholder Accounts completely by a certain time before an election; and, if successful, they could open up a new Officeholder Account after their re-election.

The issues around the termination of Officeholder Accounts should be discussed by the joint committee and decisions made about what additions or modifications to the proposed ordinance are warranted.

M. Violations of this article involving the unlawful use of Officeholder Accounts are subject to the procedures of, and the penalties in, Article 7 of this chapter.

ISSUE: Are there any other issues on enforcement besides this general provision that need to be addressed?

* * *

OTHER ISSUES TO BE CONSIDERED:

Some of the other issues not yet incorporated into the draft, but which merit consideration, include:

1. Establishment of an Officeholder Committee. State law requires an officeholder to create an Officeholder Controlled Committee if the officeholder receives more than \$2,000; and it provides guidance on the procedures for establishing such a committee, the committee's name, and other requirements. (Cal. Code of Reg., sec. 18531.63(c).) The Berkeley ordinance should probably include similar provisions.

2. Return of Excess Contributions/Donations. State law requires that an excess contribution to an officeholder be returned. (Gov. Code sec.85316(b)(3).) The regulations prescribe that the officeholder return the contribution within 14 days. (Cal. Code of Reg., sec. 18531.63(f).) The Berkeley ordinance should probably include similar provisions.

3. Conforming Amendments to BERA. A BERA section on the disposition of excess

campaign funds will probably need to be amended to be consistent with the new section 2.12.600 on Officeholder Accounts (see BERA sec. 2.12.245.C.). There may be other sections to BERA that require similar conforming changes.

RESOLUTION NO. 67,992-N.S.

CITY COUNCIL EXPENDITURE AND REIMBURSEMENT POLICIES

WHEREAS, each fiscal year, the City Council appropriates funds in the Mayor and Councilmember's departmental budgets to cover the costs of Mayor and Council staff and non-personnel expenditures which are reasonable and necessary for the performance of the duties of Mayor and Councilmember; and

WHEREAS, the Council needs to ensure that the expenditures are incurred and paid in conformity with the requirements of the City Charter; and

WHEREAS, AB 1234, adopted in 2005 and codified as Government Code Sections 53232, et. seq., requires that all cities adopt an expense reimbursement policy for Mayor and Council expenses; and

WHEREAS, on July 25, 2006, the City Council adopted Resolution No. 63,412-N.S. to establish the expenditure and reimbursement policy required by state law; and

WHEREAS, on September 10, 2103, the City Council rescinded Resolution No. 63,412-N.S. and replaced it with Resolution No. 66,295-N.S., which revised the expenditure and reimbursement policy required by state law.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Councilmember Office Budget Relinquishment and Grant Policy enumerated in Exhibit A is incorporated by reference into the policy for City Expenditures and Expense Reimbursement for Mayor and Council.

BE IT FURTHER RESOLVED that Resolution No. 66,295-N.S. and any amendments thereto are hereby rescinded.

BE IT FURTHER RESOLVED that the policy concerning City Expenditures and Expense Reimbursement for Mayor and Council departments is hereby adopted to read as follows:

CITY EXPENDITURES AND EXPENSE REIMBURSEMENT FOR MAYOR AND COUNCIL DEPARTMENTS

I. City Expenditures for Mayor and Council

The Mayor and Council members shall purchase all office supplies, office equipment, furniture, computers, or any other product, good, or service for the actual and necessary expense of their office in the manner normally applicable to all other purchases of goods and services by the City. Such expenses may include membership in organizations of elected officials and the purchase of newspapers and periodicals that provide information needed for the performance of official duties.

II. Reimbursement of Actual and Necessary Expense of Office

The Mayor and Council members and their staff may be reimbursed for the actual and necessary expenses for the categories of activities set forth below under "Authorized Activities."

A. Authorized Activities.

Travel, meals and lodging incurred in connection with the following types of activities set forth below constitute authorized expenses, as long as the other requirements of this Resolution are fulfilled:

1. Communicating with representatives of local, regional, state and national government on City policy positions;
2. Attending educational seminars designed to improve officials' skill and information levels, provided that a brief report of such seminar shall be made by the Mayor and Council at a subsequent Council meeting;
3. Participating in local, regional, state and national organizations of cities whose activities affect the City's interests;
4. Recognizing service to the City (for example, thanking a longtime employee with a retirement gift or celebration of nominal value and cost);
5. Attending City events; or events sponsored by organizations or entities whose activities affect the City's interests where the primary purpose of the event is to discuss subjects which relate to City business;
6. Implementing City approved policies;
7. Meals where the primary purpose of the meal is to conduct City-related business (other than simply meeting constituents) as long as the amount of such meal does not exceed the daily maximum as set forth in this Resolution and meets applicable federal and state standards as to when meal reimbursement may be allowed; and
8. Expenditures for these purposes approved in advance by a Mayor or Council member and undertaken by that person's staff.

Expenditures for all other activities require prior approval by the City Council and must meet an articulated municipal purpose that must be recited in the report proposing the expenditure and the resolution authorizing the expenditure. Most frequently, prior approval by the City Council is given in items to authorize relinquishment of Council office budget fund to general fund and grant of such funds for charitable events, which would be unauthorized expenses if not pre-approved by Council. The policy for relinquishments and grants from Councilmember office budgets is enumerated in Exhibit A.

B. Unauthorized Expenses

The following personal expenditures incurred by City officials shall not be reimbursed:

1. The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;
3. Family expenses, including partner's expenses when accompanying official on agency-related business, as well as children or pet-related expenses;

4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related expenses), or other recreational and cultural events;
5. Alcoholic beverages;
6. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
7. Personal losses incurred while on City business.

Any questions regarding the propriety of a particular type of expense should be resolved by the City Council before the expense is incurred.

C. Particular Types of Authorized Expenditures Defined

To conserve City resources and keep expenses within community standards for public officials, expenditures should adhere to the following guidelines. In the event that expenses are incurred which exceed these guidelines, the cost borne or reimbursed by the City will be limited to the costs that fall within the guidelines.

1. **Registration.** Registration fee charged for any authorized convention, conference, seminar or meeting is reimbursable.
2. **Transportation.** The most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route. Charges for rental-vehicles may be reimbursed under this provision if more than one City official is attending an out of town conference, and it is determined that sharing a rental vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of such other forms of transportation. Government and group rates must be used when available.
3. **Airfare.** Airfares that are equal to or less than those available through the California Department of General Services (DGS) Statewide Travel Program offered through the League of California Cities, www.dgs.ca.gov/travel¹, are presumed to be the most economical and reasonable for purposes of reimbursement under this policy. If DGS rates are not available, reimbursement for airfare must not exceed 110% of either the state DGS rates or the Federal rates published by the U.S. General Services Administration (GSA) rates, www.gsa.gov², whichever is greater. Any exceptions to these rates must be approved at a public Council meeting before the expense is incurred.

¹ California Department of General Services Statewide Travel Program (DGS): www.dgs.ca.gov/travel

² U.S. General Services Administration (GSA): www.gsa.gov

4. **Automobile.** Automobile mileage is reimbursed at Internal Revenue Service rates presently in effect. These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable. The Internal Revenue Service rates will not be paid for rental vehicles; only receipted fuel expenses will be reimbursed.
5. **Car Rental.** Rental rates that are equal or less than those published by the California Department of General Services (DGS) Statewide Travel Program available through the League of California Cities shall be considered the most economical and reasonable for purposes of reimbursement under this policy. If DGS rates are not available, reimbursement for car rental must not exceed 110% of either the state DGS rates or the Federal GSA rates, whichever is greater. Any exceptions to these rates must be approved at a public Council meeting before the expense is incurred.
6. **Taxis/Ride Shares/Shuttles.** Taxis, ride shares, or shuttles fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.
7. ~~7.~~ **Lodging.** Lodging expenses will be reimbursed or paid for when travel on official City business reasonably requires an overnight stay. If such lodging is in connection with a conference, lodging expenses must not exceed the group rate published by the conference or activity sponsor, provided that lodging at the group rate is available to the Council member at the time of booking. If lodging at the group rate is not available, or if travel is not in connection with a conference, rates that are equal to or less than those available through the California Department of General Services (DGS) Statewide Travel Program offered through the League of California Cities, are presumed to be the most economical and reasonable for purposes of reimbursement under this policy. If DGS rates are not available, reimbursement for lodging must not exceed 120% of the state DGS rates or 100% of the Federal rates published by the GSA, whichever is greater. Any exceptions to these rates must be approved at a public Council meeting before the expense is incurred. **Meals.** Meal expenses and associated gratuities will be reimbursed at the rate set forth in Administrative Regulation 3.9. "Meals which are served at regular meetings of associations to which the city belongs (i.e. Alameda County Mayors' Conference, league of California Cities, or ABAG) shall be exempt from this policy.
8. **Telephone/Fax/Cellular.** Council members will be reimbursed for actual telephone and fax expenses incurred on City business. Telephone bills should identify which calls were made on City business. For calls made on an official's personal cell phone, the official may obtain reimbursement for business calls based on the following formula: minutes used on public business divided by the total minutes allowed under a monthly plan, plus

long-distances charges for those calls.

9. **Airport Parking.** Short-term airport parking may not be used for travel exceeding 24-hours.
10. **Other Travel Related Expenses.** Reasonable baggage fees given the duration of the travel will be reimbursed. Expenses for which City officials receive reimbursement from another agency are not reimbursable.
11. **Miscellaneous Office Products.** Notwithstanding the requirement in Section I, occasionally an elected officer or officer's staff may need to make an immediate small out of pocket purchase of office supplies that are normally ordered by the City for which payment is paid directly to the vendor. In accordance with the applicable City Manager Administrative Regulation concerning petty cash refunds, the City may reimburse such purchases.

D. Cash Advance Policy for Airfare and Hotel Only (per A.R. 3.9)

From time to time, it may be necessary for an official to request a cash advance to cover anticipated expenses while traveling or doing business on the City's behalf. Such request for an advance should be submitted to the City Auditor, and copied to the City Manager, ten (10) working days prior to the need for the advance with the following information:

1. The purpose of the expenditure(s);
2. Whether the expenditure is for an authorized activity;
3. The benefit to the residents of the City;
4. The anticipated amount of the expenditure(s) (for example, hotel rates, meal costs, and transportation expenses); and
5. The dates of the expenditure(s).

Any unused advance must be returned to the City within five (5) working days of the official's return, along with an expense report and receipts documenting how the advance was used in compliance with this expense policy.

E. Expense Report Content and Submission Deadline

1. A statement of expense must be completed, signed and submitted to the City Auditor for review and forwarded to the Finance Department for payment. The statement of expense must document that the expense in question met the requirements of this Resolution. For example, if the meeting is with a legislator, the local agency official should explain whose meals were purchased, what issues were discussed and how those relate to the City's adopted legislative positions and priorities.
2. Officials must submit their statement of expense reports to the Auditor's Office within 60 days of an expense being incurred, accompanied by receipts documenting each expense. Itemized restaurant receipts, including number of individuals served, in addition to any credit card receipts, are also part of the necessary documentation. Receipts for gratuities and tolls under \$5 are not required.
3. Inability to provide such documentation in a timely fashion may result in the expense being borne by the official.

ITEM 14
ATTACHMENT 2

EXHIBIT A

F. Audits of Expense Reports

All expenses are subject to verification by the City Auditor of compliance with this policy.

G. Reports

At the following City Council meeting, each official shall briefly report on meetings attended at City expense. If multiple officials attended, a joint report may be made.

H. Compliance with Laws

City officials should keep in mind that some expenditures may be subject to reporting under the Political Reform Act and other laws. All agency expenditures are public records subject to disclosure under the Public Records Act.

I. Violation of This Policy

Use of public resources or falsifying expense reports in violation of this policy may result in any or all of the following:

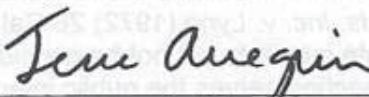
1. loss of reimbursement privileges;
2. a demand for restitution to the City;
3. the City's reporting the expenses as income to the elected official to state and federal tax authorities;
4. civil penalties of up to \$1,000 per day and three times the value of the resources used; and
5. prosecution for misuse of public resources.

The foregoing Resolution was adopted by the Berkeley City Council on May 30, 2017 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: None.



Jesse Arreguin, Mayor

Attest: 

Mark Numalville, City Clerk

Exhibit A

Councilmember Office Budget Relinquishment and Grant PolicyIntroduction – Limitations on the Expenditure of Public Funds

The basic purpose of the City as an entity is to exist and function as a *municipality*. This is also reflected in the Charter, which limits the Council's powers only to those "municipal affairs adequate to a complete system of local government". (Section 38.)

Exercises of this power may not be used solely to further the interests of particular individuals, although they may incidentally benefit private interests:

The exercise of the police power is available only for the purpose of promoting the general welfare, the interests of the public as distinguished from those of individuals or persons. It cannot be used to promote private gain or advantage, except so far as the same may also promote the public interest and welfare, and it is the latter, and not the former, effect which forms the basis of the power and warrants its exercise.

(*Binford v. Boyd* (1918) 178 Cal. 458, 461.)

The Council's basic powers circumscribe its ability to spend public funds. In other words, the Council cannot spend public funds for purposes that are beyond its authority in the first place. Thus the City may only use its funds for municipal purposes. In any given case the crucial inquiry is whether an expenditure serves such a purpose:

The determination of what constitutes a public purpose is primarily a matter for the legislature, and its discretion will not be disturbed by the courts so long as that determination has a reasonable basis.

(*County of Alameda v. Carlson* (1971) 5 Cal.3d 730, 745-746.)

If the courts find that there is a valid public purpose, they next examine whether the government's actions are reasonably related to effectuating this purpose. (*Tip Top Foods, Inc. v. Lyng* (1972) 28 Cal.App.3d 533, 541.) Public appropriations granted to private interests will not be considered unlawful diversions of public funds when the transaction serves the public interest, merely granting an incidental benefit to the private individual. (*Cane v. City and County of San Francisco* (1978) 78 Cal.App.3d 654, 660.)

Criteria for Grants of City Funds from Councilmember Office Budgets

Relinquishments and grants for purposes and recipients that fall within the categories listed in Table 1 may be "pre-approved" each fiscal year by Council resolution.

Table 1.

Recipient	Purpose
The City (e.g., the Berkeley Public Library, the Berkeley Animal Shelter)	Any purpose already being undertaken, because it already serves a public purpose. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.
BUSD and other public agencies operating in Berkeley	Any purpose already being undertaken, because it already serves a public purpose, assuming the activity is in Berkeley. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.
Entities with which the City is co-sponsoring a public event in Berkeley (e.g., Earth Day, Solano Stroll).	City co-sponsorship suggests but is not conclusive of public purpose; public purpose would need to be stated, and all such events should be open to the public at no cost. Alternatively, a list of ongoing events that have been determined to serve a public purpose could be developed.
Entities in Berkeley to which the City already contributes funds for municipal purposes (e.g., affordable housing or social service nonprofits)	To advance the same public purposes for which the entities are funded. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.

Proposed relinquishments and grants that do not meet the criteria for pre-approval, but that meet an appropriate municipal purpose, may be approved by resolution with a majority vote of the City Council.



Fair Campaign Practices Commission

PUBLIC HEARING

February 4, 2020

To: Honorable Mayor and Members of the City Council
 From: Fair Campaign Practices Commission
 Submitted by: Dean Metzger, Chairperson, Fair Campaign Practices Commission
 Subject: Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to prohibit Officeholder Accounts (See Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission).

SUMMARY

Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also a goal of the Fair Elections Act of 2016.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The proposed amendments to the Berkeley Election Reform Act (BERA) were adopted by the Fair Campaign Practices Commission (FCPC) at its regular meeting of November 21, 2019.

Action: M/S/C (Smith/Saver) to adopt the proposed amendments to BERA related to Officeholder Accounts.

Vote: Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: O'Donnell (excused).

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the "double green light" process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

BACKGROUND

The Fair Campaign Practices Commission has supported creating the circumstances in which the incumbent and challengers during an election play on as level a playing field as possible and reducing the influence of private campaign contributions. For instance, the Berkeley Fair Elections Act of 2016, which was passed by voters and recommended to Council by the Commission, included the following express purposes:

- Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- Help reduce the influence of private campaign contributions on Berkeley government.
- Reduce the impact of wealth as a determinant of whether a person becomes a candidate.

(Section 2.12.490(B)-(D).)

A recent inquiry to the Commission Secretary regarding the regulation of Officeholder Accounts resulted in a request from a Commissioner to have discussion of these accounts placed on the May 16, 2019 agenda for possible action. The following motion was made and passed at that meeting:

Motion to request staff work with Commissioner Smith to bring to a future meeting background information and a proposal to eliminate officeholder accounts (M/S/C: O'Donnell/Blome; Ayes: Blome, Ching, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (excused)).

Definition of an Officeholder Account

Under state law, an "officeholder account" refers to the funds held in a single bank account at a financial institution in the State of California separate from any other bank account held by the officeholder and that are used for "paying expenses associated with holding public office." Officeholder Account funds cannot be used to pay "campaign expenses." This definition is drawn from state law applicable to statewide elected officials: Government Code section 85316 (Attachment 2), and the accompanying regulation by the Fair Political Practices Commission (FPPC) codified at Title 2, Division 6, of the California Code of Regulations, Section 18531.62 (Attachment 3).

Contributions to or expenditures from an Officeholder Account are not subject to BERA's reporting requirements. (The FPPC still requires the reporting of activity relating to Officeholder Accounts, which is available to view on Berkeley's Public Access Portal.) If, however, a complaint is filed that an Officeholder Account is used for

campaign contributions or to pay “campaign expenses,” BERA can be used to respond to the complaint. The legal arguments for these statements are contained in a memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert, dated December 28, 1999 and a December 9, 1991 memorandum by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, that is attached to the December 28, 1999 memo. (Attachment 4.) Because the BERA provisions relied on in these memoranda have not been amended, and because no other BERA provisions have been added to regulate officeholder accounts, the memoranda’s conclusions remain valid and are still controlling guidance.

Contributions to Officeholder Accounts

Funds raised for Officeholder Accounts in Berkeley are not subject to any limitations, either from the FPPC or BERA. Neither is there a limit on the total amount the Officeholder Account fund may receive in contributions per year. Contributions to an elected official’s Officeholder Account may put that contributor in a more favorable light with the elected official than might otherwise be the case.

Expenditures from Officeholder Accounts

Except for the restriction that Officeholder Account funds cannot be used for “campaign expenses,” BERA does not restrict how funds from Officeholder Accounts can be used.

There are a number of permissible expenditures from Officeholder Accounts that could put an elected official in a favorable light with voters that are not available to a challenger for that office. A donation to a nonprofit organization, although technically not a “campaign expense,” would be seen favorably by those receiving the funds as well as individuals favorably disposed to the nonprofit organization receiving the funds. An individual running against this incumbent would have to draw on their own resources to make contributions to nonprofit organizations.

As long as political campaigns are not included, newsletters mailed to constituents related to events, information, or an officeholder’s position on matters before the Council are a permissible Officeholder Account expenditure. This keeps the incumbent’s name in front of the voter in a way unavailable to a challenger unless they pay for a newsletter and its distribution from their own resources.

Expenditures from Officeholder Account funds for flowers and other expressions of condolences, congratulations, or appreciation, while technically not “campaign expenses,” also increase the probability that the recipient will be favorably predisposed toward the elected official as a candidate for reelection or election to another office. Again, a challenger would have to draw on their own resources to express condolences, congratulations, or appreciation to their potential supporters.

Further, officeholder accounts can be used to pay for a broad range of office expenses, such as meals, travel, parking tickets, or contributions to other candidates or political parties.¹ Eliminating officeholder accounts would reduce reliance on and the influence of private contributions for these expenditures.

Recommendation

To make elections more equitable between challengers and incumbent and for the reasons given above, the Fair Campaign Practices Commission recommends prohibiting Officeholder Accounts.

Berkeley will not be the first to prohibit Officeholder Accounts. The San Jose Municipal Code was amended to prohibit officeholder accounts in January 2008. (Chapter 12.06 – ELECTIONS, San Jose, CA Code of Ordinances, p. 10)

Part 8 - OFFICEHOLDER ACCOUNTS

12.06.810 - Officeholder account prohibited.

No city officeholder, or any person or committee on behalf of a city officeholder may establish an officeholder account or an account established under the Political Reform Act, California Government Code Section 8100 et seq. as amended, for the solicitation or expenditure of officeholder funds. Nothing in this section shall prohibit an officeholder from spending personal funds on official or related business activities.

The following additions to BERA are proposed:

2.12.157 Officeholder Account

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

2.12.441 Officeholder account prohibited

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.

¹ Under state law applicable to state elected officials, officeholders may use campaign contributions for “expenses that are associated with holding office.” (Govt. Code, § 89510.) To qualify, expenditures must be “reasonably related to a legislative or governmental purpose.” (*Id.*, § 89512.) “Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose.” (*Ibid.*)

- C. Anyone holding an active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account, in accordance with FPPC guidelines.

ENVIRONMENTAL SUSTAINABILITY

There are no identified environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION

This proposed change to BERA will help to level the playing field between challengers and the incumbent running for elective office.

ALTERNATIVE ACTIONS CONSIDERED

A Subcommittee was formed to consider the options of (1) amending the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts, (2) amending BERA to mitigate possible advantages incumbents with an Officeholder Accounts have over challengers, or (3) doing nothing with regard to Officeholder Accounts. The four members of the Subcommittee recommended unanimously to the full Commission to amend the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts.

CITY MANAGER

The City Manager takes no position on the content and recommendations of this report.

CONTACT PERSON

Dean Metzger, Chair, Fair Campaign Practices Commission. 981-6998

Attachments:

- 1: Proposed Ordinance
- 2: Government Code section 85316
- 3: Section 18531.62 (Elected State Officeholder Bank Accounts), Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations
- 4: Memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert (including attached memorandum signed by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, to the FCPC)

ORDINANCE NO. ##,###-N.S.

OFFICEHOLDER ACCOUNT PROHIBITED; AMENDING BERKELEY MUNICIPAL CODE
CHAPTER 2.12

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

Section 1. That Berkeley Municipal Code section 2.12.157 is added to read as follows:

BMC 2.12.157 Officeholder account

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

Section 2. That Berkeley Municipal Code section 2.12.441 is added to read as follows:

BMC 2.12.441 Officeholder account prohibited

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.
- C. This provision does not affect a candidate’s ability to establish a legal defense fund or the requirements for such a fund, as set forth in the Political Reform Act or by regulation.
- D. Any active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation


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TITLE 9. POLITICAL REFORM [81000 - 91014] (Title 9 added June 4, 1974, by initiative Proposition 9.)

CHAPTER 5. Limitations on Contributions [85100 - 85802] (Chapter 5 added June 7, 1988, by initiative Proposition 73.)

ARTICLE 3. Contribution Limitations [85300 - 85321]

(Article 3 added June 7, 1988, by initiative Proposition 73.)

85316. (a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

(b) Notwithstanding subdivision (a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. Contributions received pursuant to this subdivision shall be deposited into a bank account established solely for the purposes specified in this subdivision.

(1) No person shall make, and no elected state officer shall receive from a person, a contribution pursuant to this subdivision totaling more than the following amounts per calendar year:

(A) Three thousand dollars (\$3,000) in the case of an elected state officer of the Assembly or Senate.

(B) Five thousand dollars (\$5,000) in the case of a statewide elected state officer other than the Governor.

(C) Twenty thousand dollars (\$20,000) in the case of the Governor.

(2) No elected state officer shall receive contributions pursuant to paragraph (1) that, in the aggregate, total more than the following amounts per calendar year:

(A) Fifty thousand dollars (\$50,000) in the case of an elected state officer of the Assembly or Senate.

(B) One hundred thousand dollars (\$100,000) in the case of a statewide elected state officer other than the Governor.

(C) Two hundred thousand dollars (\$200,000) in the case of the Governor.

(3) Any contribution received pursuant to this subdivision shall be deemed to be a contribution to that candidate for election to any state office that he or she may seek during the term of office to which he or she is currently elected, including, but not limited to, reelection to the office he or she currently holds, and shall be subject to any applicable contribution limit provided in this title. If a contribution received pursuant to this subdivision exceeds the allowable contribution limit for the office sought, the candidate shall return the amount exceeding the limit to the contributor on a basis to be determined by the Commission. None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in Section 85400.

(4) The commission shall adjust the calendar year contribution limitations and aggregate contribution limitations set forth in this subdivision in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one hundred dollars (\$100).

(Amended by Stats. 2007, Ch. 130, Sec. 149. Effective January 1, 2008. Note: This section was added by Stats. 2000, Ch. 102, and approved in Prop. 34 on Nov. 7, 2000.)

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18531.62. Elected State Officeholder Bank Accounts.

(a) Application and Definitions. For purposes of Section 85316(b) and this regulation, the following definitions apply:

- (1) "Officeholder" means an elected state officer.
- (2) "Officeholder controlled committee" means a committee formed pursuant to subdivision (c) of this regulation.
- (3) "Officeholder account" means the bank account established at a financial institution located in the State of California pursuant to Section 85316(b).
- (4) "Officeholder funds" means money in the officeholder account.

(b) Establishing the Officeholder Account: For purposes of Section 85316(b), an officeholder shall maintain officeholder funds in a single bank account separate from any other bank account held by the officeholder.

(c) Establishing the Officeholder Controlled Committee, Reporting and Recordkeeping:

(1) Formation: The officeholder shall establish a controlled committee by filing a statement of organization pursuant to Section 84101 if the officeholder receives \$2,000 or more in officeholder contributions in a calendar year.

(2) Committee Name: The controlled committee name shall include the officeholder's last name, the office held, the year the officeholder was elected to the current term of office, and the words "Officeholder Account." The statement of organization shall include the name, account number, and address of the financial institution where the committee established the officeholder account.

(3) Filing Requirements: The controlled committee shall file campaign statements and reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other controlled committee formed by the officeholder for election to state office.

(4) Required Recordkeeping and Audits. The officeholder and treasurer shall be subject to recordkeeping requirements under Section 84104. The officeholder account and officeholder controlled committee shall be subject to audits under Chapter 10 of Title 9 of the Government Code. Any audit of the officeholder, or any of his or her controlled committees, under Section 90001 shall include all officeholder accounts and officeholder controlled committees maintained by the officeholder during the audit period as described in Regulation 18996(a)(1).

(d) Prohibitions:

(1) Officeholder funds may not be contributed or transferred to another state or local committee, including any other controlled committee of the officeholder, except as permitted in subdivisions (g) (2) and (g)(3).

(2) Officeholders may not use officeholder funds to pay "campaign expenses" as defined in Regulation 18525(a).

(3) The officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account, except as permitted in subdivision (g)(2) and (g)(3).

(e) Contributions to the Officeholder Account:

(1)(A) Required Notices: In addition to the requirements of Regulation 18523.1, a written solicitation for contributions to the officeholder account shall include the following: "For purposes of the Political Reform Act's contribution limits, a contribution to an officeholder

account is also considered to be a contribution to all campaign committees for future elective state office the officeholder seeks during his or her current term of office.

(B) In addition to the requirements of subparagraph (A) above, an officeholder who files a statement of intention to be a candidate for any elective state office during the officeholder's term of office shall provide notice of this filing to every person that has made a contribution to his or her officeholder account. The notice shall contain the language in subparagraph (A) and be transmitted or mailed within 10 days of filing the statement of intention to be a candidate.

(2) Cumulation: A contribution to the officeholder account shall also be deemed a contribution to the officeholder's controlled committee for election to elective state office for the purposes of Section 85316(b)(3) only under all of the following circumstances:

(A) The contributor makes the contribution between the day the election was held for the term of office for which the officeholder account was established and the end of that term of office;

(B) The officeholder maintains the controlled committee, established for a future term of elective state office, at any time during the period covered in subparagraph (A).

(3) Cumulation and Primary and General Elections: A person's contributions to the officeholder account, when combined with contributions from the same person for a primary and general election to the elective state office may not exceed the contribution limits applicable to the primary and general election.

(4) Multiple Officeholder Accounts: When an officeholder maintains more than one officeholder account in the same calendar year, he or she may not receive the following contributions to any of those accounts during that calendar year:

(A) Contributions from a single contributor that, when cumulated for all the accounts, exceed the maximum amount the contributor could give to the officeholder account having the highest per person contribution limit under Section 85316(b)(1).

(B) Contributions from all contributors that, when cumulated for all the accounts, exceed the maximum amount in total contributions the officeholder could receive in the officeholder account having the highest aggregate contribution limit under Section 85316(b)(2).

(f) Contributions Over the Limits:

(1) An officeholder shall return to the contributor the portion of any contribution to his or her officeholder account that exceeds the limits of Section 85301, 85302 (after cumulation) or 85316 (either alone or after cumulation) by the earlier of 14 days of receipt or 14 days of the date the officeholder files a statement of intention to be a candidate for elective state office pursuant to Section 85200.

(2) A contributor to the officeholder account does not violate the contribution limits applying to the officeholder's election to a future elective state office as otherwise provided under Section 85316(b)(3) if, when he or she makes the contribution, the officeholder has not filed a statement of organization to establish a controlled committee for election to a future elective state office.

(g) Terminating Officeholder Accounts and Committees.

(1) The officeholder may not accept contributions after the officeholder's term of office ends or the date he or she leaves that office, whichever is earlier.

(2) The officeholder may redesignate the officeholder account as an officeholder controlled committee for a future term of the same office by amending the statement of

organization for the committee to reflect the redesignation for the future term of office prior to the date the officer's term of office ends.

(3) An officeholder may redesignate officeholder funds in the redesignated officeholder account as officeholder funds for the new term of office, subject to the limitations in subdivision (e)(4).

(4) Once the officeholder's term of office ends or he or she leaves that office, whichever is earlier, the officeholder may only use his or her officeholder funds for the following purposes:

- (A) Paying outstanding officeholder expenses.
- (B) Repaying contributions to contributors to the officeholder account.
- (C) Making a donation to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

(D) Paying for professional services reasonably required by the officeholder controlled committee to assist in the performance of its administrative functions.

(5) The officeholder shall terminate the officeholder controlled committee within 90 days of the date the officer's term of office ends or he or she leaves that office, whichever is earlier. The Executive Director may for good cause extend the termination date or permit the candidate to reopen the account.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 84104, 85316 and 90000-90007, Government Code.

HISTORY

1. New section filed 7-3-2007; operative 8-2-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27). For prior history, see Register 2007, No. 26.
2. Change without regulatory effect amending section filed 3-22-2016; operative 4-21-2016 pursuant to 2 CCR 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 13).



Office of the
City Attorney

DATE: December 28, 1999

TO: BARBARA GILBERT,
Aide to Mayor Shirley Dean

FROM: MANUELA ALBUQUERQUE, City Attorney *MA*
By: CAMILLE COUREY, Deputy City Attorney

SUBJECT: APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

Does the Berkeley Election Reform Act (BERA) govern officeholder accounts?

CONCLUSION:

No. The BERA does not govern true officeholder accounts per se. However, the mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under the BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable local laws.

ANALYSIS:

Sarah Reynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.¹ For similar reasons, the BERA does not

¹ However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.

Barbara Gilbert

Re: Application of Berkeley Election Reform Act To Officeholder Accounts

December 28, 1999

Page 2

apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.² Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

Attachment

cc: Fair Campaign Practices Commission
Sherry Kelly, City Clerk

City Attorney Opinion Index: ILE 1. and IILG.

CCM

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² Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)

NOTICE OF PUBLIC HEARING BERKELEY CITY COUNCIL

AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the prohibition of officeholder accounts.

The hearing will be held on, February 4, 2020, at 4:00 p.m. in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City’s website at www.CityofBerkeley.info as of **January 30, 2020**.

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council 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 the City Council, 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 City Clerk. 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 City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

Published: January 24, 2020 – The Berkeley Voice
Pursuant to Berkeley Municipal Code Section 2.12.051

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City’s website, on January 30, 2020.

\_\_\_\_\_  
Mark Numainville, City Clerk



Fair Campaign Practices Commission

Date: September 17, 2020

To: Fair Campaign Practices Commission and Open Government Commission

From: Commissioner Patrick O'Donnell

Subject: Amendments to the Berkeley Election Reform Act (BERA) to Regulate Officeholder Accounts and Proposed Changes to City Council Expenditure and Reimbursement Policies (Resolution 67,992-N.S.)

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This memorandum to the Fair Campaign Practices Commission (FCPC) and the Open Government Commission (OGC) substitutes for the one previously posted, mailed to members of the FCPC, and appearing as Item 7 on the agenda of the FCPC. The key difference is that this memorandum addresses not only officeholder accounts, but also proposed changes to City Council Expenditure and Reimbursement Policies (so-called D-13 Accounts). These two proposals are closely linked and should be considered together. Because the proposal relating to officeholder accounts falls under the jurisdiction of the FCPC and that relating to D-13 accounts falls under the jurisdiction of the OGC, the FCPC and OGC should act jointly in considering the proposed changes to BERA and the Reimbursement Policies.

The memorandum also makes the following recommendation:

Form a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

The preceding recommendations are consistent with previous discussions and the annual workplans of the FCPC and the OGC.

To implement the recommendations in this memorandum, a revised report to the Council is attached.

At this stage, the Council has referred both the issues relating to officeholder accounts and those relating to D-13 accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee had an initial discussion of these topics. It agreed that the Council Committee would work collaboratively with the FCPC and OGC on matters relating to officeholder accounts and D-13 accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

Consistent with the prior actions of the Council and the FCPC/OGC, I propose that the Commissions recommend the establishment of a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts, and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

PUBLIC HEARING  
XXXXX XX, XXXX

To: Honorable Mayor and Members of the City Council

From: Brad Smith, Chair, Fair Campaign Practices and Open Government Commissions

Submitted by: Samuel Harvey, Secretary, Fair Campaign Practices and Open Government Commissions

Subject: Amendments to the Berkeley Election Reform Act (BERA) and Change to City Council Expenditure and Reimbursement Policies (Resolution 67,992-N.S.)

RECOMMENDATION

Form a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Officeholder accounts are not expressly regulated by BERA. However, under existing law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and may trigger various local and state legal requirements.

Donations to nonprofit organizations from Councilmember’s discretionary council budgets (D-13 accounts) are allowed by the authority of City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.).

Action:

Vote:



Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the “double green light” process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

Changes to the City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) can be made by a majority vote of the Council.

## BACKGROUND

### *Officeholder Accounts*

During 2019, the Fair Campaign Practices Commission (FCPC) discussed whether there is a need to amend the law relating to these accounts. These accounts are not expressly regulated by BERA, but under current law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and trigger various local and state legal requirements. A 1999 legal opinion from the City Attorney stated: “[t]he mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable laws.”

In the course of its review of the issue of officeholder accounts, the FPPC considered three options: (1) leaving the law on officeholder accounts unchanged; (2) prohibiting officeholder accounts entirely (an approach used by the City of San Jose), or (3) authorizing officeholder accounts but limiting their use and imposing various restrictions and requirements on them (an approach used by the City of Oakland).

The Commission referred the issue of officeholder accounts to a subcommittee, which met several times in the fall of 2019 and considered the options. The subcommittee unanimously recommended prohibiting officeholder accounts entirely. At its regular meeting on November 21, 2019 the Commission voted without opposition to recommend amendments to the BERA that would prohibit officeholder accounts.

The Commission’s proposal was presented to the City Council at a February 4, 2020 special meeting. (Report to the Council, with Attachments, is attached.) The FCPC report summarized its proposal: “Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also the goal of the Fair Elections Act of 2016.” (Report, page 1.)

At the February 4, 2020 meeting, the Council had a lengthy discussion about their D-13 accounts and the lack of discretionary funds that members have to spend. They also decided not to approve the FCPC recommendation to prohibit officeholder accounts. The City Council referred the issues relating to officeholder and D-13 accounts to its Agenda and Rules Committee for further consideration.

***Proposed Changes to City Council Expenditure and Reimbursement Policies***

At the April 23, 2020 meeting of the Open Government Committee (OGC), a motion to direct staff to develop a proposal recommending Council change City policy to remove councilmember names from donations to nonprofit organizations from D-13 accounts was approved unanimously.

Donations to nonprofit organizations from the Councilmember's discretionary council budget (D-13 accounts) puts that elected official in a favorable light with Berkeley citizens at no cost to the Councilmember, an option not available to a challenger for that office. A look at the Consent Calendar of City Council Meeting Agendas will often contain one or more items from one or more Councilmembers making a donation to a nonprofit organization "from the discretionary council budget" of the Councilmember. This line item ("Services and Materials") from the General Fund was increased from \$50,938 in FY 2017 to \$113,526 in FY 2018 (approximately \$40,000 for the Mayor, the balance evenly divided among the Councilmembers; see Attachment 1 – Council Office Budget Summaries). While not technically a "campaign contribution," those individuals in the organization as well as individuals favorably disposed to the nonprofit organization receiving the funds would certainly see it favorably. A person running against this incumbent would have to draw on their own resources to match a Councilmember's contribution from public funds and without the public notice of the contribution the Councilmember receives.

In addition to favoring incumbents, the use of public moneys for contributions to nonprofit organizations from the discretionary council budgets of individual Council members is arguably improper and certainly bad optics. The commissioners of the OGC have no argument with contributions being made to nonprofit organizations from the City of Berkeley, but believe they should be made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley, not from individual Council members. Perhaps a nonprofit fund could be set up from which the donations could be made from recommendations made to one of the Council's Policy Commissions. This would free funds for other purposes now being directed to nonprofit organizations from individual Councilmember's D-13 accounts.

**Proposed Action:**

At this stage, the Council has referred both the issues relating to officeholder accounts and those relating to D-13 accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee agreed to work collaboratively with the FCPC and OGC on matters relating to officeholder

accounts and D-13 accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

Consistent with the prior actions of the Council and the FCPC/OGC, the Commissions recommend the establishment of a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to:

(1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts, and

(2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects related to the recommendation in this report.

#### RATIONALE FOR RECOMMENDATION

The “double green light” process requires that the FCPC adopt an amendment by a two-thirds vote, and that the City Council hold a public hearing and also adopt an amendment by a two-thirds vote. Evidence to date suggests there are differences of perspective regarding this matter between the City Council and the FCPC regarding the D-13 accounts. It would seem to be a rational step to discuss and come to agreement and possibly compromise prior to the “double green light” process.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CITY MANAGER

#### CONTACT PERSON

Brad Smith, Chair, Fair Campaign Practices and Open Government Commissions,  
(510) 981-6998

Samuel Harvey, Commission Secretary, Fair Campaign Practices and Open  
Government Commissions, (510) 981-6998



Fair Campaign Practices Commission

Date: September 17, 2020

To: Fair Campaign Practices Commission

From: Commissioner Patrick O'Donnell

Subject: Amendments to the Berkeley Election Reform Act to regulate officeholder accounts

In 2019, the FCPC approved an amendment to the Berkeley Election Reform Act (“BERA”) prohibiting officeholder accounts. That proposal was submitted to Council. However, some councilmembers have expressed opposition to an outright ban on officeholder accounts and a preference for developing regulations for those accounts. This report contains a new alternative proposal to regulate – rather than prohibit – officeholder accounts. At its July 16, 2020 meeting, the Commission voted to direct Commissioner O’Donnell to return at the Commission’s September 17, 2020 meeting with a version of the proposal drafted as an amendment to BERA that can be voted on and presented to Council.

## Background

During 2019, the Commission discussed whether there is a need to amend the law relating to the use of officeholder accounts. These accounts are not expressly regulated by BERA. But under current law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and may trigger various local and state legal requirements. A 1999 legal opinion from the City Attorney stated: “[t]he mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable laws.” (Report, page 14.)

In the course of its review of the issue of officeholder accounts, the Commission considered three options: (1) leaving the law on officeholder accounts unchanged; (2) prohibiting officeholder accounts entirely (an approach used by the City of San Jose), or

(3) authorizing officeholder accounts but limiting their use and imposing various restrictions and requirements on them (an approach used by the City of Oakland).

The Commission referred the issue of officeholder accounts to a subcommittee, which met in the fall of 2019 and considered the options. The subcommittee unanimously recommended prohibiting officeholder accounts entirely. At its regular meeting on November 21, 2019 the Commission voted without opposition to recommend amendments to the BERA that would prohibit officeholder accounts.

The Commission's proposal was presented to the City Council at a February 4, 2020 special meeting. (Report to the Council, with Attachments, is attached.) The FCPC report summarized its proposal: "Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also the goal of the Fair Elections Act of 2016." (Report, page 1.) At the February 4 meeting, the Council had a lengthy discussion about their D13 accounts and the lack of discretionary funds that members have to spend. They also decided not to approve the FCPC recommendation to prohibit officeholder Accounts. (See Memorandum to FCPC dated February 12, 2020, a copy of which is attached.)

The City Council, however, referred both the issues relating to D13 accounts and those relating to officeholder accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee had an initial discussion of these topics. At that meeting, it was agreed that the Council Committee would work collaboratively with the FCPC on matters relating to D13 accounts and officeholder accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

### **Alternative Proposal for Legislation on Officeholder Accounts**

Given the Council's opposition to accepting an outright prohibition of officeholder accounts, the FCPC should at least explore some alternatives, including the option of amending the BERA to allow for officeholder accounts that would be subject to limitations, as the City of Oakland has done. The subcommittee which examined officeholder accounts briefly discussed this option but, given that there was unanimous support for prohibiting officeholder accounts entirely, it never developed a detailed proposal for this kind of alternative. However, now that the FCPC/OGC will be in conversation with the council about the options going forward, it seems to make good sense to examine in more detail what the alternative might look like.

For discussion purposes, a draft proposal to amend the BERA is attached (Attachment 1). It is based generally on the Oakland ordinance but differs in important ways from that statute. The basic concept behind this alternative is to allow officeholders to have *true* officeholder accounts, but to insure that the funds in these accounts are

used *strictly* for officeholder purposes and may not be used for political campaigns or other non-officeholder purposes. The proposal would also include limitations on the amount each donor may contribute and the total amount of donations to each officeholder account permitted annually. The amendments would require disclosures of the sources and amounts of all donations and expenditures. And they would specify how officeholder accounts are to be terminated.

Although not as fully effective as the complete prohibition of officeholder accounts previously recommended by the FCPC, this approach would allow officeholders to create regulated accounts for proper officeholder purposes. At the same time, these true officeholder accounts would be subject to public scrutiny and express limitations that would prevent serious abuses. Finally, the strict prohibitions in the proposed legislation against using any funds from officeholder accounts for campaign purposes would greatly simplify the management and oversight of these accounts. Current state law, which permits certain officeholder funds to be redesignated for campaign purposes under certain circumstances and subject to various disclosure and notice requirements, creates a nightmare of administrative and reporting requirements. It has made it difficult for officeholders to comply with the law and has established traps for the unwary. Thus, it is hardly surprising that most candidates elected to public office do not even attempt to set up officeholder accounts.

In the end, it may well be that the alternative presented here—or any other—may be unable to carry the day. Because of the double-green light requirements of BERA, no proposal may be able to garner the 2/3 votes of both the Council and Commission required to change the law. But for the purposes of collaborating with the Council on ways of improving the officeholder account process, the Commission should review the attached proposal which offers at least one possible scenario for addressing the problems and pitfalls involved with officeholder accounts.

Prior to approving this item, the Commission will need to make a determination regarding the dollar amounts for limits on donations to officeholder accounts. These amounts are highlighted in the attached Proposal in Section 2.12.600.E & F.

**Attachments:**

1. New draft proposed amendments to BERA to allow for officeholder accounts, to limit such accounts to being used strictly for officeholder purposes, and to subject these accounts to various other limitations and disclosure requirements (“Proposal”)
2. Report to the City Council from the Fair Campaign Practices Commission entitled “Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts: Amending BMC Chapter 2.12” (for Public Hearing on February 4, 2020) (with Attachments) (“Report”)
3. Memorandum from Dean Metzger, Chair, to FCPC dated February 12, 2020 (with Attachments) (“Memorandum”)



Fair Campaign Practices Commission

PUBLIC HEARING  
XXXXX XX, XXXX

To: Honorable Mayor and Members of the City Council  
From: Brad Smith, Chair, Open Government Commission  
Submitted by: Samuel Harvey, Secretary, Fair Campaign Practices Commission  
Subject: Amendments to the Berkeley Election Reform Act

RECOMMENDATION

Adopt an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to regulate officeholder accounts.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

These recommended amendments to the Berkeley Lobbyist Registration Act were approved by the Open Government Commission at its regular meeting of XXXXX XX, XXXX.

**Action:**

**Vote:**

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the “double green light” process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

BACKGROUND

In 2019, the FCPC approved an amendment to the Berkeley Election Reform Act (“BERA”) prohibiting officeholder accounts. That proposal was submitted to Council. However, some councilmembers have expressed opposition to an outright ban on officeholder accounts and a preference for developing regulations for those accounts. This report contains a new alternative proposal to regulate – rather than prohibit – officeholder accounts.

During 2019, the Commission discussed whether there is a need to amend the law relating to the use of officeholder accounts. These accounts are not expressly regulated

by BERA. But under current law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and may trigger various local and state legal requirements. A 1999 legal opinion from the City Attorney stated: “[t]he mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable laws.” (Report, page 14.)

In the course of its review of the issue of officeholder accounts, the Commission considered three options: (1) leaving the law on officeholder accounts unchanged; (2) prohibiting officeholder accounts entirely (an approach used by the City of San Jose), or (3) authorizing officeholder accounts but limiting their use and imposing various restrictions and requirements on them (an approach used by the City of Oakland).

The Commission referred the issue of officeholder accounts to a subcommittee, which met in the fall of 2019 and considered the options. The subcommittee unanimously recommended prohibiting officeholder accounts entirely. At its regular meeting on November 21, 2019 the Commission voted without opposition to recommend amendments to the BERA that would prohibit officeholder accounts.

The Commission’s proposal was presented to the City Council at a February 4, 2020 special meeting. (Report to the Council, with Attachments, is attached.) The FCPC report summarized its proposal: “Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also the goal of the Fair Elections Act of 2016.” (Report, page 1.) At the February 4 meeting, the Council had a lengthy discussion about their D13 accounts and the lack of discretionary funds that members have to spend. They also decided not to approve the FCPC recommendation to prohibit officeholder Accounts. (See Memorandum to FCPC dated February 12, 2020, a copy of which is attached.)

The City Council, however, referred both the issues relating to D13 accounts and those relating to officeholder accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee had an initial discussion of these topics. At that meeting, it was agreed that the Council Committee would work collaboratively with the FCPC on matters relating to D13 accounts and officeholder accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

### **Alternative Proposal for Legislation on Officeholder Accounts**

At its September 17, 2020 meeting, the FCPC passed the attached proposal to amend the BERA (Attachment 1). It is based generally on the Oakland ordinance but differs in important ways from that statute. The basic concept behind this alternative is to allow officeholders to have *true* officeholder accounts, but to insure that the funds in these accounts are used *strictly* for officeholder purposes and may not be used for political



campaigns or other non-officeholder purposes. The proposal also includes limitations on the amount each donor may contribute and the total amount of donations to each officeholder account permitted annually. The amendments would require disclosures of the sources and amounts of all donations and expenditures, and specify how officeholder accounts are to be terminated.

This approach would allow officeholders to create regulated accounts for proper officeholder purposes. At the same time, these true officeholder accounts would be subject to public scrutiny and express limitations that would prevent serious abuses. Finally, the strict prohibitions in the proposed legislation against using any funds from officeholder accounts for campaign purposes would greatly simplify the management and oversight of these accounts. Current state law, which permits certain officeholder funds to be redesignated for campaign purposes under certain circumstances and subject to various disclosure and notice requirements, creates a nightmare of administrative and reporting requirements. It has made it difficult for officeholders to comply with the law and has established traps for the unwary. Thus, it is hardly surprising that most candidates elected to public office do not even attempt to set up officeholder accounts.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects related to the recommendation in this report.

#### RATIONALE FOR RECOMMENDATION

This proposal is offered as an alternative to the proposed ban on officeholder accounts previously submitted to Council by the FCPC. This proposal would regulate – rather than prohibit – officeholder accounts.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CITY MANAGER

#### CONTACT PERSON

Brad Smith, Chair, Open Government Commission, (510) 981-6998

Samuel Harvey, Commission Secretary, Open Government Commission (510) 981-6998

#### Attachments:

1. Proposed ordinance amending BERA to allow and regulate officeholder accounts
2. Report to the City Council from the Fair Campaign Practices Commission entitled “Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts: Amending BMC Chapter 2.12” (for Public Hearing on February 4, 2020) (with Attachments) (“Report”)
3. Memorandum from Dean Metzger, Chair, to FCPC dated February 12, 2020 (with Attachments) (“Memorandum”)

ORDINANCE NO. -N.S.

AMENDING THE BERKELEY ELECTION REFORM ACT TO REGULATE  
OFFICEHOLDER ACCOUNTS

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

Section 1. That the Berkeley Municipal Code section 2.12.157 is added to read as follows:**Section 2.12.157 Officeholder account.**“Officeholder account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.Section 2. That Article 9 of Chapter 2.12 of the Berkeley Municipal Code is added to read as followsArticle 9. Officeholder Accounts**Section. 2.12.600 Regulation of officeholder accounts.**A. The mayor and council members (the “officeholder” or “office holders”) shall each be permitted to establish one officeholder account, as defined in section 2.12.157.B. All donations deposited into an officeholder account shall be deemed to be held in trust solely for expenses associated with holding the office currently held by the elected city officer. For the purpose of this section, “donation” means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, in support of the office currently held by an elected official.C. Only a natural person who is a resident of the City may make a donation to an officeholder account.D. Donations to an officeholder account must be made by a separate check or other separate written instrument. Single donations may not be divided between the officeholder account and any candidate committee or other entity.E. No donor shall make, and no elected officer shall receive from a donor, a donation or donations under this section totaling more than fifty [or two-hundred and fifty] dollars (\$50.00 [or \$250.00]) per person for the calendar year. “Donor” means a natural person who is a resident of the City who makes a donation as defined in paragraph B.F. For the office of mayor, total donations to an officeholder account from all donors shall not exceed ten thousand dollars (\$10,000.00) in the aggregate per calendar year. For each member of the city council, total donations to an officeholder account from all donors shall not exceed five thousand dollars (\$5,000.00) in the aggregate per calendar year.

G. All donations received for, and expenditures made from, an officeholder account during a calendar year shall be reported at least annually on the date or dates prescribed by the commission and the report shall be made available to the public promptly thereafter. The commission shall adopt or designate a form or forms for the purpose of reporting the information about each elected officer's officeholder account. The forms shall be filed electronically. The information on the form or forms shall be verified by the officeholder. The information that shall be included in the officeholder account report shall include the following:

1. The name of the officeholder and the office held;
2. The reporting period covered by the report;
3. A description of all receipts and expenditures.
4. The full name of each donor from whom a donation or donations has been received together with his or her street address, occupation, and the name of his or her employer, if any, or the principal place of business if he or she is self-employed; the amount which he or she donated; the date on which the each donation was received during the period covered by the report; and the cumulative amount that the donor donated. Loans received shall be set forth in a separate schedule and the foregoing information shall be stated with regard to each lender, together with the date and amount of the loan, and if the loan has been repaid, the date of the payment and by whom paid;
5. The full name and street address of each person to whom an expenditure or expenditures have been made, together with the amount of each separate expenditure to each person during the period covered by the report; a description of the purpose for which the expenditure was made; and the full name and street address of the person receiving the expenditure.
6. Under the heading "receipts," the total amount of donations received, and under the heading "expenditures," the total amount of expenditures made during the reporting period and cumulative amount of such totals;
7. The balance of cash and cash equivalents, including the amounts in the officeholder bank account, at the beginning and end of each period covered by the report.

H. Expenditures from an officeholder account may be made only for-lawful officeholder purposes, and may not be used for any of the purposes prohibited in subsections J. and K. of this section.

I. Allowable expenditures from an officeholder account include the following:

1. Expenditures for fundraising (including solicitations by mail) for the officeholder account;
2. Expenditures for office equipment, furnishings and office supplies;

3. Expenditures for office rent;

4. Expenditures for salaries of part-time or full-time staff employed by the officeholder for officeholder activities;

5. Expenditures for consulting, research, polling, photographic or similar services except for campaign expenditures for any city, county, regional, state or federal elective office;

6. Expenditures for conferences, meetings, receptions, and events attended in the performance of government duties by (1) the officeholder (2) a member of the officeholder's staff; or (3) such other person designated by the officeholder who is authorized to perform such government duties;

7. Expenditures for travel, including lodging, meals and other related disbursements, incurred in the performance of governmental duties by (1) the officeholder, (2) a member of the officeholder's staff, (3) or such other person designated by the officeholder who is authorized to perform such government duties;

8. Expenditures for memberships to civic, service or professional organizations, if such membership bears a reasonable relationship to a governmental, legislative or political purpose;

9. Expenditures for an educational course or educational seminar if the course or seminar maintains or improves skills which are employed by the officeholder or a member of the officeholder's staff in the performance of his or her governmental responsibilities;

10. Expenditures for mailing to persons within the city which provide information related to city-sponsored events, an official's governmental duties or an official's position on a particular matter pending before the Council or Mayor;

11. Expenditures for expressions of congratulations, appreciation or condolences sent to constituents, employees, governmental officials, or other persons with whom the officeholder communicates in his or her official capacity;

12. Expenditures for payment of tax liabilities incurred as a result of authorized officeholder expense fund transactions; and

13. Expenditures for accounting, professional and administrative services provided to the officeholder account.

J. Officeholder expense funds shall not be used for the following:

1. Expenditures in connection with a future election for any city, county, regional, state or federal elective office or in connection with a ballot measure;

2. Expenditures for campaign consulting, research, polling, photographic or similar services for election to city, county, regional, state or federal elective office;

3. Membership in any athletic, social, fraternal, veteran or religious organization;

4. Supplemental compensation for employees for performance of an act which would be required or expected of the person in the regular course or hours of his or her duties as a city official or employee;

5. Any expenditure that would violate the provisions the California State Political Reform Act, including Government Code Sections 89506 and 89512 through 89519, and any provisions of the BERA.

K. Prohibitions:

1. No funds may be contributed or transferred from an officeholder account to any candidate or committee, as defined in sections 2.12.085 and 2.12.095 of this chapter, including to any committee in which the officeholder is a candidate. An officeholder may not redesignate his or her officeholder account as a committee for a future term of the same office or redesignate his or her officeholder funds to be used as campaign funds by his or her committee for a future term of the same office.

2. No funds may be used from an officeholder account to pay any campaign expenses.

3. An officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account.

L. Once an officeholder's term of office ends or she or he leaves that office, whichever is earlier, the former officeholder may use his or her officeholder funds only for the following purposes:

1. Paying for legitimate, outstanding officeholder expenses.

2. Repaying contributions to contributors to the officeholder accounts.

3. Making a donation to a bona fide charitable, educational, civic, religious or similar tax-exempt, non-profit organization if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

M. The officeholder shall terminate the officeholder account within 90 days of the date that the officeholder's term of office ends or he or she leaves that office, whichever is earlier. The Commission may for good cause extend the termination date. The disposition of all funds from the closed officeholder account, including the identification of all persons and entities that have received funds from the account and the amounts distributed, shall be described on a form prescribed by the Commission. The officeholder must verify and file the form electronically no later the date prescribed for the termination of the officeholder account or an approved extension thereof.

N. All funds from a closed officeholder account not properly disposed of within the 90 day period prescribed above, or an approved extension thereof, shall be deposited in the City's general fund.

O. Violations of this article involving the unlawful use of officeholder accounts are subject to the procedures of, and the penalties in, Article 7 of this chapter.

**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL**

### AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the regulation of officeholder accounts.

The hearing will be held on, [date of hearing] at [6:00 p.m.] in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City’s website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of [date of agenda posting].

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

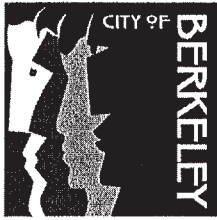
Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, 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 City Clerk. 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 City Clerk at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

**Published:** [Publication Date in Newspaper]

Pursuant to Berkeley Municipal Code section 2.12.051

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City’s website, on [Enter Date].

Mark Numainville, City Clerk



Fair Campaign Practices Commission

PUBLIC HEARING
February 4, 2020

To: Honorable Mayor and Members of the City Council
 From: Fair Campaign Practices Commission
 Submitted by: Dean Metzger, Chairperson, Fair Campaign Practices Commission
 Subject: Amendments to the Berkeley Election Reform Act to prohibit
 Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to prohibit Officeholder Accounts (See Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission).

SUMMARY

Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also a goal of the Fair Elections Act of 2016.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The proposed amendments to the Berkeley Election Reform Act (BERA) were adopted by the Fair Campaign Practices Commission (FCPC) at its regular meeting of November 21, 2019.

Action: M/S/C (Smith/Saver) to adopt the proposed amendments to BERA related to Officeholder Accounts.

Vote: Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: O'Donnell (excused).

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the "double green light" process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

Amendments to the Berkeley Election Reform Act
to prohibit Officeholder AccountsPUBLIC HEARING
February 4, 2020BACKGROUND

The Fair Campaign Practices Commission has supported creating the circumstances in which the incumbent and challengers during an election play on as level a playing field as possible and reducing the influence of private campaign contributions. For instance, the Berkeley Fair Elections Act of 2016, which was passed by voters and recommended to Council by the Commission, included the following express purposes:

- Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- Help reduce the influence of private campaign contributions on Berkeley government.
- Reduce the impact of wealth as a determinant of whether a person becomes a candidate.

(Section 2.12.490(B)-(D).)

A recent inquiry to the Commission Secretary regarding the regulation of Officeholder Accounts resulted in a request from a Commissioner to have discussion of these accounts placed on the May 16, 2019 agenda for possible action. The following motion was made and passed at that meeting:

Motion to request staff work with Commissioner Smith to bring to a future meeting background information and a proposal to eliminate officeholder accounts (M/S/C: O'Donnell/Blome; Ayes: Blome, Ching, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (excused)).

Definition of an Officeholder Account

Under state law, an "officeholder account" refers to the funds held in a single bank account at a financial institution in the State of California separate from any other bank account held by the officeholder and that are used for "paying expenses associated with holding public office." Officeholder Account funds cannot be used to pay "campaign expenses." This definition is drawn from state law applicable to statewide elected officials: Government Code section 85316 (Attachment 2), and the accompanying regulation by the Fair Political Practices Commission (FPPC) codified at Title 2, Division 6, of the California Code of Regulations, Section 18531.62 (Attachment 3).

Contributions to or expenditures from an Officeholder Account are not subject to BERA's reporting requirements. (The FPPC still requires the reporting of activity relating to Officeholder Accounts, which is available to view on Berkeley's Public Access Portal.) If, however, a complaint is filed that an Officeholder Account is used for

Amendments to the Berkeley Election Reform Act
to prohibit Officeholder AccountsPUBLIC HEARING
February 4, 2020

campaign contributions or to pay "campaign expenses," BERA can be used to respond to the complaint. The legal arguments for these statements are contained in a memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert, dated December 28, 1999 and a December 9, 1991 memorandum by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, that is attached to the December 28, 1999 memo. (Attachment 4.) Because the BERA provisions relied on in these memoranda have not been amended, and because no other BERA provisions have been added to regulate officeholder accounts, the memoranda's conclusions remain valid and are still controlling guidance.

Contributions to Officeholder Accounts

Funds raised for Officeholder Accounts in Berkeley are not subject to any limitations, either from the FPPC or BERA. Neither is there a limit on the total amount the Officeholder Account fund may receive in contributions per year. Contributions to an elected official's Officeholder Account may put that contributor in a more favorable light with the elected official than might otherwise be the case.

Expenditures from Officeholder Accounts

Except for the restriction that Officeholder Account funds cannot be used for "campaign expenses," BERA does not restrict how funds from Officeholder Accounts can be used.

There are a number of permissible expenditures from Officeholder Accounts that could put an elected official in a favorable light with voters that are not available to a challenger for that office. A donation to a nonprofit organization, although technically not a "campaign expense," would be seen favorably by those receiving the funds as well as individuals favorably disposed to the nonprofit organization receiving the funds. An individual running against this incumbent would have to draw on their own resources to make contributions to nonprofit organizations.

As long as political campaigns are not included, newsletters mailed to constituents related to events, information, or an officeholder's position on matters before the Council are a permissible Officeholder Account expenditure. This keeps the incumbent's name in front of the voter in a way unavailable to a challenger unless they pay for a newsletter and its distribution from their own resources.

Expenditures from Officeholder Account funds for flowers and other expressions of condolences, congratulations, or appreciation, while technically not "campaign expenses," also increase the probability that the recipient will be favorably predisposed toward the elected official as a candidate for reelection or election to another office. Again, a challenger would have to draw on their own resources to express condolences, congratulations, or appreciation to their potential supporters.

Amendments to the Berkeley Election Reform Act
to prohibit Officeholder Accounts

PUBLIC HEARING
February 4, 2020

Further, officeholder accounts can be used to pay for a broad range of office expenses, such as meals, travel, parking tickets, or contributions to other candidates or political parties.¹ Eliminating officeholder accounts would reduce reliance on and the influence of private contributions for these expenditures.

Recommendation

To make elections more equitable between challengers and incumbent and for the reasons given above, the Fair Campaign Practices Commission recommends prohibiting Officeholder Accounts.

Berkeley will not be the first to prohibit Officeholder Accounts. The San Jose Municipal Code was amended to prohibit officeholder accounts in January 2008. (Chapter 12.06 – ELECTIONS, San Jose, CA Code of Ordinances, p. 10)

Part 8 - OFFICEHOLDER ACCOUNTS

12.06.810 - Officeholder account prohibited.

No city officeholder, or any person or committee on behalf of a city officeholder may establish an officeholder account or an account established under the Political Reform Act, California Government Code Section 8100 et seq. as amended, for the solicitation or expenditure of officeholder funds. Nothing in this section shall prohibit an officeholder from spending personal funds on official or related business activities.

The following additions to BERA are proposed:

2.12.157 Officeholder Account

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

2.12.441 Officeholder account prohibited

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.

¹Under state law applicable to state elected officials, officeholders may use campaign contributions for “expenses that are associated with holding office.” (Govt. Code, § 89510.) To qualify, expenditures must be “reasonably related to a legislative or governmental purpose.” (*Id.*, § 89512.) “Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose.” (*Ibid.*)

Amendments to the Berkeley Election Reform Act
to prohibit Officeholder Accounts

PUBLIC HEARING
January 21, 2020

- C. Anyone holding an active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account, in accordance with FPPC guidelines.

ENVIRONMENTAL SUSTAINABILITY

There are no identified environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION

This proposed change to BERA will help to level the playing field between challengers and the incumbent running for elective office.

ALTERNATIVE ACTIONS CONSIDERED

A Subcommittee was formed to consider the options of (1) amending the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts, (2) amending BERA to mitigate possible advantages incumbents with an Officeholder Accounts have over challengers, or (3) doing nothing with regard to Officeholder Accounts. The four members of the Subcommittee recommended unanimously to the full Commission to amend the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts.

CITY MANAGER

The City Manager takes no position on the content and recommendations of this report.

CONTACT PERSON

Dean Metzger, Chair, Fair Campaign Practices Commission. 981-6998

Attachments:

- 1: Proposed Ordinance
- 2: Government Code section 85316
- 3: Section 18531.62 (Elected State Officeholder Bank Accounts), Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations
- 4: Memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert (including attached memorandum signed by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, to the FCPC)

ORDINANCE NO. ##,###-N.S.

OFFICEHOLDER ACCOUNT PROHIBITED; AMENDING BERKELEY MUNICIPAL CODE
CHAPTER 2.12

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

Section 1. That Berkeley Municipal Code section 2.12.157 is added to read as follows:

BMC 2.12.157 Officeholder account

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

Section 2. That Berkeley Municipal Code section 2.12.441 is added to read as follows:

BMC 2.12.441 Officeholder account prohibited

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.
- C. This provision does not affect a candidate’s ability to establish a legal defense fund or the requirements for such a fund, as set forth in the Political Reform Act or by regulation.
- D. Any active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation

10/8/2019

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California
LEGISLATIVE INFORMATION[Home](#)[Bill Information](#)[California Law](#)[Publications](#)[Other Resources](#)[My Subscriptions](#)[My Favorites](#)Code: Section: [Up^](#) [<< Previous](#) [Next >>](#)[cross-reference chaptered bills](#)[PDF](#) | [Add To My Favorites](#)Search Phrase: **GOVERNMENT CODE - GOV****TITLE 9. POLITICAL REFORM [81000 - 91014]** (Title 9 added June 4, 1974, by initiative Proposition 9.)**CHAPTER 5. Limitations on Contributions [85100 - 85802]** (Chapter 5 added June 7, 1988, by initiative Proposition 73.)**ARTICLE 3. Contribution Limitations [85300 - 85321]** (Article 3 added June 7, 1988, by initiative Proposition 73.)

85316. (a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

(b) Notwithstanding subdivision (a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. Contributions received pursuant to this subdivision shall be deposited into a bank account established solely for the purposes specified in this subdivision.

(1) No person shall make, and no elected state officer shall receive from a person, a contribution pursuant to this subdivision totaling more than the following amounts per calendar year:

(A) Three thousand dollars (\$3,000) in the case of an elected state officer of the Assembly or Senate.

(B) Five thousand dollars (\$5,000) in the case of a statewide elected state officer other than the Governor.

(C) Twenty thousand dollars (\$20,000) in the case of the Governor.

(2) No elected state officer shall receive contributions pursuant to paragraph (1) that, in the aggregate, total more than the following amounts per calendar year:

(A) Fifty thousand dollars (\$50,000) in the case of an elected state officer of the Assembly or Senate.

(B) One hundred thousand dollars (\$100,000) in the case of a statewide elected state officer other than the Governor.

(C) Two hundred thousand dollars (\$200,000) in the case of the Governor.

(3) Any contribution received pursuant to this subdivision shall be deemed to be a contribution to that candidate for election to any state office that he or she may seek during the term of office to which he or she is currently elected, including, but not limited to, reelection to the office he or she currently holds, and shall be subject to any applicable contribution limit provided in this title. If a contribution received pursuant to this subdivision exceeds the allowable contribution limit for the office sought, the candidate shall return the amount exceeding the limit to the contributor on a basis to be determined by the Commission. None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in Section 85400.

(4) The commission shall adjust the calendar year contribution limitations and aggregate contribution limitations set forth in this subdivision in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one hundred dollars (\$100).

(Amended by Stats. 2007, Ch. 130, Sec. 149. Effective January 1, 2008. Note: This section was added by Stats. 2000, Ch. 102, and approved in Prop. 34 on Nov. 7, 2000.)

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18531.62. Elected State Officeholder Bank Accounts.

(a) Application and Definitions. For purposes of Section 85316(b) and this regulation, the following definitions apply:

(1) "Officeholder" means an elected state officer.

(2) "Officeholder controlled committee" means a committee formed pursuant to subdivision (c) of this regulation.

(3) "Officeholder account" means the bank account established at a financial institution located in the State of California pursuant to Section 85316(b).

(4) "Officeholder funds" means money in the officeholder account.

(b) Establishing the Officeholder Account: For purposes of Section 85316(b), an officeholder shall maintain officeholder funds in a single bank account separate from any other bank account held by the officeholder.

(c) Establishing the Officeholder Controlled Committee, Reporting and Recordkeeping:

(1) Formation: The officeholder shall establish a controlled committee by filing a statement of organization pursuant to Section 84101 if the officeholder receives \$2,000 or more in officeholder contributions in a calendar year.

(2) Committee Name: The controlled committee name shall include the officeholder's last name, the office held, the year the officeholder was elected to the current term of office, and the words "Officeholder Account." The statement of organization shall include the name, account number, and address of the financial institution where the committee established the officeholder account.

(3) Filing Requirements: The controlled committee shall file campaign statements and reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other controlled committee formed by the officeholder for election to state office.

(4) Required Recordkeeping and Audits. The officeholder and treasurer shall be subject to recordkeeping requirements under Section 84104. The officeholder account and officeholder controlled committee shall be subject to audits under Chapter 10 of Title 9 of the Government Code. Any audit of the officeholder, or any of his or her controlled committees, under Section 90001 shall include all officeholder accounts and officeholder controlled committees maintained by the officeholder during the audit period as described in Regulation 18996(a)(1).

(d) Prohibitions:

(1) Officeholder funds may not be contributed or transferred to another state or local committee, including any other controlled committee of the officeholder, except as permitted in subdivisions (g) (2) and (g)(3).

(2) Officeholders may not use officeholder funds to pay "campaign expenses" as defined in Regulation 18525(a).

(3) The officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account, except as permitted in subdivision (g)(2) and (g)(3).

(e) Contributions to the Officeholder Account:

(1)(A) Required Notices: In addition to the requirements of Regulation 18523.1, a written solicitation for contributions to the officeholder account shall include the following: "For purposes of the Political Reform Act's contribution limits, a contribution to an officeholder

account is also considered to be a contribution to all campaign committees for future elective state office the officeholder seeks during his or her current term of office.”

(B) In addition to the requirements of subparagraph (A) above, an officeholder who files a statement of intention to be a candidate for any elective state office during the officeholder's term of office shall provide notice of this filing to every person that has made a contribution to his or her officeholder account. The notice shall contain the language in subparagraph (A) and be transmitted or mailed within 10 days of filing the statement of intention to be a candidate.

(2) Cumulation: A contribution to the officeholder account shall also be deemed a contribution to the officeholder's controlled committee for election to elective state office for the purposes of Section 85316(b)(3) only under all of the following circumstances:

(A) The contributor makes the contribution between the day the election was held for the term of office for which the officeholder account was established and the end of that term of office;

(B) The officeholder maintains the controlled committee, established for a future term of elective state office, at any time during the period covered in subparagraph (A).

(3) Cumulation and Primary and General Elections: A person's contributions to the officeholder account, when combined with contributions from the same person for a primary and general election to the elective state office may not exceed the contribution limits applicable to the primary and general election.

(4) Multiple Officeholder Accounts: When an officeholder maintains more than one officeholder account in the same calendar year, he or she may not receive the following contributions to any of those accounts during that calendar year:

(A) Contributions from a single contributor that, when cumulated for all the accounts, exceed the maximum amount the contributor could give to the officeholder account having the highest per person contribution limit under Section 85316(b)(1).

(B) Contributions from all contributors that, when cumulated for all the accounts, exceed the maximum amount in total contributions the officeholder could receive in the officeholder account having the highest aggregate contribution limit under Section 85316(b)(2).

(f) Contributions Over the Limits:

(1) An officeholder shall return to the contributor the portion of any contribution to his or her officeholder account that exceeds the limits of Section 85301, 85302 (after cumulation) or 85316 (either alone or after cumulation) by the earlier of 14 days of receipt or 14 days of the date the officeholder files a statement of intention to be a candidate for elective state office pursuant to Section 85200.

(2) A contributor to the officeholder account does not violate the contribution limits applying to the officeholder's election to a future elective state office as otherwise provided under Section 85316(b)(3) if, when he or she makes the contribution, the officeholder has not filed a statement of organization to establish a controlled committee for election to a future elective state office.

(g) Terminating Officeholder Accounts and Committees:

(1) The officeholder may not accept contributions after the officeholder's term of office ends or the date he or she leaves that office, whichever is earlier.

(2) The officeholder may redesignate the officeholder account as an officeholder controlled committee for a future term of the same office by amending the statement of

organization for the committee to reflect the redesignation for the future term of office prior to the date the officer's term of office ends.

(3) An officeholder may redesignate officeholder funds in the redesignated officeholder account as officeholder funds for the new term of office, subject to the limitations in subdivision

(e)(4).

(4) Once the officeholder's term of office ends or he or she leaves that office, whichever is earlier, the officeholder may only use his or her officeholder funds for the following purposes:

(A) Paying outstanding officeholder expenses.

(B) Repaying contributions to contributors to the officeholder account.

(C) Making a donation to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

(D) Paying for professional services reasonably required by the officeholder controlled committee to assist in the performance of its administrative functions.

(5) The officeholder shall terminate the officeholder controlled committee within 90 days of the date the officer's term of office ends or he or she leaves that office, whichever is earlier. The Executive Director may for good cause extend the termination date or permit the candidate to reopen the account.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 84104, 85316 and 90000-90007, Government Code.

HISTORY

1. New section filed 7-3-2007; operative 8-2-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27). For prior history, see Register 2007, No. 26.
2. Change without regulatory effect amending section filed 3-22-2016; operative 4-21-2016 pursuant to 2 CCR 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 13).



Office of the
City Attorney

DATE: December 28, 1999

TO: BARBARA GILBERT,
Aide to Mayor Shirley Dean

FROM: MANUELA ALBUQUERQUE, City Attorney *MA*
By: CAMILLE COUREY, Deputy City Attorney

SUBJECT: APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

Does the Berkeley Election Reform Act (BERA) govern officeholder accounts?

CONCLUSION:

No. The BERA does not govern true officeholder accounts per se. However, the mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under the BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable local laws.

ANALYSIS:

Sarah Reynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.¹ For similar reasons, the BERA does not

¹ However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.

Barbara Gilbert
Re: Application of Berkeley Election Reform Act To Officeholder Accounts
December 28, 1999
Page 2

apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.² Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

Attachment

cc: Fair Campaign Practices Commission
Sherry Kelly, City Clerk

City Attorney Opinions Index: H.E.I. and H.L.G.

CCM

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² Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)

CITY OF BERKELEY

DATE: December 9, 1991

Memorandum

TO: FCPC COMMISSIONERS

FROM: Sarah Reynoso,  Secretary & Staff CounselSUBJECT: APPLICABILITY OF BERA'S CONTRIBUTION LIMIT TO FUNDS RAISED FOR OFFICEHOLDER EXPENSESBACKGROUND AND ISSUE

I received the attached letter from Richard N. Lerner, treasurer of Friends of Ioni Hancock Committee ("Committee"), regarding the applicability of BERA's (Berkeley Election Reform Act) \$250 contribution limit to funds raised to cover officeholder expenses. The Committee would like to raise money to cover activities by the Mayor for which the City has not allocated funds, for example, distribution of a newsletter and international travel to visit Berkeley Sister Cities.

Thus, the issue presented to the Commission is as follows: Is BERA's \$250 contribution limit applicable to funds raised for officeholder expenses?

CONCLUSION

No. The BERA's contribution limitation is only applicable to money raised "in aid of or in opposition to the nomination or election" of a candidate. Since the Committee intends to raise these funds for activities unrelated to the nomination or election of the Mayor, they are not subject to the BERA's \$250 contribution limitation. However, such funds must be reported as contributions under the State Political Reform Act and their expenditure itemized on the disclosure forms.

ANALYSIS

The BERA prohibits candidates for elective office from soliciting or accepting a contribution of more than \$250 from any one contributor. (BERA section 2.12.415.) Thus, funds which fall within BERA's definition of a contribution, are subject to the \$250 limit. In order to determine whether funds raised for officeholder expenses are subject to the contribution limitation, BERA's definition of contribution must be reviewed.

The BERA defines contribution, in part, as follows:

"Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or

FCPC COMMISSIONERS
December 9, 1991
Page 2

in opposition to the nomination or election of one or more candidates (Emphasis added.)

Thus, the plain language of the BERA requires that a contribution be solicited for purposes related to the nomination or election of a candidate for office to be subject to its contribution limitation. Since the Committee intends to raise funds for purposes unrelated to the Mayor's nomination or election for elective office, such funds do not fall within the BERA's definition and are therefore not subject to its \$250 limitation.

However, because the state Political Reform Act defines contribution to include any funds raised for political purposes, funds raised for officeholder expenses are considered contributions and must be reported on campaign disclosure forms.^{1/} (Government Code section 82015.) Additionally, since the court's ruling in SEIU v. FPPC invalidated the state's \$1,000 contribution limit, funds raised for officeholder expenses are not subject to any limitation.

As a final precaution, the Committee should be advised that the FPPC has issued regulations concerning officeholder expenses and it should review them with respect to their interaction with the BERA.

Attachment

^{1/}I spoke with the FPPC's legal staff and confirmed that funds raised for officeholder expenses must be reported as contributions on the campaign disclosure forms.

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the prohibition of officeholder accounts.

The hearing will be held on, February 4, 2020, at 4:00 p.m. in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of **January 30, 2020**.

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

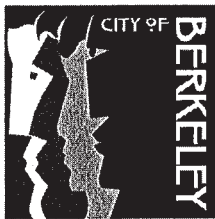
Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council 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 the City Council, 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 City Clerk. 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 City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

Published: January 24, 2020 – The Berkeley Voice
Pursuant to Berkeley Municipal Code Section 2.12.051

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on January 30, 2020.

\_\_\_\_\_  
Mark Numainville, City Clerk



[First Last name]  
Councilmember District [District No.]

## SUPPLEMENTAL REVISED AGENDA MATERIAL for Supplemental Packet 2

**Meeting Date:** February 4, 2020

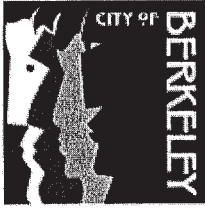
**Item Number:** 2

**Item Description:** Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

**Submitted by:** Councilmember Hahn

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.

**SOPHIE HAHN**

Berkeley City Council, District 5  
 2180 Milvia Street, 5th Floor  
 Berkeley, CA 94704  
 (510) 981-7150  
 shahn@cityofberkeley.info

ACTION CALENDAR

February 4, 2020

To: Honorable Mayor and Members of the City Council  
 From: Vice Mayor Sophie Hahn  
 Subject: Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.

Officeholder accounts are accounts an elected official can open, and raise funds for, to pay for expenses related to the office they hold.<sup>1</sup> They are not campaign accounts, and cannot be used for campaign purposes. The types of expenses Officeholder Accounts can be used for include research, conferences, events attended in the performance of government duties, printed newsletters, office supplies, travel related to official duties, etc. Cities can place limits on Officeholder Accounts, as Oakland has done.<sup>2</sup> Officeholder Accounts must be registered as official "Committees" and adhere to strict public reporting requirements, like campaign accounts. They provide full transparency to the public about sources and uses of funds.

The FCPC bases its recommendation to prohibit Officeholder Accounts on arguments about "equity" and potential "corruption" in elections. The report refers repeatedly to "challengers" and "incumbents," suggesting that Officeholder Accounts are vehicles for unfairness in the election context.

I believe that the FCPC's recommendations reflect a misunderstanding of the purpose and uses of Officeholder Accounts, equating them with campaign accounts and suggesting that they create an imbalance between community members who apparently have already decided to run against an incumbent (so-called "challengers") and elected officials who are presumed to be

<sup>1</sup> <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter5/18531.62.pdf>

<sup>2</sup> <http://www2.oaklandnet.com/w/OAK052051>

always running for office. The recommendations do not take into account some important framing: the question of what funds are otherwise available to pay for Officeholder-type expenses for Officeholders or members of the public. Contrary to the conclusions of the FCPC, I believe Officeholder accounts are an important vehicle to redress a significant disadvantage for elected officials, whose ability to exercise free speech in the community and participate in conferences and events related to their profession is constrained by virtue of holding public office, as compared to community members, whose speech rights are unrestricted in any manner whatsoever, and who can raise money to use for whatever purposes they desire.

Outlawing Officeholder Accounts is also posited as a means to create equity between more and less wealthy Officeholders, on the theory that less affluent Officeholders will have less access to fundraising for Officeholder Accounts than more affluent Officeholders. Because there are no prohibition on using personal funds for many of the purposes for which Officeholder Account funds can be used, prohibiting Officeholder Accounts I believe has the opposite effect; it leaves more affluent Officeholders with the ability to pay for Officeholder expenses from personal funds, without providing an avenue for less affluent Officeholders, who may not have available personal funds, to raise money from their supporters to pay for such Officeholder expenses.

The question of whether Officeholder Accounts should be allowed in Berkeley plays out in the context of a number of rules and realities that are important to framing any analysis.

First, by State Law, elected officials are prohibited from using public funds for a variety of communications that many constituents nevertheless expect. For example, an elected official may not use public funds to send a mailing announcing municipal information to constituents, "such as a newsletter or brochure, [ ] delivered, by any means [ ] to a person's residence, place of employment or business, or post office box."<sup>3</sup> Nor may an elected official mail an item using public funds that features a reference to the elected official affiliated with their public position.<sup>4</sup> Note that Electronic newsletters are not covered by these rules, and can and do include all of these features, even if the newsletter service is paid for by the public entity. That said, while technically not required, many elected officials prefer to use email newsletter distribution services (Constant Contact, MailChimp, Nationbuilder, etc.) paid for with personal (or "Officeholder") funds, to operate in the spirit of the original rules against using public funds for communications that include a photo of, or references to, the elected official.

Without the ability to raise funds for an Officeholder Account, for an elected official to send a paper newsletter to constituents or to use an email newsletter service that is not paid for with public funds, they must use personal funds. A printed newsletter mailed to 5-6,000 households (a typical number of households in a Berkeley City Council District) can easily cost \$5,000+, and an electronic mail service subscription typically costs \$10 (for the most basic service) to \$45 per month, a cost of \$120.00 to over \$500 per year - in personal funds.

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<sup>3</sup> <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

<sup>4</sup> <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

Second, Berkeley City Councilmembers and the Mayor of Berkeley are not paid enough for there to be any reasonable expectation that personal funds should be used for these types of expenses.<sup>5</sup> For many Councilmembers and/or the Mayor, work hours are full time - or more - and there is no other source of income.

Finally, and most importantly, local elected officials are restricted from accepting money or gifts. An elected official cannot under any circumstances raise money to pay for Officeholder expenses such as printed communications, email newsletter services, travel and admission to industry conferences for which the elected official is not an official delegate (e.g., conferences on City Planning, Green Cities, Municipal Finance, etc.), and other expenses related to holding office that are not covered by public funds. Again, without the possibility of an Officeholder Account, an elected official generally must use personal funds for these expenses, allowing more affluent elected officials to participate while placing a hardship or in some cases a prohibition on the ability of less affluent elected officials to undertake these Officeholder-type activities - which support expected communications with constituents and participation in industry activities that improve the elected official's effectiveness.

The elected official's inability to raise funds from others must be contrasted with the ability of a community member - a potential "challenger" who has not yet declared themselves to be an actual candidate - or perhaps a neighborhood association, business or corporation (Chevron, for example) - to engage in similar activities. Nothing restricts any community member or organization from using their own funds - or funds obtained from anyone - a wealthy friend, a corporation, a local business, a community organization or their neighbors - for any purpose whatsoever.

Someone who doesn't like the job an elected official is doing could raise money from family or connections anywhere in the community - or the world - and mail a letter to every person in the District or City criticizing the elected official, or buy up every billboard or banner ad on Facebook or Berkeleyside to broadcast their point of view. By contrast, the elected official, without access to an Officeholder Account, could only use personal funds to "speak" with their own printed letter, billboard or advertisement. Community members (including future "challengers") can also attend any and all conferences they want, engage in travel to visit interesting cities and projects that might inform their thoughts on how a city should be run, and pay for those things with money raised from friends, colleagues, businesses, corporations, foreign governments - *anyone*. They are private citizens with full first amendment rights and have no limitations, no reporting requirements, no requirements of transparency or accountability whatsoever.

The imbalance is significant. Outside of the campaign setting, where all declared candidates can raise funds and must abide by the same rules of spending and communications, *elected officials cannot raise money for any expenses whatsoever, from any source, while community*

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<sup>5</sup> Councilmembers receive annual compensation of approximately \$36,000, while the Mayor receives annual compensation of approximately \$55,000.<sup>5</sup>

*members, including organizations and private companies, can raise as much money as they want from any sources, and use that money for anything they choose.*

Without the ability to establish and fund an Officeholder Account, the only option an elected official has is to use personal funds, which exacerbates the potential imbalance between elected officials with more and less personal funds to spend. Elected officials work within a highly regulated system, which can limit their ability to “speak” and engage in other activities members of the public are able to undertake without restriction. Officeholder Accounts restore some flexibility by allowing elected officials to raise money for expenses related to holding office, so long as the sources and uses of those funds is made transparent.

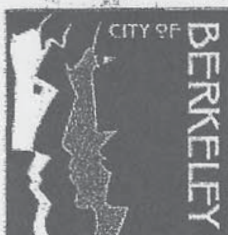
By allowing Officeholder Accounts and regulating them, Berkeley can place limits on amounts that can be raised, and on the individuals/entities from whom funds can be accepted, similar (or identical) to the limits Berkeley places on sources of campaign funds. Similarly, Berkeley can restrict uses of funds beyond the State’s restrictions, to ensure funds are not used for things like family members’ travel, as is currently allowed by the State. Oakland has taken this approach, and has a set of Officeholder Account regulations that provide a good starting point for Berkeley to consider.<sup>6</sup>

I respectfully ask for a vote to send the question of potential allowance for, and regulation of, Officeholder Accounts to the Agenda and Rules Committee for further consideration.

CONTACT: Sophie Hahn, District 5: (510) 981-7150

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<sup>6</sup> <http://www2.oaklandnet.com/w/OAK052051>



Fair Campaign Practices Commission

**Date:** February 12, 2020  
**To:** FAIR CAMPAIGN PRACTICES COMMISSION  
**From:** Dean Metzger, Commission Chair  
**Subject:** Council discussion and action with regards to the Officeholder Accounts FCPC proposal.

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At the Special City Council meeting of Tuesday February 4, 2020, the City Council had a lengthy discussion about their D13 accounts, and the lack of discretionary funds Council Members have to spend. They then decided not to approve the FCPC recommendation to prohibit Officeholder Accounts.

To remedy this concern the FCPC should request from the City Manager the amount each Council Member receives in their D13 accounts and after some discussion make a recommendation to Council. If the D13 account is large enough to allow Council members to make the expenditures they feel will keep their constituents informed of their activities, travel to local meetings, provide transportation expenses and meals - there would be no need for Officeholders Accounts.

A search of the City's Budget documents did not reveal the amounts allocated to the Council D13 accounts. Once the information is available the FCPC can make its recommendations to City Council.

**Attachments:**

1. Mayor and City Council Financial Summary
2. Draft request to City Manager for budget details of the Mayor and each individual Council Member

**MAYOR AND CITY COUNCIL FINA**

|                        | FY 2015<br>Actual | FY 2016<br>Actual | FY 2017<br>Adopted | FY 2018<br>Proposed | FY 2019<br>Proposed |
|------------------------|-------------------|-------------------|--------------------|---------------------|---------------------|
| <b>EXPENDITURES</b>    |                   |                   |                    |                     |                     |
| <b>By Type:</b>        |                   |                   |                    |                     |                     |
| Salaries and Benefits  | 1,660,661         | 1,760,619         | 1,723,617          | 1,833,734           | 1,880,031           |
| Services and Materials | 36,942            | 43,407            | 113,526            | 113,526             | 113,526             |
| Capital Outlay         | 1,953             | 7,674             |                    |                     |                     |
| Internal Services      | 89,100            | 81,181            | 81,181             | 81,181              | 81,181              |
| Indirect Cost Transfer |                   |                   |                    |                     |                     |
|                        | <u>1,788,656</u>  | <u>1,892,881</u>  | <u>1,918,324</u>   | <u>2,028,441</u>    | <u>2,074,738</u>    |
| <b>By Division:</b>    |                   |                   |                    |                     |                     |
| Mayor's Office         | 515,095           | 558,137           | 584,877            | 554,389             | 566,917             |
| Council Offices        | 1,273,561         | 1,334,744         | 1,333,447          | 1,474,052           | 1,507,821           |
| Exiting Officials      |                   |                   |                    |                     |                     |
|                        | <u>1,788,656</u>  | <u>1,892,881</u>  | <u>1,918,324</u>   | <u>2,028,441</u>    | <u>2,074,738</u>    |
| <b>By Fund:</b>        |                   |                   |                    |                     |                     |
| General Fund           | 1,788,656         | 1,892,881         | 1,918,324          | 2,028,441           | 2,074,738           |
|                        | <u>1,788,656</u>  | <u>1,892,881</u>  | <u>1,918,324</u>   | <u>2,028,441</u>    | <u>2,074,738</u>    |

|                         |       |       |       |       |       |
|-------------------------|-------|-------|-------|-------|-------|
| <b>General Fund FTE</b> | 12.00 | 12.00 | 12.00 | 12.00 | 12.00 |
| <b>Total FTE</b>        | 12.00 | 12.00 | 12.00 | 12.00 | 12.00 |



**DRAFT**

**DRAFT**

**DRAFT**

**Date:** February 20, 2020

**To:** Dee Williams-Riley  
City Manager

**From:** Fair Campaign Practices Commission

**Subject:** Request for budget details of the Mayor and each individual Council Member.

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At the Special Council meeting of Tuesday, February 4, 2020 the Council heard and took action on the FCPC recommendation to amend the Berkeley Municipal Code to prohibit Officeholder Accounts. The Council discussion went to great lengths about why they needed the Officeholder Account before declining to approve the FCPC recommendation.

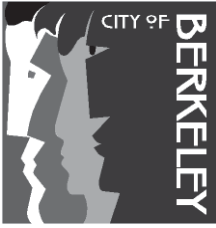
The FCPC needs to understand why the Council took the action it did.

To help the Commission determine if any further action on its part would be helpful, the Commission requests that your office provide the FCPC with the detailed budgets of the Mayor and each Council Member. The Commission has the budget summaries of the Mayor and City Council but it is of little use for the discussion.

Please provide the requested information in time for the FCPC meeting on March 19, 2020.

Thank you,

**Fair Campaign Practices Commission**



Fair Campaign Practices Commission  
Open Government Commission

ACTION CALENDAR  
January 26, 2021

To: Honorable Mayor and Members of the City Council

From: Brad Smith, Chair, Fair Campaign Practices and Open Government Commissions

Submitted by: Samuel Harvey, Secretary, Fair Campaign Practices and Open Government Commissions

Subject: Amendments to the Berkeley Election Reform Act (BERA) and Change to City Council Expenditure and Reimbursement Policies (Resolution 67,992-N.S.)

RECOMMENDATION

Form a joint subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Officeholder accounts are not expressly regulated by BERA. However, under existing law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and may trigger various local and state legal requirements.

Donations to nonprofit organizations from Councilmember's discretionary council budgets (D-13 accounts) are allowed by the authority of City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.).

*Action: Motion to submit report to City Council recommending creation of a subcommittee of members of the Council, FCPC and OGC to (1) prepare an ordinance prohibiting or regulating officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies*

Vote: M/S/C: Blome/Metzger; Ayes: O'Donnell, Ching, Blome, Tsang, Smith; Noes: Metzger, Sheahan; Abstain: none; Absent: McLean.

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the "double green light" process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

Changes to the City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) can be made by a majority vote of the Council.

## BACKGROUND

### ***Officeholder Accounts***

During 2019, the Fair Campaign Practices Commission (FCPC) discussed whether there is a need to amend the law relating to these accounts. These accounts are not expressly regulated by BERA, but under current law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and trigger various local and state legal requirements. A 1999 legal opinion from the City Attorney stated: "[t]he mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable laws."

In the course of its review of the issue of officeholder accounts, the FCPC considered three options:

- (1) leaving the law on officeholder accounts unchanged;
- (2) prohibiting officeholder accounts entirely (an approach used by the City of San Jose), or
- (3) authorizing officeholder accounts but limiting their use and imposing various restrictions and requirements on them (an approach used by the City of Oakland).

The Commission referred the issue of officeholder accounts to a subcommittee, which met several times in the fall of 2019 and considered the options. The subcommittee unanimously recommended prohibiting officeholder accounts entirely. At its regular meeting on November 21, 2019 the Commission voted without opposition to recommend amendments to the BERA that would prohibit officeholder accounts.

The Commission's proposal was presented to the City Council at a February 4, 2020 special meeting. (Report to the Council, with Attachments, is attached.) The FCPC report summarized its proposal: "Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also the goal of the Fair Elections Act of 2016." (Report, page 1.)

At the February 4, 2020 meeting, the Council had a lengthy discussion about their D- 13 accounts and the lack of discretionary funds that members have to spend. They also decided not to approve the FCPC recommendation to prohibit officeholder accounts. The City Council referred the issues relating to officeholder and D-13 accounts to its Agenda and Rules Committee for further consideration.

***Proposed Changes to City Council Expenditure and Reimbursement Policies***

At the April 23, 2020 meeting of the Open Government Committee (OGC), a motion to direct staff to develop a proposal recommending Council change City policy to remove councilmember names from donations to nonprofit organizations from D- 13 accounts was approved unanimously.

Donations to nonprofit organizations from the Councilmember’s discretionary council budget (D-13 accounts) puts that elected official in a favorable light with Berkeley citizens at no cost to the Councilmember, an option not available to a challenger for that office. A look at the Consent Calendar of City Council Meeting Agendas will often contain one or more items from one or more Councilmembers making a donation to a nonprofit organization “from the discretionary council budget” of the Councilmember. This line item (“Services and Materials”) from the General Fund was increased from \$50,938 in FY 2017 to \$113,526 in FY 2018 (approximately \$40,000 for the Mayor, the balance evenly divided among the Councilmembers; see Attachment – Council Office Budget Summaries). While not technically a “campaign contribution,” those individuals in the organization as well as individuals favorably disposed to the nonprofit organization receiving the funds would certainly see it favorably. A person running against this incumbent would have to draw on their own resources to match a Councilmember’s contribution from public funds and without the public notice of the contribution the Councilmember receives.

In addition to favoring incumbents, the use of public moneys for contributions to nonprofit organizations from the discretionary council budgets of individual Council members is arguably improper and certainly bad optics. The commissioners of the OGC have no argument with contributions being made to nonprofit organizations from the City of Berkeley, but believe they should be made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley, not from individual Council members. Perhaps a nonprofit fund could be set up from which the donations could be made from recommendations made to one of the Council’s Policy Commissions. This would free funds for other purposes now being directed to nonprofit organizations from individual Councilmember’s D-13 accounts.

Proposed Action:

At this stage, the Council has referred both the issues relating to officeholder accounts and those relating to D-13 accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee agreed to work collaboratively with the FCPC and OGC on matters relating to officeholder accounts and D-13 accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

Consistent with the prior actions of the Council and the FCPC/OGC, the Commissions recommend the establishment of a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to:

(1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts, and

(2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION

The “double green light” process requires that the FCPC adopt an amendment by a two-thirds vote, and that the City Council hold a public hearing and also adopt an amendment by a two-thirds vote. Evidence to date suggests there are differences of perspective regarding this matter between the City Council and the FCPC regarding the D-13 accounts. It would seem to be a rational step to discuss and come to agreement and possibly compromise prior to the “double green light” process.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

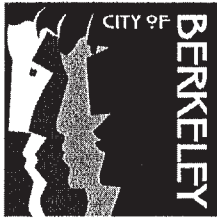
CONTACT PERSON

Brad Smith, Chair, Fair Campaign Practices and Open Government Commissions, (510) 981-6998

Samuel Harvey, Commission Secretary, Fair Campaign Practices and Open Government Commissions, (510) 981-6998

Attachments:

1. FCPC February 4, 2020 report to Council and attachments
2. Mayor and City Council Financial Summary



Fair Campaign Practices Commission

PUBLIC HEARING  
February 4, 2020

To: Honorable Mayor and Members of the City Council  
From: Fair Campaign Practices Commission  
Submitted by: Dean Metzger, Chairperson, Fair Campaign Practices Commission  
Subject: Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to prohibit Officeholder Accounts (See Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission).

SUMMARY

Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also a goal of the Fair Elections Act of 2016.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The proposed amendments to the Berkeley Election Reform Act (BERA) were adopted by the Fair Campaign Practices Commission (FCPC) at its regular meeting of November 21, 2019.

**Action:** M/S/C (Smith/Saver) to adopt the proposed amendments to BERA related to Officeholder Accounts.

**Vote:** Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: O'Donnell (excused).

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the "double green light" process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder Accounts

PUBLIC HEARING  
February 4, 2020

BACKGROUND

The Fair Campaign Practices Commission has supported creating the circumstances in which the incumbent and challengers during an election play on as level a playing field as possible and reducing the influence of private campaign contributions. For instance, the Berkeley Fair Elections Act of 2016, which was passed by voters and recommended to Council by the Commission, included the following express purposes:

- Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- Help reduce the influence of private campaign contributions on Berkeley government.
- Reduce the impact of wealth as a determinant of whether a person becomes a candidate.

(Section 2.12.490(B)-(D).)

A recent inquiry to the Commission Secretary regarding the regulation of Officeholder Accounts resulted in a request from a Commissioner to have discussion of these accounts placed on the May 16, 2019 agenda for possible action. The following motion was made and passed at that meeting:

Motion to request staff work with Commissioner Smith to bring to a future meeting background information and a proposal to eliminate officeholder accounts (M/S/C: O'Donnell/Blome; Ayes: Blome, Ching, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (excused)).

**Definition of an Officeholder Account**

Under state law, an "officeholder account" refers to the funds held in a single bank account at a financial institution in the State of California separate from any other bank account held by the officeholder and that are used for "paying expenses associated with holding public office." Officeholder Account funds cannot be used to pay "campaign expenses." This definition is drawn from state law applicable to statewide elected officials: Government Code section 85316 (Attachment 2), and the accompanying regulation by the Fair Political Practices Commission (FPPC) codified at Title 2, Division 6, of the California Code of Regulations, Section 18531.62 (Attachment 3).

Contributions to or expenditures from an Officeholder Account are not subject to BERA's reporting requirements. (The FPPC still requires the reporting of activity relating to Officeholder Accounts, which is available to view on Berkeley's Public Access Portal.) If, however, a complaint is filed that an Officeholder Account is used for

Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder Accounts

PUBLIC HEARING  
February 4, 2020

campaign contributions or to pay "campaign expenses," BERA can be used to respond to the complaint. The legal arguments for these statements are contained in a memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert, dated December 28, 1999 and a December 9, 1991 memorandum by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, that is attached to the December 28, 1999 memo. (Attachment 4.) Because the BERA provisions relied on in these memoranda have not been amended, and because no other BERA provisions have been added to regulate officeholder accounts, the memoranda's conclusions remain valid and are still controlling guidance.

### **Contributions to Officeholder Accounts**

Funds raised for Officeholder Accounts in Berkeley are not subject to any limitations, either from the FPPC or BERA. Neither is there a limit on the total amount the Officeholder Account fund may receive in contributions per year. Contributions to an elected official's Officeholder Account may put that contributor in a more favorable light with the elected official than might otherwise be the case.

### **Expenditures from Officeholder Accounts**

Except for the restriction that Officeholder Account funds cannot be used for "campaign expenses," BERA does not restrict how funds from Officeholder Accounts can be used.

There are a number of permissible expenditures from Officeholder Accounts that could put an elected official in a favorable light with voters that are not available to a challenger for that office. A donation to a nonprofit organization, although technically not a "campaign expense," would be seen favorably by those receiving the funds as well as individuals favorably disposed to the nonprofit organization receiving the funds. An individual running against this incumbent would have to draw on their own resources to make contributions to nonprofit organizations.

As long as political campaigns are not included, newsletters mailed to constituents related to events, information, or an officeholder's position on matters before the Council are a permissible Officeholder Account expenditure. This keeps the incumbent's name in front of the voter in a way unavailable to a challenger unless they pay for a newsletter and its distribution from their own resources.

Expenditures from Officeholder Account funds for flowers and other expressions of condolences, congratulations, or appreciation, while technically not "campaign expenses," also increase the probability that the recipient will be favorably predisposed toward the elected official as a candidate for reelection or election to another office. Again, a challenger would have to draw on their own resources to express condolences, congratulations, or appreciation to their potential supporters.



Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder Accounts

PUBLIC HEARING  
February 4, 2020

Further, officeholder accounts can be used to pay for a broad range of office expenses, such as meals, travel, parking tickets, or contributions to other candidates or political parties.<sup>1</sup> Eliminating officeholder accounts would reduce reliance on and the influence of private contributions for these expenditures.

**Recommendation**

To make elections more equitable between challengers and incumbent and for the reasons given above, the Fair Campaign Practices Commission recommends prohibiting Officeholder Accounts.

Berkeley will not be the first to prohibit Officeholder Accounts. The San Jose Municipal Code was amended to prohibit officeholder accounts in January 2008. (Chapter 12.06 – ELECTIONS, San Jose, CA Code of Ordinances, p. 10)

**Part 8 - OFFICEHOLDER ACCOUNTS**

**12.06.810 - Officeholder account prohibited.**

No city officeholder, or any person or committee on behalf of a city officeholder may establish an officeholder account or an account established under the Political Reform Act, California Government Code Section 8100 et seq. as amended, for the solicitation or expenditure of officeholder funds. Nothing in this section shall prohibit an officeholder from spending personal funds on official or related business activities.

The following additions to BERA are proposed:

**2.12.157 Officeholder Account**

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

**2.12.441 Officeholder account prohibited**

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.

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<sup>1</sup> Under state law applicable to state elected officials, officeholders may use campaign contributions for “expenses that are associated with holding office.” (Govt. Code, § 89510.) To qualify, expenditures must be “reasonably related to a legislative or governmental purpose.” (*Id.*, § 89512.) “Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose.” (*Ibid.*)

Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder Accounts

PUBLIC HEARING  
January 21, 2020

- C. Anyone holding an active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account, in accordance with FPPC guidelines.

ENVIRONMENTAL SUSTAINABILITY

There are no identified environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION

This proposed change to BERA will help to level the playing field between challengers and the incumbent running for elective office.

ALTERNATIVE ACTIONS CONSIDERED

A Subcommittee was formed to consider the options of (1) amending the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts, (2) amending BERA to mitigate possible advantages incumbents with an Officeholder Accounts have over challengers, or (3) doing nothing with regard to Officeholder Accounts. The four members of the Subcommittee recommended unanimously to the full Commission to amend the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts.

CITY MANAGER

The City Manager takes no position on the content and recommendations of this report.

CONTACT PERSON

Dean Metzger, Chair, Fair Campaign Practices Commission. 981-6998

Attachments:

- 1: Proposed Ordinance
- 2: Government Code section 85316
- 3: Section 18531.62 (Elected State Officeholder Bank Accounts), Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations
- 4: Memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert (including attached memorandum signed by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, to the FCPC)

ORDINANCE NO. ##,###-N.S.

OFFICEHOLDER ACCOUNT PROHIBITED; AMENDING BERKELEY MUNICIPAL CODE  
CHAPTER 2.12

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

Section 1. That Berkeley Municipal Code section 2.12.157 is added to read as follows:

**BMC 2.12.157 Officeholder account**

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

Section 2. That Berkeley Municipal Code section 2.12.441 is added to read as follows:

**BMC 2.12.441 Officeholder account prohibited**

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.
- C. This provision does not affect a candidate’s ability to establish a legal defense fund or the requirements for such a fund, as set forth in the Political Reform Act or by regulation.
- D. Any active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation



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**GOVERNMENT CODE - GOV**

**TITLE 9. POLITICAL REFORM [81000 - 91014]** ( Title 9 added June 4, 1974, by initiative Proposition 9. )

**CHAPTER 5. Limitations on Contributions [85100 - 85802]** ( Chapter 5 added June 7, 1988, by initiative Proposition 73. )

**ARTICLE 3. Contribution Limitations [85300 - 85321]** ( Article 3 added June 7, 1988, by initiative Proposition 73. )

**85316.** (a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

(b) Notwithstanding subdivision (a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. Contributions received pursuant to this subdivision shall be deposited into a bank account established solely for the purposes specified in this subdivision.

(1) No person shall make, and no elected state officer shall receive from a person, a contribution pursuant to this subdivision totaling more than the following amounts per calendar year:

(A) Three thousand dollars (\$3,000) in the case of an elected state officer of the Assembly or Senate.

(B) Five thousand dollars (\$5,000) in the case of a statewide elected state officer other than the Governor.

(C) Twenty thousand dollars (\$20,000) in the case of the Governor.

(2) No elected state officer shall receive contributions pursuant to paragraph (1) that, in the aggregate, total more than the following amounts per calendar year:

(A) Fifty thousand dollars (\$50,000) in the case of an elected state officer of the Assembly or Senate.

(B) One hundred thousand dollars (\$100,000) in the case of a statewide elected state officer other than the Governor.

(C) Two hundred thousand dollars (\$200,000) in the case of the Governor.

(3) Any contribution received pursuant to this subdivision shall be deemed to be a contribution to that candidate for election to any state office that he or she may seek during the term of office to which he or she is currently elected, including, but not limited to, reelection to the office he or she currently holds, and shall be subject to any applicable contribution limit provided in this title. If a contribution received pursuant to this subdivision exceeds the allowable contribution limit for the office sought, the candidate shall return the amount exceeding the limit to the contributor on a basis to be determined by the Commission. None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in Section 85400.

(4) The commission shall adjust the calendar year contribution limitations and aggregate contribution limitations set forth in this subdivision in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one hundred dollars (\$100).

(Amended by Stats. 2007, Ch. 130, Sec. 149. Effective January 1, 2008. Note: This section was added by Stats. 2000, Ch. 102, and approved in Prop. 34 on Nov. 7, 2000.)

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

**§ 18531.62. Elected State Officeholder Bank Accounts.**

(a) Application and Definitions. For purposes of Section 85316(b) and this regulation, the following definitions apply:

(1) "Officeholder" means an elected state officer.

(2) "Officeholder controlled committee" means a committee formed pursuant to subdivision (c) of this regulation.

(3) "Officeholder account" means the bank account established at a financial institution located in the State of California pursuant to Section 85316(b).

(4) "Officeholder funds" means money in the officeholder account.

(b) Establishing the Officeholder Account: For purposes of Section 85316(b), an officeholder shall maintain officeholder funds in a single bank account separate from any other bank account held by the officeholder.

(c) Establishing the Officeholder Controlled Committee, Reporting and Recordkeeping:

(1) Formation: The officeholder shall establish a controlled committee by filing a statement of organization pursuant to Section 84101 if the officeholder receives \$2,000 or more in officeholder contributions in a calendar year.

(2) Committee Name: The controlled committee name shall include the officeholder's last name, the office held, the year the officeholder was elected to the current term of office, and the words "Officeholder Account." The statement of organization shall include the name, account number, and address of the financial institution where the committee established the officeholder account.

(3) Filing Requirements: The controlled committee shall file campaign statements and reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other controlled committee formed by the officeholder for election to state office.

(4) Required Recordkeeping and Audits. The officeholder and treasurer shall be subject to recordkeeping requirements under Section 84104. The officeholder account and officeholder controlled committee shall be subject to audits under Chapter 10 of Title 9 of the Government Code. Any audit of the officeholder, or any of his or her controlled committees, under Section 90001 shall include all officeholder accounts and officeholder controlled committees maintained by the officeholder during the audit period as described in Regulation 18996(a)(1).

(d) Prohibitions:

(1) Officeholder funds may not be contributed or transferred to another state or local committee, including any other controlled committee of the officeholder, except as permitted in subdivisions (g) (2) and (g)(3).

(2) Officeholders may not use officeholder funds to pay "campaign expenses" as defined in Regulation 18525(a).

(3) The officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account, except as permitted in subdivision (g)(2) and (g)(3).

(e) Contributions to the Officeholder Account:

(1)(A) Required Notices: In addition to the requirements of Regulation 18523.1, a written solicitation for contributions to the officeholder account shall include the following: "For purposes of the Political Reform Act's contribution limits, a contribution to an officeholder

account is also considered to be a contribution to all campaign committees for future elective state office the officeholder seeks during his or her current term of office."

(B) In addition to the requirements of subparagraph (A) above, an officeholder who files a statement of intention to be a candidate for any elective state office during the officeholder's term of office shall provide notice of this filing to every person that has made a contribution to his or her officeholder account. The notice shall contain the language in subparagraph (A) and be transmitted or mailed within 10 days of filing the statement of intention to be a candidate.

(2) Cumulation: A contribution to the officeholder account shall also be deemed a contribution to the officeholder's controlled committee for election to elective state office for the purposes of Section 85316(b)(3) only under all of the following circumstances:

(A) The contributor makes the contribution between the day the election was held for the term of office for which the officeholder account was established and the end of that term of office;

(B) The officeholder maintains the controlled committee, established for a future term of elective state office, at any time during the period covered in subparagraph (A).

(3) Cumulation and Primary and General Elections: A person's contributions to the officeholder account, when combined with contributions from the same person for a primary and general election to the elective state office may not exceed the contribution limits applicable to the primary and general election.

(4) Multiple Officeholder Accounts: When an officeholder maintains more than one officeholder account in the same calendar year, he or she may not receive the following contributions to any of those accounts during that calendar year:

(A) Contributions from a single contributor that, when cumulated for all the accounts, exceed the maximum amount the contributor could give to the officeholder account having the highest per person contribution limit under Section 85316(b)(1).

(B) Contributions from all contributors that, when cumulated for all the accounts, exceed the maximum amount in total contributions the officeholder could receive in the officeholder account having the highest aggregate contribution limit under Section 85316(b)(2).

(f) Contributions Over the Limits:

(1) An officeholder shall return to the contributor the portion of any contribution to his or her officeholder account that exceeds the limits of Section 85301, 85302 (after cumulation) or 85316 (either alone or after cumulation) by the earlier of 14 days of receipt or 14 days of the date the officeholder files a statement of intention to be a candidate for elective state office pursuant to Section 85200.

(2) A contributor to the officeholder account does not violate the contribution limits applying to the officeholder's election to a future elective state office as otherwise provided under Section 85316(b)(3) if, when he or she makes the contribution, the officeholder has not filed a statement of organization to establish a controlled committee for election to a future elective state office.

(g) Terminating Officeholder Accounts and Committees:

(1) The officeholder may not accept contributions after the officeholder's term of office ends or the date he or she leaves that office, whichever is earlier.

(2) The officeholder may redesignate the officeholder account as an officeholder controlled committee for a future term of the same office by amending the statement of



organization for the committee to reflect the redesignation for the future term of office prior to the date the officer's term of office ends.

(3) An officeholder may redesignate officeholder funds in the redesignated officeholder account as officeholder funds for the new term of office, subject to the limitations in subdivision

(e)(4).

(4) Once the officeholder's term of office ends or he or she leaves that office, whichever is earlier, the officeholder may only use his or her officeholder funds for the following purposes:

(A) Paying outstanding officeholder expenses.

(B) Repaying contributions to contributors to the officeholder account.

(C) Making a donation to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

(D) Paying for professional services reasonably required by the officeholder controlled committee to assist in the performance of its administrative functions.

(5) The officeholder shall terminate the officeholder controlled committee within 90 days of the date the officer's term of office ends or he or she leaves that office, whichever is earlier. The Executive Director may for good cause extend the termination date or permit the candidate to reopen the account.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 84104, 85316 and 90000-90007, Government Code.

**HISTORY**

1. New section filed 7-3-2007; operative 8-2-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27). For prior history, see Register 2007, No. 26.

2. Change without regulatory effect amending section filed 3-22-2016; operative 4-21-2016 pursuant to 2 CCR 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 13).



Office of the  
City Attorney

**DATE:** December 28, 1999

**TO:** BARBARA GILBERT,  
Aide to Mayor Shirley Dean

**FROM:** MANUELA ALBUQUERQUE, City Attorney *MA*  
By: CAMILLE COUREY, Deputy City Attorney

**SUBJECT:** APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

**ISSUE:**

Does the Berkeley Election Reform Act (BERA) govern officeholder accounts?

**CONCLUSION:**

No. The BERA does not govern true officeholder accounts per se. However, the mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under the BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable local laws.

**ANALYSIS:**

Sarah Reynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.<sup>1</sup> For similar reasons, the BERA does not

<sup>1</sup> However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.

Barbara Gilbert  
Re: Application of Berkeley Election Reform Act To Officeholder Accounts  
December 28, 1999  
Page 2

apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.<sup>2</sup> Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

Attachment

cc: Fair Campaign Practices Commission  
Sherry Kelly, City Clerk

City Attorney Opinions Index: H.E.I. and H.L.G.

CCM

PAUSERS\BBL2\ofhldr.mem.doc

<sup>2</sup> Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)

CITY OF BERKELEY

DATE: December 9, 1991 Memorandum

TO: FCPC COMMISSIONERS

FROM: Sarah Reynoso, Secretary & Staff Counsel

SUBJECT: APPLICABILITY OF BERA'S CONTRIBUTION LIMIT TO FUNDS RAISED FOR OFFICEHOLDER EXPENSES

BACKGROUND AND ISSUE

I received the attached letter from Richard N. Lerner, treasurer of Friends of Ioni Hancock Committee ("Committee"), regarding the applicability of BERA's (Berkeley Election Reform Act) \$250 contribution limit to funds raised to cover officeholder expenses. The Committee would like to raise money to cover activities by the Mayor for which the City has not allocated funds, for example, distribution of a newsletter and international travel to visit Berkeley Sister Cities.

Thus, the issue presented to the Commission is as follows: Is BERA's \$250 contribution limit applicable to funds raised for officeholder expenses?

CONCLUSION

No. The BERA's contribution limitation is only applicable to money raised "in aid of or in opposition to the nomination or election" of a candidate. Since the Committee intends to raise these funds for activities unrelated to the nomination or election of the Mayor, they are not subject to the BERA's \$250 contribution limitation. However, such funds must be reported as contributions under the State Political Reform Act and their expenditure itemized on the disclosure forms.

ANALYSIS

The BERA prohibits candidates for elective office from soliciting or accepting a contribution of more than \$250 from any one contributor. (BERA section 2.12.415.) Thus, funds which fall within BERA's definition of a contribution, are subject to the \$250 limit. In order to determine whether funds raised for officeholder expenses are subject to the contribution limitation, BERA's definition of contribution must be reviewed.

The BERA defines contribution, in part, as follows:

"Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or

FCPC COMMISSIONERS

December 9, 1991

Page 2

in opposition to the nomination or election of one or more candidates . . . . (Emphasis added.)

Thus, the plain language of the BERA requires that a contribution be solicited for purposes related to the nomination or election of a candidate for office to be subject to its contribution limitation. Since the Committee intends to raise funds for purposes unrelated to the Mayor's nomination or election for elective office, such funds do not fall within the BERA's definition and are therefore not subject to its \$250 limitation.

However, because the state Political Reform Act defines contribution to include any funds raised for political purposes, funds raised for officeholder expenses are considered contributions and must be reported on campaign disclosure forms.<sup>1/</sup> (Government Code section 82015.) Additionally, since the court's ruling in SEIU v. FPPC invalidated the state's \$1,000 contribution limit, funds raised for officeholder expenses are not subject to any limitation.

As a final precaution, the Committee should be advised that the FPPC has issued regulations concerning officeholder expenses and it should review them with respect to their interaction with the BERA.

Attachment

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<sup>1/</sup>I spoke with the FPPC's legal staff and confirmed that funds raised for officeholder expenses must be reported as contributions on the campaign disclosure forms.

**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL**

**AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT**

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the prohibition of officeholder accounts.

The hearing will be held on, February 4, 2020, at 4:00 p.m. in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City's website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **January 30, 2020**.

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

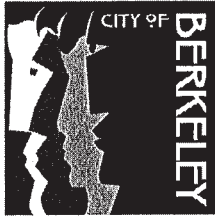
Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council 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 the City Council, 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 City Clerk. 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 City Clerk at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

**Published:** January 24, 2020 – The Berkeley Voice  
Pursuant to Berkeley Municipal Code Section 2.12.051

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on January 30, 2020.

Mark Numainville, City Clerk



[First Last name]
Councilmember District [District No.]

SUPPLEMENTAL REVISED AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: February 4, 2020

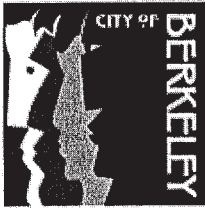
Item Number: 2

Item Description: Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

Submitted by: Councilmember Hahn

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.



SOPHIE HAHN

Berkeley City Council, District 5
2180 Milvia Street, 5th Floor
Berkeley, CA 94704
(510) 981-7150
shahn@cityofberkeley.info

ACTION CALENDAR

February 4, 2020

To: Honorable Mayor and Members of the City Council
From: Vice Mayor Sophie Hahn
Subject: Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.

Officeholder accounts are accounts an elected official can open, and raise funds for, to pay for expenses related to the office they hold.¹ They are not campaign accounts, and cannot be used for campaign purposes. The types of expenses Officeholder Accounts can be used for include research, conferences, events attended in the performance of government duties, printed newsletters, office supplies, travel related to official duties, etc. Cities can place limits on Officeholder Accounts, as Oakland has done.² Officeholder Accounts must be registered as official "Committees" and adhere to strict public reporting requirements, like campaign accounts. They provide full transparency to the public about sources and uses of funds.

The FCPC bases its recommendation to prohibit Officeholder Accounts on arguments about "equity" and potential "corruption" in elections. The report refers repeatedly to "challengers" and "incumbents," suggesting that Officeholder Accounts are vehicles for unfairness in the election context.

I believe that the FCPC's recommendations reflect a misunderstanding of the purpose and uses of Officeholder Accounts, equating them with campaign accounts and suggesting that they create an imbalance between community members who apparently have already decided to run against an incumbent (so-called "challengers") and elected officials who are presumed to be

¹ <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter5/18531.62.pdf>

² <http://www2.oaklandnet.com/w/OAK052051>

always running for office. The recommendations do not take into account some important framing: the question of what funds are otherwise available to pay for Officeholder-type expenses for Officeholders or members of the public. Contrary to the conclusions of the FCPC, I believe Officeholder accounts are an important vehicle to redress a significant disadvantage for elected officials, whose ability to exercise free speech in the community and participate in conferences and events related to their profession is constrained by virtue of holding public office, as compared to community members, whose speech rights are unrestricted in any manner whatsoever, and who can raise money to use for whatever purposes they desire.

Outlawing Officeholder Accounts is also posited as a means to create equity between more and less wealthy Officeholders, on the theory that less affluent Officeholders will have less access to fundraising for Officeholder Accounts than more affluent Officeholders. Because there are no prohibition on using personal funds for many of the purposes for which Officeholder Account funds can be used, prohibiting Officeholder Accounts I believe has the opposite effect; it leaves more affluent Officeholders with the ability to pay for Officeholder expenses from personal funds, without providing an avenue for less affluent Officeholders, who may not have available personal funds, to raise money from their supporters to pay for such Officeholder expenses.

The question of whether Officeholder Accounts should be allowed in Berkeley plays out in the context of a number of rules and realities that are important to framing any analysis.

First, by State Law, elected officials are prohibited from using public funds for a variety of communications that many constituents nevertheless expect. For example, an elected official may not use public funds to send a mailing announcing municipal information to constituents, "such as a newsletter or brochure, [] delivered, by any means [] to a person's residence, place of employment or business, or post office box."³ Nor may an elected official mail an item using public funds that features a reference to the elected official affiliated with their public position.⁴ Note that Electronic newsletters are not covered by these rules, and can and do include all of these features, even if the newsletter service is paid for by the public entity. That said, while technically not required, many elected officials prefer to use email newsletter distribution services (Constant Contact, MailChimp, Nationbuilder, etc.) paid for with personal (or "Officeholder") funds, to operate in the spirit of the original rules against using public funds for communications that include a photo of, or references to, the elected official.

Without the ability to raise funds for an Officeholder Account, for an elected official to send a paper newsletter to constituents or to use an email newsletter service that is not paid for with public funds, they must use personal funds. A printed newsletter mailed to 5-6,000 households (a typical number of households in a Berkeley City Council District) can easily cost \$5,000+, and an electronic mail service subscription typically costs \$10 (for the most basic service) to \$45 per month, a cost of \$120.00 to over \$500 per year - in personal funds.

³ <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

⁴ <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

Second, Berkeley City Councilmembers and the Mayor of Berkeley are not paid enough for there to be any reasonable expectation that personal funds should be used for these types of expenses.⁵ For many Councilmembers and/or the Mayor, work hours are full time - or more - and there is no other source of income.

Finally, and most importantly, local elected officials are restricted from accepting money or gifts. An elected official cannot under any circumstances raise money to pay for Officeholder expenses such as printed communications, email newsletter services, travel and admission to industry conferences for which the elected official is not an official delegate (e.g., conferences on City Planning, Green Cities, Municipal Finance, etc.), and other expenses related to holding office that are not covered by public funds. Again, without the possibility of an Officeholder Account, an elected official generally must use personal funds for these expenses, allowing more affluent elected officials to participate while placing a hardship or in some cases a prohibition on the ability of less affluent elected officials to undertake these Officeholder-type activities - which support expected communications with constituents and participation in industry activities that improve the elected official's effectiveness.

The elected official's inability to raise funds from others must be contrasted with the ability of a community member - a potential "challenger" who has not yet declared themselves to be an actual candidate - or perhaps a neighborhood association, business or corporation (Chevron, for example) - to engage in similar activities. Nothing restricts any community member or organization from using their own funds - or funds obtained from anyone - a wealthy friend, a corporation, a local business, a community organization or their neighbors - for any purpose whatsoever.

Someone who doesn't like the job an elected official is doing could raise money from family or connections anywhere in the community - or the world - and mail a letter to every person in the District or City criticizing the elected official, or buy up every billboard or banner ad on Facebook or Berkeleyside to broadcast their point of view. By contrast, the elected official, without access to an Officeholder Account, could only use personal funds to "speak" with their own printed letter, billboard or advertisement. Community members (including future "challengers") can also attend any and all conferences they want, engage in travel to visit interesting cities and projects that might inform their thoughts on how a city should be run, and pay for those things with money raised from friends, colleagues, businesses, corporations, foreign governments - *anyone*. They are private citizens with full first amendment rights and have no limitations, no reporting requirements, no requirements of transparency or accountability whatsoever.

The imbalance is significant. Outside of the campaign setting, where all declared candidates can raise funds and must abide by the same rules of spending and communications, *elected officials cannot raise money for any expenses whatsoever, from any source, while community*

⁵ Councilmembers receive annual compensation of approximately \$36,000, while the Mayor receives annual compensation of approximately \$55,000.⁵

members, including organizations and private companies, can raise as much money as they want from any sources, and use that money for anything they choose.

Without the ability to establish and fund an Officeholder Account, the only option an elected official has is to use personal funds, which exacerbates the potential imbalance between elected officials with more and less personal funds to spend. Elected officials work within a highly regulated system, which can limit their ability to “speak” and engage in other activities members of the public are able to undertake without restriction. Officeholder Accounts restore some flexibility by allowing elected officials to raise money for expenses related to holding office, so long as the sources and uses of those funds is made transparent.

By allowing Officeholder Accounts and regulating them, Berkeley can place limits on amounts that can be raised, and on the individuals/entities from whom funds can be accepted, similar (or identical) to the limits Berkeley places on sources of campaign funds. Similarly, Berkeley can restrict uses of funds beyond the State’s restrictions, to ensure funds are not used for things like family members’ travel, as is currently allowed by the State. Oakland has taken this approach, and has a set of Officeholder Account regulations that provide a good starting point for Berkeley to consider.⁶

I respectfully ask for a vote to send the question of potential allowance for, and regulation of, Officeholder Accounts to the Agenda and Rules Committee for further consideration.

CONTACT: Sophie Hahn, District 5: (510) 981-7150

⁶ <http://www2.oaklandnet.com/w/OAK052051>

MAYOR AND CITY COUNCIL FINANCIAL SUMMARY

	FY 2015 Actual	FY 2016 Actual	FY 2017 Adopted	FY 2018 Proposed	FY 2019 Proposed
EXPENDITURES					
By Type:					
Salaries and Benefits	1,660,661	1,760,619	1,723,617	1,833,734	1,880,031
Services and Materials	36,942	43,407	113,526	113,526	113,526
Capital Outlay	1,953	7,674			
Internal Services	89,100	81,181	81,181	81,181	81,181
Indirect Cost Transfer					
	<u>1,788,656</u>	<u>1,892,881</u>	<u>1,918,324</u>	<u>2,028,441</u>	<u>2,074,738</u>
By Division:					
Mayor's Office	515,095	558,137	584,877	554,389	566,917
Council Offices	1,273,561	1,334,744	1,333,447	1,474,052	1,507,821
Exiting Officials					
	<u>1,788,656</u>	<u>1,892,881</u>	<u>1,918,324</u>	<u>2,028,441</u>	<u>2,074,738</u>
By Fund:					
General Fund	1,788,656	1,892,881	1,918,324	2,028,441	2,074,738
	<u>1,788,656</u>	<u>1,892,881</u>	<u>1,918,324</u>	<u>2,028,441</u>	<u>2,074,738</u>
General Fund FTE	12.00	12.00	12.00	12.00	12.00
Total FTE	12.00	12.00	12.00	12.00	12.00



Kate Harrison
Councilmember District 4

CONSENT CALENDAR

October 12, 2021

(Continued from September 14, 2021)

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison

Subject: Referral to the Zero Waste and Energy Commission (or Successor Commission) to Hold Joint Meetings to Conduct Community Outreach and Education Events with Regard to the Proposed Ordinance Regulating the Use of Carryout and Pre-checkout Bags and to Make Recommendations to the FITES Committee

RECOMMENDATION

Refer to Berkeley's Zero Waste and Energy Commissions (or successor Commission) to hold joint meetings regarding the proposed Ordinance regulating the use of carryout and pre-checkout bags and promoting the use of reusable bags by December 31, 2021.

As part of the series of meetings, the Commissions should:

1. strive to conduct community/business outreach and education events to include, but not limited to the following entities:
 - a. all stores and events that provide pre-checkout bags (e.g., grocery stores, convenience stores, food marts, and food vendors);
 - b. all restaurants, take-out food stores, food trucks, permitted events, and any other commercial establishment not regulated by the state that provide carryout bags; and
2. make any recommendations with respect to any amendments and appropriate phasing to the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee.

POLICY COMMITTEE RECOMMENDATION

On July 21, 2021 the FITES Committee took the following action:

Action: M/S/C (Harrison/Robinson) to make a positive recommendation to the City Council that the Council direct the Zero Waste and Energy Commission (or

Referral to the Zero Waste and Energy Commission (or Successor Commission) to Hold Joint Meetings to Conduct Community Outreach and Education Events with Regard to the Proposed Ordinance Regulating the Use of Carryout and Pre-checkout Bags and to Make Recommendations to the FITES Committee

CONSENT CALENDAR
October 12, 2021

successor Commission) to hold joint meetings to conduct community outreach and education events and recommend proposed changes and appropriate phasing to the FITES Committee.

Vote: All Ayes

BACKGROUND

On December 10, 2019, Councilmember Harrison and cosponsor Councilmember Hahn submitted a draft Ordinance regulating the use of carryout and pre-checkout bags and promoting the use of reusable bags. The Agenda Committee referred the item to the FITES Committee on November 25, 2019.

By closing loopholes in state and county law, the ordinance is aimed at avoiding unnecessary waste, promoting reuse, reducing greenhouse gas emissions, and protecting land/sea wildlife and the urban environment.

Committee consideration of the item was initially delayed due to examination of statewide preemption issues and the COVID-19 pandemic. Subsequently, the item has gone through a number of revisions.

The latest draft of the ordinance has been crafted to consider and complement existing regulations at the state and county levels. With respect to the regulation of carryout bags, this ordinance is intended to *only* regulate entities for which the City is not preempted by the state. Neither the state nor county regulate pre-checkout bags, however, the proposed ordinance would. This ordinance does not regulate bags that are integral to the manufacturing of products, i.e., product bags, and provides and provides a limited exemption process.

As currently drafted, the ordinance does the following across the following bag types and entities:

Carryout bags:

- Bans thicker plastic film carryout bags, except for bags that contain hot liquids, for:
 - restaurants, take-out food stores, and food trucks.
 - permitted events and city-sponsored events
 - any other commercial establishment not regulated by the state¹
- Defines reusable carryout bags as non-plastic film across:
 - restaurants, take-out food stores, and food trucks.
 - permitted events and city-sponsored events
 - any other commercial establishment not regulated by the state

¹ e.g., smaller clothing stores/book/furniture/electronic/gift stores, clothing stores/book/furniture/electronic/gift stores that don't sell perishable goods and have < \$2 million revenue, grocery stores under \$2 million that don't sell alcohol, convenience stores that don't sell alcohol, small pharmacies < 10k square feet etc.

Referral to the Zero Waste and Energy Commission (or Successor Commission) to Hold Joint Meetings to Conduct Community Outreach and Education Events with Regard to the Proposed Ordinance Regulating the Use of Carryout and Pre-checkout Bags and to Make Recommendations to the FITES Committee

CONSENT CALENDAR
October 12, 2021

- Charges \$0.10 for paper bags at:
 - restaurants, take-out food stores, and food trucks.
- *Second phase 2023*: requires any paper carryout bag provided by the following be 100% recycled material:
 - restaurants, take-out food stores, and food trucks.
 - permitted events and city-sponsored events
 - any other commercial establishment not regulated by the state

Pre-Checkout Bags:

- Bans all but paper pre-checkout bags, except upon request for meat/seafood, across:
 - all stores & events
- Charges \$ 0.10 min. for any paper pre-checkout bag; *Second phase in 2023*: requires any paper pre-checkout bag to be 100% recycled across:
 - all stores & events
- Defines pre-checkout bags as non-plastic film:
 - all stores & events

In addition, the ordinance prevents stores from unreasonably denying customers from bringing their own reusable bags and containers.

As part of its consideration of the proposed ordinance, the FITES Committee provided direction at its July 21, 2021 meeting that the Zero Waste and Energy Commissions (or successor Commission) should hold joint meetings with respect to the ordinance aimed at conducting community/business outreach and education events to include the people and entities regulated by the ordinance and to make recommendations regarding any amendments and appropriate phasing of the law to FITES.

The Zero Waste and Energy Commissions respectively focus on issues ranging from City solid waste policy and goals to climate protection and energy conservation. It is in the public interest for the Council to engage its citizen-led commissions to assist in the outreach process to community members and businesses that may be impacted by the proposed ordinance.

FISCAL IMPACTS

Noticing and providing assistance to Commissioners to conduct a series of community outreach meetings will require staff time.

Referral to the Zero Waste and Energy Commission (or Successor Commission) to Hold Joint Meetings to Conduct Community Outreach and Education Events with Regard to the Proposed Ordinance Regulating the Use of Carryout and Pre-checkout Bags and to Make Recommendations to the FITES Committee

CONSENT CALENDAR
October 12, 2021

ENVIRONMENTAL SUSTAINABILITY

By closing loopholes in state and county law, the ordinance is aimed at avoiding waste, promoting reuse, reducing greenhouse gas emissions, and protecting land/sea wildlife and the urban environment.

CONTACT PERSON

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

ATTACHMENTS:

1. Infographic Comparing State and County Laws to the Proposed Berkeley Ordinance
2. Proposed Ordinance Adding BMC Chapter 11.63 and Regulating the Use of Carryout and Pre-checkout Bags and Promoting the Use of Reusable Bags

COMPARISON OF STATE & COUNTY LAW TO PROPOSED BERKELEY ORDINANCE



Law: Public Resources Code Sections 42281 et seq., Senate Bill 270, Proposition 67,

Applicability:



Retail/grocery stores with annual sales > \$2 million that sell some perishable items



Large retail stores with a pharmacy > 10,000 sq. ft. of retail space



Convenience stores, food marts, or liquor stores that sell e.g. milk, bread, soda, & snack foods, and that have a Type 20 or Type 21 alcohol license

Regulation:



Bans flimsy plastic film carryout bags: **✗**



Thicker film and other "reusable" carryout bags: **\$0.10 min**



Paper carryout bags: **\$0.10 min + 20-40% Recycled Material**



Law: Alameda County Waste Management Authority Ord. 2016-2

Applicability:



Restaurant, take-out food & food-trucks



All other stores w/ enclosed structure selling goods e.g., clothing, food & personal items

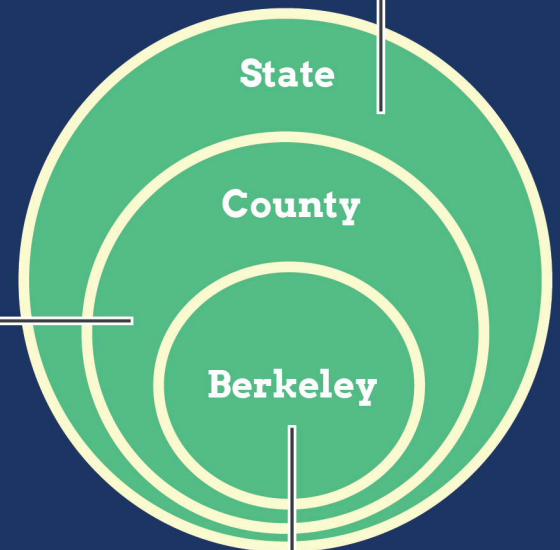
Regulation:



Thicker film and other "reusable" carryout bags: **\$0.10 min**



Paper carryout bags **\$0.10 min (except for restaurants) + 40% Recycled Material**



Law: Proposed Ordinance BMC 11.63

Applicability:



Restaurant, take-out food and food-truck establishments



All other stores selling goods e.g., clothing, food & personal items



Events requiring a street permit



City of Berkeley sponsored events

Regulation:



Bans thicker film bags **✗**



Paper carryout bags **\$0.10 min &**



Pre-checkout bags (e.g. produce) **Starting in 2023: 100% Recycled Paper**



Bans compostable plastic

Reusable non-film Bags

ORDINANCE NO. –N.S.

ADDING CHAPTER 11.63 TO THE BERKELEY MUNICIPAL CODE TO REGULATE
THE USE OF CARRYOUT AND PRE-CHECKOUT BAGS AND PROMOTING THE USE
OF REUSABLE BAGS

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

Section 1. That Chapter 11.63 of the Berkeley Municipal Code is added to read as follows:

Chapter 11.63

**REGULATING THE USE OF CARRYOUT AND PRE-CHECKOUT BAGS AND
PROMOTING THE USE OF REUSABLE BAGS**

Sections:

11.63.010 Findings and purpose.

11.63.020 Definitions.

11.63.030 Carryout Bag restrictions for Covered Entities.

11.63.040 Pre-checkout Bag restrictions for Grocery Stores and Covered Entities.

11.63.050 Unreasonable denial of customer bags or containers.

11.63.060 General exemptions.

11.63.070 Waivers—applicability and process to obtain.

11.63.080 City of Berkeley—purchases prohibited.

11.63.090 Duties, responsibilities and authority of the City of Berkeley.

11.63.100 Liability and enforcement.

11.63.110 Severability.

11.63.120 Construction.

11.63.130 Effective date.

11.63.010 Findings and purpose.

The Council of the City of Berkeley finds and declares as follows:

- A. Single-use plastic bags and plastic produce bags are a significant contributor to street litter, ocean pollution, marine and other wildlife harm and their production creates greenhouse gas emissions.
- B. The production, consumption and disposal of plastic based bags contribute significantly to the depletion of natural resources. Plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and present a great harm to the global environment.
- C. Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish, other seafood and salt that is eventually sold for human consumption. Certain plastic bags can also contain microplastics that present a great harm to our seawater and freshwater life, which indirectly presents a threat to human life.
- D. It is in the interest of the health, safety and welfare of all who live, work and do business in the City that the amount of litter on public streets, parks and in other public places be reduced.
- E. The City of Berkeley must eliminate solid waste at its source and maximize recycling and composting in accordance with its Zero Waste Goals. Reduction of plastic bag waste furthers this goal.
- F. The State of California and Alameda County Waste Management Authority both regulate single-use, paper, and reusable carryout bags respectively under SB 270/Proposition 67 and Ordinance 2012-02 (as amended by Ordinance 2016-02). However, neither currently address all establishments or pre-checkout (e.g., produce) bags to carry fruits, vegetables, and other loose or bulky items while shopping before reaching the checkout area. These bags, which are often plastic, share many of the same physical qualities as single-use plastic carryout bags no longer permitted in California, and are difficult to recycle, reuse or compost.
- G. The State also does not regulate the price of bags provided at the point of sale by restaurants and streets events, including farmers' markets. While the County's Ordinance 2016-02 regulates restaurant carryout bags, it allows thicker film plastic.
- H. The City of Berkeley currently regulates a number of disposable plastic items through the Single-Use Foodware and Litter Reduction Ordinance (Ord. 7639-NS § 1 (part), 2019), but does not impose regulations with respect to bags. It is in the public interest to reduce plastic and paper waste in areas not preempted by the State of California.
- I. This Chapter is consistent with the City of Berkeley's 2009 Climate Action Plan, the County of Alameda Integrated Waste Management Plan, as amended, and the CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

11.63.020 Definitions.

- A. "Carryout Bag" means a bag provided at the check stand, cash register, point of sale or other location for the purpose of transporting food or merchandise out of a Covered Entity. Carryout Bags do not include Pre-checkout or Product Bags.
- B. "Covered Entity" means any of the following:
 - (1) any restaurant, take-out food establishment or other business (including, but not limited to, food sales from vehicles or temporary facilities open to the public) that

receives 90% or more of its revenue from the sale of prepared and ready-to-consume foods and/or drinks to the public and is not subject to the requirements of Public Resources Code Section 42281; and

(2) any event, or Person therein, requiring a street event permit pursuant to Berkeley Municipal Code 13.44.040 and not subject to the requirements of Public Resources Code Section 42281; and

(3) any other commercial establishment that sells perishable or nonperishable goods including, but not limited to, clothing, food and personal items directly to a customer and not subject to the requirements of Public Resources Code Section 42281.

C. "Customer" means any Person obtaining goods from a Covered Entity or Grocery Store.

D. "Grocery Store" means a supermarket, grocery store, convenience food store, foodmart, or other entity engaged in the retail sale of goods that include perishable and nonperishable food items;

E. "100% Recycled Content Paper Bag" means either a Carryout Bag provided by a covered Entity or a Pre-checkout Bag provided by a Grocery Store that contains no old growth fiber and one hundred percent (100%) postconsumer recycled material; is one hundred percent (100%) recyclable and compostable, consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard D6400; and has printed in a highly visible manner on the outside of the bag the words; "Recyclable," the name and location of the manufacturer, and the percentage of postconsumer recycled content;

F. "Reusable Carryout Bag" means a bag that is specifically designed and manufactured for multiple reuse and meets all of the following requirements:

(1) has a minimum lifetime of 125 uses, which for purposes of this subsection, means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet;

(2) has a minimum volume of 15 liters;

(3) is washable by hand or machine, or is made from a material that can otherwise be cleaned or disinfected;

(4) does not contain lead, cadmium or any other heavy metal in toxic amounts, as defined by applicable state and federal standards and regulations for packaging or reusable bags;

(5) has printed on the bag, or on a tag that is permanently affixed to the bag, the name of the manufacturer, the location (country) where the bag was manufactured, a statement that the bag does not contain lead, cadmium, or any other heavy metal in toxic amounts, and the percentage of postconsumer recycled material used, if any; and

(6) is not primarily made of plastic film, regardless of thickness.

G. "Person" means an individual, firm, public or private corporation, limited liability company, partnership, industry or any other entity whatsoever.

H. "Pre-checkout Bag" means a 100% Recycled Content Paper Bag provided to a customer to carry produce, bulk food, or other food items to the point of sale inside a store.

I. "Product Bags" are bags that are integral to the packaging of a product such as film or other bags used to fully encapsulate liquid or semi-liquid takeout food items (e.g., soup containers) to prevent spillage; or bags designed to be placed over articles of clothing on a hanger at dry cleaning or laundry facility.

11.63.030 Carryout Bag restrictions for Covered Entities.

- A. No Covered Entity shall provide or sell a Carryout Bag other than 100% Recycled Content Paper Bags or Reusable Carryout Bags at the check stand, cash register, point of sale or other location to a Customer for the purpose of transporting food or merchandise out of such Covered Entity.
- B. A Covered Entity may provide or make available for sale to a Customer a 100% Recycled Content Paper Bags for a minimum price of ten cents (\$0.10).

11.63.040 Pre-checkout Bag restrictions for Grocery Stores and Covered Entities.

- A. No Grocery Store or Covered Entity shall provide Pre-checkout Bags other than 100% Recycled Content Paper Bags.
- B. Notwithstanding subsection A, Covered Entities and Grocery Stores may provide plastic film bags as Pre-checkout Bags to Customers for the sole purpose of separating meats and seafood only upon the specific request of a Customer. Covered Entities shall not solicit Customers with respect to this exception.
- C. A Grocery Store or Covered Entity may make available for sale to a Customer Pre-checkout Bags for a minimum price of ten cents (\$0.10).

11.63.050 Unreasonable denial of customer bags or containers.

Any establishment regulated by Public Resources Code Section 42281, Alameda County Waste Management Authority Ordinance 2016-02, or this Chapter, shall not unreasonably deny a customer from using bags or containers of any type that they bring themselves, including in lieu of using bags or containers provided by the establishment. However, establishments may refuse, at their sole discretion, any customer-provided bag or container that is cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended food item, or that appears to be excessively soiled or unsanitary. If the customer accepts a store-provided bags or containers in lieu, any charge required pursuant to this ordinance, other applicable law, or the establishment's policy will apply.

11.63.060 General exemptions.

- A. Bags exempt from the Chapter include Product Bags, or bags sold in packages containing multiple bags intended for use as garbage, pet waste or yard waste bags.
- B. Nothing in this Chapter prohibits customers from using bags of any type that they bring to the establishment themselves or from carrying away merchandise or materials that are not placed in a bag at point of sale, in lieu of using bags provided by the establishment.
- C. Notwithstanding the requirements of Sections 11.63.30 and 11.63.40, Covered Entities and Grocery Stores, except as subject to the requirements of Public Resources Code Section 42281, providing 100% Recycled Content Paper Bags as Carryout Bags at the point of sale or Pre-Checkout Bags before the point of sale, shall provide such bags at no cost to a Customer participating in the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code; a Customer participating in CalFresh pursuant to Chapter 1 commencing with Section 18900) of Part 6 of Division 9 of the California Welfare and Institutions Code; and a Customer participating in the Supplemental Food Program pursuant to

Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the California Welfare and Institutions Code.

11.63.070 Waivers—applicability and process to obtain.

- A. The City Manager shall prescribe and adopt rules, regulations and forms for Covered Entities or Grocery Stores to obtain a partial waiver from any requirement of this ordinance upon sufficient evidence by the applicant that the provisions of this Chapter would cause undue hardship. The phrase "undue hardship" may include, but is not limited to situations where compliance with the requirements of this Chapter would deprive a person of a legally protected right.
- B. Waivers may be granted by the City Manager or their designees, based upon documentation provided by the applicant and, at the City Manager's discretion, independent verification, including site visits.
- C. The City Manager or their designees shall act on a waiver application no later than 90 days after receipt of such application, including mailing written notification of the City Manager's decision to the address supplied by the applicant.
- D. Waivers may be granted for a specified term of up to x [x months]. During the waiver term, the Covered Entities or Grocery Store shall make diligent efforts to become compliant. Under extraordinary circumstances, should a Covered Entities or Grocery Store demonstrate that, at the close or expiration of a granted waiver term, and with diligent efforts to become compliant, compliance remains infeasible, additional waivers of up to x (x) months each may be granted. It shall be the Covered Entities or Grocery Store's responsibility to apply for any subsequent waivers in a timely manner.
- E. Notwithstanding the x (x) month maximum term for waivers set forth in Section 11.63.070 (D), in certain limited and unique circumstances existing prior to adoption of this ordinance, where the Covered Entities or Grocery Store demonstrates diligent efforts to comply but, due to insurmountable unique circumstances, may never be reasonably able to comply, the City Manager or their designee may grant a waiver for a longer specified term.

11.63.080 City of Berkeley—purchases prohibited.

The City of Berkeley and any City-sponsored event shall only provide or sell to a Customer 100% Recycled Content Paper Bags or Reusable Carry-out Bags for the purpose of carrying away goods or other materials from the point of sale or event.

11.63.090 Duties, responsibilities and authority of the City of Berkeley.

The City Manager or their designee shall prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this Chapter and is hereby authorized to take any and all actions reasonable and necessary to enforce this Chapter including, but not limited to, inspecting any Covered Entity or Grocery Store's premises to verify compliance.

11.63.100 Liability and enforcement.

- A. Anyone violating or failing to comply with any requirement of this Chapter may be subject to an Administrative Citation pursuant to Chapter 1.28 or charged with an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code; however, no administrative citation may be issued or infraction charged for violation of a

requirement of this Chapter until one year after the effective date of such requirement.

- B. Enforcement shall include written notice of noncompliance and a reasonable opportunity to correct or to demonstrate initiation of a request for a waiver or waivers pursuant to Section 11.63.060.
- C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.
- D. The remedies and penalties provided in this section are cumulative and not exclusive.

11.63.110 Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

11.63.120 Construction.

This Chapter is intended to be a proper exercise of the City's police power, to operate only upon its own officers, agents, employees and facilities and other persons acting within its boundaries, and not to regulate inter-city or interstate commerce. It shall be construed in accordance with that intent.

11.63.130 Effective date.

The provisions in this ordinance are effective [], 2022.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



Office of the Mayor

CONSENT CALENDAR

October 12, 2021

To: Members of the City Council

From: Mayor Jesse Arreguín (Author) and Councilmember Susan Wengraf (Author)

Subject: City Policy Regarding Scheduling City Meetings on Significant Religious Holidays

RECOMMENDATION

Adopt a Resolution establishing an official City of Berkeley policy to avoid scheduling of meetings of the City Legislative Bodies (City Council, Commissions and Boards, Council Policy Committees, Task Forces) on any religious holiday that incorporates significant work restrictions and direct the City Manager to identify those holidays in consultation with community religious leaders.

BACKGROUND

The City of Berkeley traditionally does not schedule any City related meetings on Christian religious holidays such as Christmas, Easter, and Good Friday where such meetings would conflict with religious services and celebration. Currently there is not a policy to refrain from scheduling meetings on other religious holidays such as Rosh Hashana, Yom Kippur, Passover (1st night), Diwali, Chinese New Year, Birth of Baja'u'llah, Kwanzaa, Gantan-sai, Eid al-Fitr and Eid al-Adha.

While consideration has been taken to avoid scheduling meetings on such dates, it is not a consistent practice and, as such, conflicts have occurred. Ensuring that a formal policy is in place to avoid scheduling on all religious holidays that incorporate significant work restrictions will ensure that people of all religions and faiths are treated equally.

FINANCIAL IMPLICATIONS

Staff time to consult with community religious leaders

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with adopting this recommendation.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

1: Resolution

RESOLUTION NO.

ESTABLISHING A PRACTICE TO AVOID SCHEDULING CITY MEETINGS ON ALL SIGNIFICANT RELIGIOUS HOLIDAYS

WHEREAS, The City of Berkeley traditionally does not schedule any City related meetings on Christian religious holidays such as Christmas, Easter, and Good Friday where such meetings would conflict with religious services and celebration; and

WHEREAS, there is no formal policy that addresses the scheduling of meetings on other religious holidays that incorporate significant work restrictions such as Rosh Hashana, Yom Kippur, Passover (1st night), Diwali, Chinese New Year, Birth of Baja'u'llah, Kwanzaa, Gantan-sai, Eid al-Fitr and Eid al-Adha; and

WHEREAS, while consideration has been taken to avoid scheduling meetings on such dates, it is not a consistent practice and, as such, conflicts have occurred; and

WHEREAS, ensuring that a policy is in place to avoid scheduling on religious holidays that incorporate significant work restrictions will ensure that all beliefs and people are treated equally

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it will be the policy of the City to avoid scheduling meetings of City Legislative Bodies (City Council, Commissions and Boards, Council Policy Committees, Task Forces) on any religious holiday that incorporates significant work restrictions and such days shall be identified through consultation with community religious leaders.



CONSENT CALENDAR
Oct. 12, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin, Mayor Arreguín (co-sponsor), Councilmember
Robinson (co-sponsor)

Subject: Letter to Senate Budget Committee Chair Sen. Skinner Regarding Berkeley Pier

RECOMMENDATION

Send a letter to State Senator Nancy Skinner (D-Berkeley), Chair of the Senate Budget Committee, requesting state budget allocations for urgent infrastructure needs at the Berkeley Municipal Pier.

FINANCIAL IMPLICATIONS

None.

CURRENT SITUATION AND ITS EFFECTS

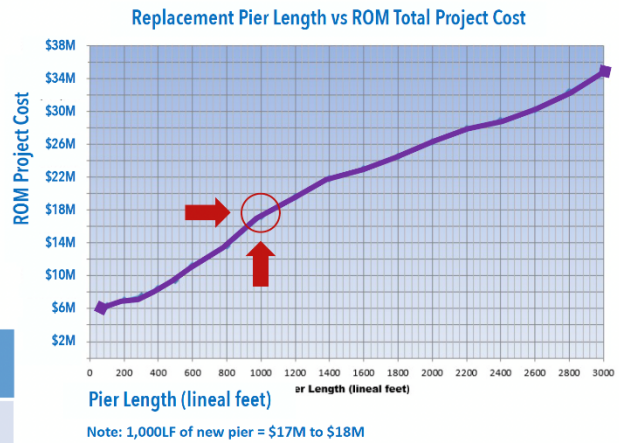
The Marina Fund is projected to exhaust all reserves in FY2022, and its operating deficit will increase to an annual \$800,000. The Berkeley Marina contains over \$200 million in infrastructure assets, with an estimated \$113 million needed in repairs, including a severely dilapidated pier. The Marina Fund has never had a permanent revenue source for capital improvements, and significant deficits have been documented as early as 1999.¹ Funding for infrastructure replacement has been provided in piecemeal fashion through an assortment of grants, loans, the Marina Fund when possible, and more recently, Measure T1 funds. The Berkeley Marina Area Specific Plan (BMASP) project is now underway to plan a revitalization of the area.

The City of Berkeley and Water Emergency Transportation Authority (WETA)'s Pier & Ferry Feasibility Study² estimates a \$32-44 million replacement cost of the pier for a full 70-year lifespan. Currently, proposed concepts in the Berkeley Municipal Pier-Ferry Project include a replacement pier of only one-third to one-half of the full 3000 lineal foot length of the existing pier. The currently recommended \$17.5 million covers the cost of 1,000 feet, but \$35 million would cover the cost of the full 3000 lineal feet.

¹ https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Marina%20Fund%20Update%20041218.pdf

² https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/Public%202021-08-010-Pier-Ferry_W2.pdf

Pier Structural Assessment – Project History



Renovation Options	Estimated Project Costs* (3,000 LF Pier)	Repair Interval Longevity	Life Cycle Costs
1. Rehabilitation	\$22–\$48M	10 yrs 10–15 yrs	\$2M/yr
2. Seismic Strengthening	\$41–\$65M	10–15 yrs 30–50 yrs	\$1M/yr
3. Replacement	\$32–\$44M	20+ yrs 70 yrs	\$0.5M/yr

* Escalated to Year 2023

← Recommended Option



Source: Berkeley/WETA Pier & Ferry Feasibility Study – Community Workshop #2 slides

According to Parks and Waterfront Commission Chairperson Gordon Wozniak, there is a desperate need for \$8 million to dredge the entrance to the main harbor, where boats often run aground at low tide; and the South Sailing Basin, which turns into a mud flat at low tide. With a total funding of \$35 million, the City would have two options: (1) replace the entire 3,000 ft pier, or (2) replace 2,000 ft of the existing pier and dredge both the entrance to the main harbor and the South Sailing Basin.

Funding capital improvements at the Marina Pier is a Strategic Plan Priority Project, advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

BACKGROUND

In May 2021, Governor Gavin Newsom announced a historic \$76 billion state budget surplus, and paired it with federal aid in the SB 129 budget revision, dubbed the “California Comeback Plan.”³ The budget bill, brought by Senate Budget Committee Chair Sen. Nancy Skinner, received only one line-item veto.⁴ It contained major capital expenditures, such as \$6 billion to expand hotel acquisition through Project Homekey.

California’s large budget surplus was the result of its progressive tax structure and strong economic conditions in the face of the COVID-19 pandemic. As vaccination increases and local businesses begin reopening, it is not unreasonable to presume that

³ <https://www.gov.ca.gov/2021/07/12/california-roars-back-governor-newsom-signs-100-billion-california-comeback-plan-to-accelerate-states-recovery-and-tackle-persistent-challenges/>

⁴ <https://www.gov.ca.gov/wp-content/uploads/2021/07/SB-129-Line-Item-Veto.pdf>

this pattern may repeat itself next year. Given the Berkeley Marina’s central location in the Bay Area metropolitan area, near-future plans for ferry service, and the City’s many critical infrastructure needs—including an estimated \$1 billion in unfunded liabilities—the State of California must commit to allocating surplus revenues to meet one-time infrastructure replacement costs while the City develops long-term plans for operating revenues.

Replacing the full 3,000-foot pier will also ensure that the Marina can be a major source of revenue from recreational activities.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

CONTACT PERSON

Councilmember Terry Taplin Council District 2 510-981-7120

Attachments:

1: Letter

The Honorable Nancy Skinner, Chair
Standing Committee on Budget and Fiscal Review
State Capitol, Room 5019
Sacramento, CA 95814

October 12, 2021

Dear Senator Skinner:

As you may know, the City of Berkeley's Municipal Pier urgently needs replacement. However, the City and the Water Emergency Transportation Authority (WETA) lack sufficient funds for a full replacement to accommodate all recreational activities as well as plans for a new ferry. Therefore, we humbly request that the California State Senate consider an appropriation of at least \$17.5 million in the next budget to match the City's recommendation and fund a full replacement of the Marina Pier.

The City of Berkeley and WETA's Pier & Ferry Feasibility Study estimates a \$32-44 million replacement cost of the pier for a full 70-year lifespan. Currently, proposed concepts in the Berkeley Municipal Pier-Ferry Project include a replacement pier of only one-third to one-half of the full 3000 lineal foot length of the existing pier. \$17.5 million covers the cost of 1,000 feet, but \$35 million would cover the cost of the full 3,000 lineal feet.

Additionally, there is a desperate need for \$8 million to dredge the entrance to the main harbor, where boats often run aground at low tide, and the South Sailing Basin, which turns into a mud flat at low tide. Even a State contribution of \$8 million would allow a 2,000 ft long replacement pier to be built, which would accommodate substantially more recreation and pedestrian usage. A longer pier that enables more recreational uses also increases potential revenue for the City.

In your capacity as Chair of the State Senate's Standing Committee on Budget and Fiscal Review, we ask you to consider allocating state funds for infrastructure replacement at the Berkeley Pier. This would go a long way toward restoring a vital public resource in our community, while also guaranteeing future revenue potential and stability for the City's Marina Fund. Thank you very much for your tireless service for the people of Senate District 9.

Respectfully yours,

City Council, City of Berkeley
2180 Milvia St
Berkeley, CA 94704



Kate Harrison
Councilmember District 4

CONSENT CALENDAR
October 12, 2021

To: Honorable Mayor and Members of the City Council
From: Councilmember Harrison
Subject: Adopt a resolution in support of a Direct Pay Provision for the 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit

RECOMMENDATION

Adopt a resolution in support of a Direct Pay Provision for the 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit.

Send copies of the resolution to Senators Feinstein and Padilla, Congresswoman Lee, Chairman Wyden, Chairman Neal, Ranking Member Crapo, and Ranking Member Brady.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

The current federal incentive structure for deploying residential renewable energy, the Investment Tax Credit (ITC), exacerbates inequalities between low-income and high-income Americans. For example, individuals who decide to install solar panels on their buildings must have sufficient cash or credit available to cover the full cost of the parts and installation upfront. Under current tax law, the federal government only reimburses qualifying installations when the individual completes their taxes. This situation disproportionately benefits wealthy individuals and corporations.

Currently, the Senate and the House of Representatives are considering modifications to existing energy related tax provisions. It is therefore prudent to request that that any legislative package include a “direct pay” or any similar cash payment program for residential energy properties as defined in 26 U.S.C. § 25D, providing federal assistance upfront as opposed to at tax time.

BACKGROUND

It is estimated that 42% percent of all U.S energy-related greenhouse emissions come from household decisions.¹ Incentivizing American households to reduce residential emissions and lower their energy bills could have a significant impact on the nation’s overall greenhouse emissions inventory.

¹ Rewiring America, About Us, July 15, 2021, <https://www.rewiringamerica.org/our-mission>.

A direct pay Section 25D subsidy would facilitate increased accessibility to clean energy and would especially benefit the nation's low-income households who spend a disproportionate amount of their incomes to energy. These lower income households have less ability to pay the upfront costs of clean energy investments and often wait months or years, with carry-forward, for their tax refunds. Lower income households are also less likely to owe sufficient federal taxes to receive all the benefits of the ITC for residential clean energy purchases.

Some have expressed opposition to amending Section 25D due to unfounded concerns over fraud and in the difficulty of overseeing and auditing this expanded program. Yet research shows that lower-income households have the lowest levels of tax evasion of any income group.² In addition, safeguards, as well as procedural solutions, that ensure section 25D direct pay – or a similar program – can be implemented so as to strengthen eligibility verification and eliminate the potential for fraud or misuse.

By adopting this resolution in support and sending letters to federal elected officials, Berkeley would be joining more than 300 environmental justice advocates, environmental groups and renewable energy companies who have already lobbied the Senate Finance and House Ways & Means Committees to support a direct pay option for the residential energy efficiency property tax credit.³

FISCAL IMPACTS OF RECOMMENDATION

Staff time will be necessary for the Clerk to send the letter to the specified elected officials.

ENVIRONMENTAL SUSTAINABILITY

Adopting direct pay for residential energy efficient property tax credits could help include lower income communities in the fight against climate change and carbon emissions.

CONTACT PERSON

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

ATTACHMENTS

1. Resolution
2. Letters

² Brookings, How Big is the Problem of Tax Evasion, April 9, 2019, <https://www.brookings.edu/blog/up-front/2019/04/09/howbig-is-the-problem-of-tax-evasion/>.

³ Environmental Justice and Renewable Energy Supporters Call on Congress to Make the Residential Tax Incentive Accessible for Lower-Income Households, PR Web, September 20, 2021, https://www.prweb.com/releases/environmental_justice_and_renewable_energy_supporters_call_on_congress_to_make_the_residential_tax_incentive_accessible_for_lower_income_households/prweb18121265.htm

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

RESOLUTION IN SUPPORT OF DIRECT PAY PROVISION FOR 26 U.S.C. § 25D
RESIDENTIAL ENERGY EFFICIENT PROPERTY TAX CREDIT

Whereas, the credit structure of the federal incentive for the deployment of renewable energy for residential customers, the Investment Tax Credit (ITC), exacerbates inequalities between low-income and high-income Americans; and

Whereas, the Senate and the House of Representatives are currently considering modifications to existing energy related tax provisions, and a coalition comprised of more than 300 environmental justice advocates, environmental groups and renewable energy companies have requested that any legislative package this session include a “direct pay” or any similar cash payment program for residential energy properties as defined in 26 U.S.C. § 25D; and

Whereas, including this amendment in legislation would reduce inequalities between low-income and higher-income Americans by ensuring quick access to ITC benefits and would enhance accessibility to clean energy to households who spend a disproportionate amount of their incomes on energy; and

Whereas, this modification of § 25D could further incentivize American households to reduce residential emissions since forty-two percent of all U.S. energy-related greenhouse emissions come from household decisions.

NOW, THEREFORE BE IT RESOLVED, the City Council of Berkeley expresses its support for including a direct pay provision in the § 25D Residential Energy Efficient Property Tax Credit.

BE IT FURTHER RESOLVED that copies of this Resolution will be sent to Senator Feinstein, Senator Padilla, Congresswoman Barbara Lee, Chairman Wyden, Chairman Neal, Ranking Member Crapo, and Ranking Member Brady.

The Honorable Senator Padilla
United States Senate
112 Hart Senate Office Building
Washington, DC 20510

Re: Support for Direct Pay Provision for 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit

Dear Senator Padilla:

The Berkeley City Council would like to convey its urgent support for amending the 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit to include a direct pay provision or any similar cash payment program for residential energy properties.

The credit structure of the current federal incentive for the deployment of renewable energy for residential, the Investment Tax Credit (ITC), exacerbates inequalities between low-income and high-income Americans who may lack sufficient cash or credit to cover the full cost of the parts and installation upfront and often wait months or years, with carry-forward, for their tax refunds. Lower income households are also less likely to owe sufficient federal taxes to receive all the benefits of the ITC for residential clean energy purchases. Berkeley supports expanding ITC access to low-income households, who already spend a disproportionate amount of their income on energy, with a direct pay provision.

Forty-two percent of all U.S energy-related greenhouse emissions come from household decisions. Equitably incentivizing American households to reduce residential emissions could make a significant difference on the nation's overall greenhouse emissions inventory.

For these reasons, we support and urge your support such an amendment in any legislation this session.

Thank you for your leadership and consideration.

Sincerely,

The Berkeley City Council

The Honorable Senator Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

Re: Support for Direct Pay for 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit

Dear Senator Feinstein:

The Berkeley City Council would like to convey its urgent support for amending the 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit to include a direct pay provision or any similar cash payment program for residential energy properties.

The credit structure of the current federal incentive for the deployment of renewable energy for residential, the Investment Tax Credit (ITC), exacerbates inequalities between low-income and high-income Americans who may lack sufficient cash or credit to cover the full cost of the parts and installation upfront and often wait months or years, with carry-forward, for their tax refunds. Lower income households are also less likely to owe sufficient federal taxes to receive all the benefits of the ITC for residential clean energy purchases. Berkeley supports expanding ITC access to low-income households, who already spend a disproportionate amount of their income on energy, with a direct pay provision.

Forty-two percent of all U.S energy-related greenhouse emissions come from household decisions. Equitably incentivizing American households to reduce residential emissions could make a significant difference on the nation's overall greenhouse emissions inventory.

For these reasons, we support and urge your support such an amendment in any legislation this session.

Thank you for your leadership and consideration.

Sincerely,

The Berkeley City Council

The Honorable Congresswoman Lee
United States House of Representatives
2470 Rayburn House Office Building
Washington, D.C. 20515

Re: Support for Direct Pay for 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit

Dear Congresswoman Lee:

The Berkeley City Council would like to convey its urgent support for amending the 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit to include a direct pay provision or any similar cash payment program for residential energy properties.

The credit structure of the current federal incentive for the deployment of renewable energy for residential, the Investment Tax Credit (ITC), exacerbates inequalities between low-income and high-income Americans who may lack sufficient cash or credit to cover the full cost of the parts and installation upfront and often wait months or years, with carry-forward, for their tax refunds. Lower income households are also less likely to owe sufficient federal taxes to receive all the benefits of the ITC for residential clean energy purchases. Berkeley supports expanding ITC access to low-income households, who already spend a disproportionate amount of their income on energy, with a direct pay provision.

Forty-two percent of all U.S energy-related greenhouse emissions come from household decisions. Equitably incentivizing American households to reduce residential emissions could make a significant difference on the nation's overall greenhouse emissions inventory.

For these reasons, we support and urge your support such an amendment in any legislation this session.

Thank you for your leadership and consideration.

Sincerely,

The Berkeley City Council

Chairman Ron Wyden
U.S. Senate U.S. Senate
Committee on Finance Committee on Finance
219 Dirksen Senate Office Building 219 Dirksen Senate Office Building
Washington, D.C., 20510

Re: Support for Direct Pay for 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit

Dear Senator Wyden:

The Berkeley City Council would like to convey its urgent support for amending the 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit to include a direct pay provision or any similar cash payment program for residential energy properties.

The credit structure of the current federal incentive for the deployment of renewable energy for residential, the Investment Tax Credit (ITC), exacerbates inequalities between low-income and high-income Americans who may lack sufficient cash or credit to cover the full cost of the parts and installation upfront and often wait months or years, with carry-forward, for their tax refunds. Lower income households are also less likely to owe sufficient federal taxes to receive all the benefits of the ITC for residential clean energy purchases. Berkeley supports expanding ITC access to low-income households, who already spend a disproportionate amount of their income on energy, with a direct pay provision.

Forty-two percent of all U.S energy-related greenhouse emissions come from household decisions. Equitably incentivizing American households to reduce residential emissions could make a significant difference on the nation's overall greenhouse emissions inventory.

For these reasons, we support and urge your support such an amendment in any legislation this session.

Thank you for your leadership and consideration.

Sincerely,

The Berkeley City Council

Chairman Richard Neil
The U.S. House of Representatives
Ways & Means Committee
1102 Longworth HOB
Washington, D.C., 20515

Re: Support for Direct Pay for 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit

Dear Congressman Neil:

The Berkeley City Council would like to convey its urgent support for amending the 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit to include a direct pay provision or any similar cash payment program for residential energy properties.

The credit structure of the current federal incentive for the deployment of renewable energy for residential, the Investment Tax Credit (ITC), exacerbates inequalities between low-income and high-income Americans who may lack sufficient cash or credit to cover the full cost of the parts and installation upfront and often wait months or years, with carry-forward, for their tax refunds. Lower income households are also less likely to owe sufficient federal taxes to receive all the benefits of the ITC for residential clean energy purchases. Berkeley supports expanding ITC access to low-income households, who already spend a disproportionate amount of their income on energy, with a direct pay provision.

Forty-two percent of all U.S energy-related greenhouse emissions come from household decisions. Equitably incentivizing American households to reduce residential emissions could make a significant difference on the nation's overall greenhouse emissions inventory.

For these reasons, we support and urge your support such an amendment in any legislation this session.

Thank you for your leadership and consideration.

Sincerely,

The Berkeley City Council

Ranking Member Mike Crapo
U.S. Senate
Committee on Finance Committee on Finance
219 Dirksen Senate Office Building
Washington, D.C., 20510

Re: Support for Direct Pay for 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit

Dear Senator Crapo:

The Berkeley City Council would like to convey its urgent support for amending the 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit to include a direct pay provision or any similar cash payment program for residential energy properties.

The credit structure of the current federal incentive for the deployment of renewable energy for residential, the Investment Tax Credit (ITC), exacerbates inequalities between low-income and high-income Americans who may lack sufficient cash or credit to cover the full cost of the parts and installation upfront and often wait months or years, with carry-forward, for their tax refunds. Lower income households are also less likely to owe sufficient federal taxes to receive all the benefits of the ITC for residential clean energy purchases. Berkeley supports expanding ITC access to low-income households, who already spend a disproportionate amount of their income on energy, with a direct pay provision.

Forty-two percent of all U.S energy-related greenhouse emissions come from household decisions. Equitably incentivizing American households to reduce residential emissions could make a significant difference on the nation's overall greenhouse emissions inventory.

For these reasons, we support and urge your support such an amendment in any legislation this session.

Thank you for your leadership and consideration.

Sincerely,

The Berkeley City Council

Ranking Member Kevin Brady
The U.S. House of Representatives
Ways & Means Committee Ways & Means Committee
1102 Longworth HOB 1102 Longworth HOB
Washington, D.C., 20515

Re: Support for Direct Pay for 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit

Dear Congressman Brady:

The Berkeley City Council would like to convey its urgent support for amending the 26 U.S.C. § 25D Residential Energy Efficient Property Tax Credit to include a direct pay provision or any similar cash payment program for residential energy properties.

The credit structure of the current federal incentive for the deployment of renewable energy for residential, the Investment Tax Credit (ITC), exacerbates inequalities between low-income and high-income Americans who may lack sufficient cash or credit to cover the full cost of the parts and installation upfront and often wait months or years, with carry-forward, for their tax refunds. Lower income households are also less likely to owe sufficient federal taxes to receive all the benefits of the ITC for residential clean energy purchases. Berkeley supports expanding ITC access to low-income households, who already spend a disproportionate amount of their income on energy, with a direct pay provision.

Forty-two percent of all U.S energy-related greenhouse emissions come from household decisions. Equitably incentivizing American households to reduce residential emissions could make a significant difference on the nation's overall greenhouse emissions inventory.

For these reasons, we support and urge your support such an amendment in any legislation this session.

Thank you for your leadership and consideration.

Sincerely,

The Berkeley City Council

Upcoming Worksessions – <i>start time is 6:00 p.m. unless otherwise noted</i>	
Scheduled Dates	
Oct. 19	<ol style="list-style-type: none"> 1. Berkeley Police Department Hiring Practices 2. Crime Report
Dec. 7	<ol style="list-style-type: none"> 1. WETA / Ferry Service at the Marina 2. Presentation by Bay Restoration Authority 3. Update: Zero Waste Rates & Priorities

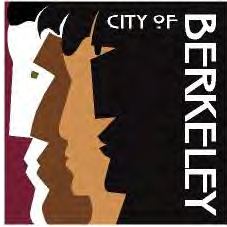
<p>Unscheduled Workshops</p> <ol style="list-style-type: none"> 1. Cannabis Health Considerations 2. Alameda County LAFCO Presentation

<p>Unscheduled Presentations (City Manager)</p> <ol style="list-style-type: none"> 1. Civic Arts Grantmaking Process & Capital Grant Program 2. Review and Update on City’s COVID-19 Response 3. Civic Center – Old City Hall and Veterans Memorial Building
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	City Council Referrals to the Agenda & Rules Committee and Unfinished Business for Scheduling
1.	<p>47. Amending Chapter 19.32 of the Berkeley Municipal Code to Require Kitchen Exhaust Hood Ventilation in Residential and Condominium Units Prior to Execution of a Contract for Sale or Close of Escrow <i>(Reviewed by Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee) (Referred from the January 21, 2020 agenda)</i></p> <p>From: Councilmember Harrison</p> <p>Recommendation:</p> <ol style="list-style-type: none"> 1. Adopt an ordinance amending Berkeley Municipal Code (BMC) 19.32 to require kitchen exhaust ventilation in residential and condominium units prior to execution of a contract for sale or close of escrow. 2. Refer to the City Manager to develop a process for informing owners and tenants of the proper use of exhaust hoods. <p>Financial Implications: See report Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140 Note: <i>Referred to Agenda & Rules for future scheduling.</i></p>
2.	<p>25. Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers <i>(Continued from February 25, 2020. Item contains revised and supplemental materials) (Referred from the May 12, 2020 agenda.)</i></p> <p>From: City Manager</p> <p>Recommendation: Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.</p> <p>Financial Implications: None Contact: Andrew Greenwood, Police, (510) 981-5900; Dave White, City Manager's Office, (510) 981-7000 Note: <i>Referred to Agenda & Rules for future scheduling.</i></p>
3.	<p>Adopt a Resolution Updating City of Berkeley Street Maintenance and Rehabilitation Policy <i>(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee) (Continued from the June 1, 2021 meeting) (Referred from the July 13, 2021 meeting)</i></p> <p>From: Councilmember Harrison (Author), Councilmember Bartlett (Co-Sponsor), Councilmember Taplin (Co-Sponsor)</p> <p>Recommendation:</p> <ol style="list-style-type: none"> 1. Adopt a Resolution updating the City's Street Maintenance and Rehabilitation Policy dated June 1, 2021. 2. Refer the exploration of potential bonding and funding opportunities for improving the Paving Condition Index (PCI) of streets and creating a Paving Master Plan back to the Facilities, Infrastructure, Transportation, Environment & Sustainability (FITES) Committee for further review. <p><i>Policy Committee Recommendation: To move the Public Works supplemental item "City of Berkeley Street Maintenance and Rehabilitation Policy to Council" with a positive recommendation including amendments made during the meeting today, and ask Council to refer the exploration of potential bonding and funding opportunities for improving the PCI of streets and creating a Paving Master Plan back to the FITES Committee for further review.</i></p> <p>Financial Implications: Staff time Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140 Note: <i>Item referred to the Agenda & Rules Committee for future scheduling with the Five-Year Paving Plan.</i></p>

CITY CLERK DEPARTMENT			
WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS BEFORE THE CITY COUNCIL			
Address	Board/ Commission	Appeal Period Ends	Public Hearing
NOD – Notices of Decision			
Public Hearings Scheduled			
2943 Pine Street (construct second story on existing one story)	ZAB		9/28/2021
1205 Peralta Avenue (conversion of an existing garage)	ZAB		10/12/2021
Remanded to ZAB or LPC			
Notes			

9/23/2021



Office of the City Manager

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: November 10, 2020

Item Number: 20

Item Description: Annual Commission Attendance and Meeting Frequency Report

Submitted by: Mark Numainville, City Clerk

The attached memo responds to issues and questions raised at the October 26 Agenda & Rules Committee Meeting and the October 27 City Council Meeting regarding the ability of city boards and commissions to resume regular meeting schedules.



Office of the City Manager

November 9, 2020

To: Mayor and Council
From: Dee Williams-Ridley, City Manager
Subject: Commission Meetings Under COVID-19 Emergency (Item 20)

This memo provides supplemental information for the discussion on Item 20 on the November 10, 2020 Council agenda. Below is a summary and update of the status of meetings of Berkeley Boards and Commissions during the COVID-19 emergency declaration and the data collected by the City Manager on the ability of commissions to resume meetings in 2021.

On March 10, 2020 the City Council ratified the proclamation of the Director of Emergency Services for a state of local emergency related to the COVID-19 pandemic. The emergency proclamation has been renewed twice by the Council and remains in effect.

On March 17, 2020 the City Council adopted Resolution No. 69,331-N.S. which placed limitations of the meetings of City legislative bodies, including all boards and commissions. The resolution allows for commissions to meet to conduct time-sensitive, legally mandated business with the authorization of the City Manager. Since that time, several commissions have obtained this approval and held meetings; many other commissions have not met at all since March.

The City Manager has periodically reviewed the status of commission meetings with the City Council Agenda & Rules Committee. Recently, at the October 12, 2020 Agenda & Rules Committee meeting, the City Manager presented a proposal to allow all commissions to meet under limited circumstances. The Committee voted to endorse the City Manager's recommendation.

Effective October 12, 2020, all City boards and commissions may meet once to develop and finalize their work plan for 2021 and to complete any Council referrals directly related to the COVID-19 pandemic response. A second meeting may be held to

complete this work with specific authorization by the City Manager. It is recommended that the meeting(s) occur by the end of February 2021.

Commissions that have been granted permission to meet under Resolution No. 69,331-N.S. may continue to meet pursuant to their existing authorization, and may also meet to develop their 2021 work plan.

Commissions that have not requested meetings pursuant to the Resolution No. 69,331-N.S. may meet pursuant to the limitations listed above.

In response to questions from the Agenda & Rules Committee and the Council, the City Manager polled all departments that support commissions to obtain information on their capacity to support the resumption of regular commission meetings. The information in Attachment 1 shows the information received from the departments and notes each commission's ability to resume a regular, or semi-regular, meeting schedule in 2021.

In summary, there are 24 commissions that have staff resources available to support a regular meeting schedule in 2021. Seven of these 24 commissions have been meeting regularly during the pandemic. There are five commissions that have staff resources available to support a limited meeting schedule in 2021. There are seven commissions that currently do not have staff resources available to start meeting regularly at the beginning of 2021. Some of these seven commissions will have staff resources available later in 2021 to support regular meetings. Please see Attachment 1 for the full list of commissions and their status.

With regards to commission subcommittees, there has been significant discussion regarding the ability of staff to support these meetings in a virtual environment. Under normal circumstances, the secretary's responsibilities regarding subcommittees is limited to posting the agenda and reserving the meeting space (if in a city building). With the necessity to hold the meetings in a virtual environment and be open to the public, it is likely that subcommittee meetings will require significantly more staff resources to schedule, train, manage, and support the work of subcommittees on Zoom or a similar platform. This additional demand on staff resources to support commission subcommittees is not feasible for any commission at this time.

One possible option for subcommittees is to temporarily suspend the requirement for ad hoc subcommittees of city commissions to notice their meetings and require public participation. Ad hoc subcommittees are not legislative bodies under the Brown Act and are not required to post agendas or allow for public participation. These requirements are specific to Berkeley and are adopted by resolution in the Commissioners' Manual. If it is the will of the Council, staff could introduce an item to temporarily suspend these

requirements which will allow subcommittees of all commissions to meet as needed to develop recommendations that will be presented to the full commission.

The limitations on the meetings of certain commissions are due to the need to direct staff resources and the resources of city legislative bodies to the pandemic response. Some of the staff assigned as commission secretaries are engaged in work with the City Emergency Operations Center or have been assigned new duties specifically related to the impacts of the pandemic.

Meeting frequency for boards and commissions will continue to be evaluated on a regular basis by the City Manager and the Health Officer in consultation with Department Heads and the City Council.

Attachments:

1. List of Commissions with Meeting Status
2. Resolution 69,331-N.S.

**November 10, 2020 - Item 20
Supplemental Information**

<u>Boards and Commissions</u>	<u>Meetings Held Under COVID March - Oct</u>	<u>Regular Mtg. Date</u>	<u>Secretary</u>	<u>Dept.</u>	<u>Resume Regular Schedule in January 2021?</u>	<u>Note</u>
Fair Campaign Practices Commission	9	3rd Thur.	Sam Harvey	CA	YES	Have been meeting regularly under COVID Emergency
Open Government Commission	6	3rd Thur.	Sam Harvey	CA	YES	Have been meeting regularly under COVID Emergency
Animal Care Commission	0	3rd Wed.	Amelia Funghi	CM	YES	
Police Review Commission	10	2nd & 4th Wed.	Katherine Lee	CM	YES	Have been meeting regularly under COVID Emergency
Disaster and Fire Safety Commission	4	4th Wed.	Keith May	FES	YES	
Community Health Commission	0	4th Thur.	Roberto Terrones	HHCS	YES	
Homeless Commission	0	2nd Wed.	Josh Jacobs	HHCS	YES	
Homeless Services Panel of Experts	5	1st Wed	Josh Jacobs	HHCS	YES	
Human Welfare & Community Action Commission	0	3rd Wed.	Mary-Claire Katz	HHCS	YES	
Mental Health Commission	1	4th Thur.	Jamie Works-Wright	HHCS	YES	
Sugar-Sweetened Beverage Product Panel of Experts	0	3rd Thur.	Dechen Tsering	HHCS	YES	
Civic Arts Commission	2	4th Wed.	Jennifer Lovvorn	OED	YES	
Elmwood BID Advisory Board	1	Contact Secretary	Kieron Slaughter	OED	YES	
Loan Administration Board	0	Contact Secretary	Kieron Slaughter	OED	YES	
Solano Avenue BID Advisory Board	2	Contact Secretary	Eleanor Hollander	OED	YES	
Design Review Committee	6	3rd Thur.	Anne Burns	PLD	YES	Have been meeting regularly under COVID Emergency
Energy Commission	0	4th Wed.	Billi Romain	PLD	YES	
Landmarks Preservation Commission	6	1st Thur.	Fatema Crane	PLD	YES	Have been meeting regularly under COVID Emergency
Planning Commission	3	1st Wed.	Alene Pearson	PLD	YES	Have been meeting regularly under COVID Emergency
Zoning Adjustments Board	11	2nd & 4th Thur.	Shannon Allen	PLD	YES	Have been meeting regularly under COVID Emergency
Parks and Waterfront Commission	4	2nd Wed.	Roger Miller	PRW	YES	
Commission on Disability	0	1st Wed.	Dominika Bednarska	PW	YES	
Public Works Commission	4	1st Thur.	Joe Enke	PW	YES	
Zero Waste Commission	0	4th Mon.	Heidi Obermeit	PW	YES	
Commission on the Status of Women	0	4th Wed.	Shallon Allen	CM	YES - LIMITED	Secretary has intermittent COVID assignments

November 10, 2020 - Item 20
Supplemental Information

<u>Boards and Commissions</u>	<u>Meetings Held Under COVID March - Oct</u>	<u>Regular Mtg. Date</u>	<u>Secretary</u>	<u>Dept.</u>	<u>Resume Regular Schedule in January 2021?</u>	<u>Note</u>
Commission on Aging	0	3rd Wed.	Richard Castrillon	HHCS	REDUCED FREQUENCY	Significant Dept. resources assigned to COVID response
Housing Advisory Commission	0	1st Thur.	Mike Uberti	HHCS	REDUCED FREQUENCY	Significant Dept. resources assigned to COVID response
Measure O Bond Oversight Committee	0	3rd Monday	Amy Davidson	HHCS	REDUCED FREQUENCY	Significant Dept. resources assigned to COVID response
Transportation Commission	2	3rd Thur.	Farid Javandel	PW	REDUCED FREQUENCY	Staff assigned to COVID response
Children, Youth, and Recreation Commission	0	4th Monday	Stephanie Chu	PRW	NO - SEPT 2021	Staff assigned to COVID response
Youth Commission	0	2nd Mon.	Ginsi Bryant	PRW	NO - SEPT 2021	Staff assigned to COVID response
Community Environmental Advisory Commission	0	2nd Thur.	Viviana Garcia	PLD	NO - JUNE 2021	Staff assigned to COVID response
Cannabis Commission	0	1st Thur.	VACANT	PLD	NO - JAN. 2022	Staff vacancy
Peace and Justice Commission	0	1st Mon.	VACANT	CM	NO	Staff vacancy
Commission on Labor	0	3rd Wed., alternate mon	Kristen Lee	HHCS	NO	Staff assigned to COVID response
Personnel Board	1	1st Mon.	La Tanya Bellow	HR	NO	Staff assigned to COVID response

RESOLUTION NO. 69,331-N.S.

RATIFYING THE RECOMMENDATIONS ISSUED BY THE DIRECTOR OF EMERGENCY SERVICES AND THE PUBLIC HEALTH OFFICER REGARDING MEETINGS OF BERKELEY LEGISLATIVE BODIES IN RESPONSE TO THE COVID-19 (NOVEL CORONAVIRUS) PANDEMIC

WHEREAS, on March 3, 2020, pursuant to Berkeley Municipal Code section 2.88.040, the City Manager, serving as the Director of Emergency Services, proclaimed the existence of a local emergency; and

WHEREAS, the proclamation was warranted by virtue of the extreme peril to the safety of persons and property in the City caused by pandemic in the form of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus ("COVID-19"), including confirmed cases in California and the San Francisco Bay Area, and presumed cases in Alameda County prompting the County to declare a local health emergency; and

WHEREAS, the proclamation of the Director of Emergency Services was ratified by the City Council on March 10, 2020; and

WHEREAS, the continued spread of COVID-19 and increase in community transmission cases in surrounding counties warrant further measures be taken by the City to protect the community; and

WHEREAS, the Public Health Officer has issued guidelines for limiting mass gatherings; and

WHEREAS, certain limitations on the meetings of legislative bodies in the City of Berkeley is warranted; and

WHEREAS, the continued essential functions of the City and certain legislative bodies must continue for time-sensitive, legally mandated actions; and

WHEREAS, the Director of Emergency Services presented recommendations to the Agenda & Rules Committee on March 12, 2020 regarding the meetings of legislative bodies; and

WHEREAS, the Agenda & Rules Committee recommended that said recommendations be forwarded to the City Council for acknowledgement and ratification.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the following recommendations issued by the Director of Emergency Services and the Public Health Officer regarding limitations and practices for legislative bodies of the City of Berkeley are hereby acknowledged and ratified:

Section 1. Boards and Commissions

Commissions listed below may continue to meet only if they have time-sensitive, legally mandated business to complete, as determined by the Director of Emergency Services. The City may consider teleconferencing for these commissions, if feasible.

Design Review Committee
Fair Campaign Practices Commission
Housing Advisory Commission (limited to quasi-judicial activities)
Joint Subcommittee on the Implementation of State Housing Laws
Landmarks Preservation Commission
Open Government Commission
Personnel Board
Planning Commission
Police Review Commission
Zoning Adjustments Board

Commissions in Category B shall not meet for a period of 60 days. This will be re-evaluated at the Agenda & Rules Committee meeting on April 13, 2020. A Commission in Category B may convene a meeting if it has time-sensitive, legally-mandated business to complete, as determined by the Director of Emergency Services.

Category B

Animal Care Commission
Cannabis Commission
Civic Arts Commission
Children, Youth, and Recreation Commission
Commission on Aging
Commission on Disability
Commission on Labor
Commission on the Status of Women
Community Environmental Advisory Commission
Community Health Commission
Disaster and Fire Safety Commission
Elmwood Business Improvement District Advisory Board
Energy Commission
Homeless Commission
Homeless Services Panel of Experts
Housing Advisory Commission
Human Welfare and Community Action Commission
Measure O Bond Oversight Committee
Mental Health Commission
Parks and Waterfront Commission
Peace and Justice Commission
Public Works Commission
Solano Avenue Business Improvement District Advisory Board
Sugar-Sweetened Beverage Product Panel of Experts

Transportation Commission
Youth Commission
Zero Waste Commission
Loan Administration Board

Section 2. City Council Policy Committees

The Agenda & Rules Committee and the Budget & Finance Committee may continue to meet to fulfill their legislative and advisory responsibilities. All other Policy Committees (Facilities, Infrastructure, Transportation, Environment & Sustainability, Public Safety, Land Use, Housing & Economic Development, and Health, Life Enrichment Equity & Community) are suspended indefinitely. The 120-day deadline to consider an item will be tolled during the suspension of business.

Section 3. City Council


For City Council meetings, the City will continue to advise and implement social distancing by limiting the capacity of the Council Chambers, providing an overflow room, attempting to limit the duration of the meeting, only conducting essential business, and limiting or suspending ceremonial items. The City will adhere to and implement the provisions of the Governor's Executive Order #N-25-20 related to the Brown Act and the utilization of technology to facilitate participation.

The foregoing Resolution was adopted by the Berkeley City Council on March 17, 2020 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: None.



Jesse Arreguin, Mayor

Attest: 

Mark Numalville, City Clerk



Office of the City Manager

October 22, 2020

To: Berkeley Boards and Commissions

From: *DWR* Dee Williams-Ridley, City Manager

Subject: Commission Meetings During COVID-19 Emergency

This memo serves to provide a summary and update of the status of meetings of Berkeley Boards and Commissions during the COVID-19 emergency declaration.

On March 10, 2020, the City Council ratified the proclamation of the Director of Emergency Services for a state of local emergency related to the COVID-19 pandemic. The emergency proclamation has been renewed twice by the Council and remains in effect.

On March 17, 2020, the City Council adopted Resolution No. 69,331-N.S. which placed limitations of the meetings of City legislative bodies, including all boards and commissions. The resolution allows for commissions to meet to conduct time-sensitive, legally mandated business with the authorization of the City Manager. Since that time, several commissions have obtained this approval and held meetings; many other commissions have not met at all since March.

The City Manager has periodically reviewed the status of commission meetings with the City Council Agenda & Rules Committee. Recently, at the October 12, 2020, Agenda & Rules Committee meeting, the City Manager presented a proposal to allow all commissions to meet under limited circumstances. The Committee voted to endorse the City Manager's recommendation.

Effective October 12, 2020, all City boards and commissions may meet once to develop and finalize their work plan for 2021 and to complete any Council referrals directly related to the COVID-19 pandemic response. A second meeting may be held to complete this work with specific authorization by the City Manager. It is recommended that the meeting(s) occur by the end of February 2021.

Commissions that have been granted permission to meet under Resolution No. 69,331-N.S. may continue to meet pursuant to their existing authorization, and may also meet to develop their 2021 work plan.

Commissions that have not requested meetings pursuant to the Resolution No. 69,331-N.S. may meet pursuant to the limitations listed above.

To assist commissions with the development of their work plan and to provide the City Council with a consistent framework to review the work plans, the City Manager has developed the following items to consider in developing the work plan that is submitted to the City Council agenda.

Prompts for Commissions to use in work plan:

- What commission items for 2021 have a direct nexus with the COVID-19 response or are the result of a City Council referral pertaining to COVID-19?
- What commission items for 2021 are required for statutory reasons?
- What commission items for 2021 are required for budgetary or fund allocation reasons?
- What commission items for 2021 support council-adopted or voter-adopted mission critical projects or programs?
- What are the anticipated staff demands (above and beyond baseline) for analysis, data, etc., to support commission work in 2021 (baseline duties = posting agendas, creating packets, attend meetings, minutes, etc.)?

The limitations on commission meetings are due to the need to direct staff resources and the resources of city legislative bodies to the pandemic response. Many of the staff assigned as commission secretaries are engaged in work with the City Emergency Operations Center or have been assigned new specific duties related to the impacts of the pandemic.

Meeting frequency for boards and commissions will continue to be evaluated on a regular basis by the City Manager in consultation with Department Heads and the City Council. More frequent meetings by commissions will be permitted as the conditions under COVID-19 dictate.

Thank you for your service on our boards and commissions. The City values the work of our commissions and we appreciate your partnership and understanding as we address this pandemic as a resilient and vibrant community.

Attachments:

1. Resolution 69,331-N.S.
2. List of Commissions with Meeting Data

cc: Mayor and City Councilmembers
Senior Leadership Team

RESOLUTION NO. 69,331-N.S.

RATIFYING THE RECOMMENDATIONS ISSUED BY THE DIRECTOR OF EMERGENCY SERVICES AND THE PUBLIC HEALTH OFFICER REGARDING MEETINGS OF BERKELEY LEGISLATIVE BODIES IN RESPONSE TO THE COVID-19 (NOVEL CORONAVIRUS) PANDEMIC

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WHEREAS, the proclamation was warranted by virtue of the extreme peril to the safety of persons and property in the City caused by pandemic in the form of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus ("COVID-19"), including confirmed cases in California and the San Francisco Bay Area, and presumed cases in Alameda County prompting the County to declare a local health emergency; and

WHEREAS, the proclamation of the Director of Emergency Services was ratified by the City Council on March 10, 2020; and

WHEREAS, the continued spread of COVID-19 and increase in community transmission cases in surrounding counties warrant further measures be taken by the City to protect the community; and

WHEREAS, the Public Health Officer has issued guidelines for limiting mass gatherings; and

WHEREAS, certain limitations on the meetings of legislative bodies in the City of Berkeley is warranted; and

WHEREAS, the continued essential functions of the City and certain legislative bodies must continue for time-sensitive, legally mandated actions; and

WHEREAS, the Director of Emergency Services presented recommendations to the Agenda & Rules Committee on March 12, 2020 regarding the meetings of legislative bodies; and

WHEREAS, the Agenda & Rules Committee recommended that said recommendations be forwarded to the City Council for acknowledgement and ratification.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the following recommendations issued by the Director of Emergency Services and the Public Health Officer regarding limitations and practices for legislative bodies of the City of Berkeley are hereby acknowledged and ratified:

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Elmwood Business Improvement District Advisory Board
Energy Commission
Homeless Commission
Homeless Services Panel of Experts
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Sugar-Sweetened Beverage Product Panel of Experts

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Youth Commission
Zero Waste Commission
Loan Administration Board

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For City Council meetings, the City will continue to advise and implement social distancing by limiting the capacity of the Council Chambers, providing an overflow room, attempting to limit the duration of the meeting, only conducting essential business, and limiting or suspending ceremonial items. The City will adhere to and implement the provisions of the Governor's Executive Order #N-25-20 related to the Brown Act and the utilization of technology to facilitate participation.

The foregoing Resolution was adopted by the Berkeley City Council on March 17, 2020 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: None.



Jesse Arreguin, Mayor

Attest: 

Mark Numalville, City Clerk



OFFICE OF THE GOVERNOR

June 2, 2021

VIA EMAIL

Graham Knaus, Executive Director
CA State Assoc. of Counties
gknaus@counties.org

Jean Kinney Hurst, Legislative Advocate
Urban Counties of CA
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Kristopher M. Anderson, Esq., Legislative
Advocate
Assoc. of CA Water Agencies
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RE: Transition Period Prior to Repeal of COVID-related Executive Orders

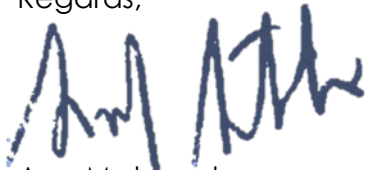
Dear Mr. Knaus, Ms. Miller, Ms. Hurst, Ms. Preston, Ms. Heaton, Ms. King, Ms. Coleman, Ms. Blacet-Hyden, Mr. McCormick, Mr. Anderson, and colleagues,

Thank you for your correspondence of May 18, 2021, inquiring what impact the anticipated June 15 termination of the Blueprint for a Safer Economy will have on Executive Order N-29-20, which provided flexibility to state and local agencies and boards to conduct their business through virtual public meetings during the COVID-19 pandemic.

Please be assured that this Executive Order Provision will not terminate on June 15 when the Blueprint is scheduled to terminate. While the Governor intends to terminate COVID-19 executive orders at the earliest possible date at which conditions warrant, consistent with the Emergency Services Act, the Governor recognizes the importance of an orderly return to the ordinary conduct of public meetings of state and local agencies and boards. To this end, the Governor's office will work to provide notice to affected stakeholders in advance of rescission of this provision to provide state and local agencies and boards time necessary to meet statutory and logistical requirements. Until a further order issues, all entities may continue to rely on N-29-20.

We appreciate your partnership throughout the pandemic.

Regards,

A handwritten signature in blue ink, appearing to read 'Ana Matosantos', written in a cursive style.

Ana Matosantos
Cabinet Secretary



NEWS RELEASE

Release

June 4, 2021

Number: 2021-58

Standards Board Readopts Revised Cal/OSHA COVID-19 Prevention Emergency Temporary Standards

The revised Cal/OSHA standards are expected to go into effect no later than June 15

Sacramento — The Occupational Safety and Health Standards Board on June 3 readopted Cal/OSHA's revised COVID-19 prevention emergency temporary standards.

Last year, the Board adopted health and safety standards to protect workers from COVID-19. The standards did not consider vaccinations and required testing, quarantining, masking and more to protect workers from COVID-19.

The changes adopted by the Board phase out physical distancing and make other adjustments to better align with the state's June 15 goal to retire the Blueprint. Without these changes, the original standards, would be in place until at least October 2. These restrictions are no longer required given today's record low case rates and the fact that we've administered 37 million vaccines.

The revised emergency standards are expected to go into effect no later than June 15 if approved by the Office of Administrative Law in the next 10 calendar days. Some provisions go into effect starting on July 31, 2021.

The [revised standards](#) are the first update to Cal/OSHA's temporary COVID-19 prevention requirements adopted in November 2020.

The Board may further refine the regulations in the coming weeks to take into account changes in circumstances, especially as related to the availability of vaccines and low case rates across the state.

The standards apply to most workers in California not covered by Cal/OSHA's Aerosol Transmissible Diseases [standard](#). Notable revisions include:

- **Face Coverings:**
 - Indoors, fully vaccinated workers without COVID-19 symptoms do not need to wear face coverings in a room where everyone else is fully vaccinated and not showing symptoms. However, where there is a mixture of vaccinated and unvaccinated persons in a room, all workers will continue to be required to wear a face covering.
 - Outdoors, fully vaccinated workers without symptoms do not need to wear face coverings. However, outdoor workers who are not fully vaccinated must continue to wear a face covering when they are less than six feet away from another person.
- **Physical Distancing:** When the revised standards take effect, employers can eliminate physical distancing and partitions/barriers for employees working indoors and at outdoor mega events if they provide respirators, such as N95s, to unvaccinated employees for voluntary use. After July 31, physical distancing

and barriers are no longer required (except during outbreaks), but employers must provide all unvaccinated employees with N95s for voluntary use.

- **Prevention Program:** Employers are still required to maintain a written COVID-19 Prevention Program but there are some key changes to requirements:
 - Employers must review the California Department of Public Health’s [Interim guidance for Ventilation, Filtration, and Air Quality in Indoor Environments](#).
 - COVID-19 prevention training must now include information on how the vaccine is effective at preventing COVID-19 and protecting against both transmission and serious illness or death.
- **Exclusion from the Workplace:** Fully vaccinated workers who do not have COVID-19 symptoms no longer need to be excluded from the workplace after a close contact.
- **Special Protections for Housing and Transportation:** Special COVID-19 prevention measures that apply to employer-provided housing and transportation no longer apply if all occupants are fully vaccinated.

The Standards Board will file the readoption rulemaking package with the Office of Administrative Law, which has 10 calendar days to review and approve the temporary workplace safety standards enforced by Cal/OSHA. Once approved and published, the full text of the revised emergency standards will appear in the Title 8 sections [3205](#) (COVID-19 Prevention), [3205.1](#) (Multiple COVID-19 Infections and COVID-19 Outbreaks), [3205.2](#) (Major COVID-19 Outbreaks) [3205.3](#) (COVID-19 Prevention in Employer-Provided Housing) and [3205.4](#) (COVID-19 Prevention in Employer-Provided Transportation) of the [California Code of Regulations](#). Pursuant to the state’s [emergency rulemaking process](#), this is the first of two opportunities to readopt the temporary standards after the initial effective period.

The Standards Board also convened a representative subcommittee to work with Cal/OSHA on a proposal for further updates to the standard, as part of the emergency rulemaking process. It is anticipated this newest proposal, once developed, will be heard at an upcoming Board meeting. The subcommittee will provide regular updates at the Standards Board monthly meetings.

The [Occupational Safety and Health Standards Board](#), a seven-member body appointed by the Governor, is the standards-setting agency within the Cal/OSHA program. The Standards Board’s objective is to adopt reasonable and enforceable standards at least as effective as federal standards. The Standards Board also has the responsibility to grant or deny applications for permanent variances from adopted standards and respond to petitions for new or revised standards.

The California Division of Occupational Safety and Health, or [Cal/OSHA](#), is the division within the Department of Industrial Relations that helps protect California’s workers from health and safety hazards on the job in almost every workplace. [Cal/OSHA’s Consultation Services Branch](#) provides free and voluntary assistance to employers to improve their health and safety programs. Employers should call (800) 963-9424 for assistance from Cal/OSHA Consultation Services.

Contact: Erika Monterroza / Frank Polizzi, Communications@dir.ca.gov, (510) 286-1161.

The [California Department of Industrial Relations](#), established in 1927, protects and improves the health, safety, and economic well-being of over 18 million wage earners, and helps their employers comply with state labor laws. DIR is housed within the [Labor & Workforce Development Agency](#)



Office of the City Manager

June 1, 2021

To: Agenda & Rules Committee

From: Dee Williams-Ridley, City Manager

Subject: Preliminary Analysis of Return to In-Person Meetings of City Legislative Bodies

Introduction

This memo responds to the request from the Agenda & Rules Committee on May 17, 2021 for information from the City Manager on the options and timing for a return to in-person meetings for City legislative bodies. The analysis below is a preliminary summary of the considerations and options for returning to in-person meetings.

With the onset of the COVID-19 pandemic, the shelter-in-place order, and the issuance of Executive Order N-29-20 (“Executive Order”) in the spring of 2020, the City quickly adjusted to a virtual meeting model. Now, almost 15 months later, with the Blueprint for a Safer Economy scheduled to sunset on June 15, 2021, the City is faced with a new set of conditions that will impact how public meetings may be held in Berkeley. While the June 15, 2021 date appears to be certain, there is still a great deal of uncertainty about the fate of the Executive Order. In addition, the City is still awaiting concrete, specific guidance from the State with regards to regulations that govern public meetings and public health recommendations that will be in place after June 15, 2021.

For background, Executive Order N-29-20 allows legislative bodies to meet in a virtual setting and suspends the following Brown Act requirements:

- Printing the location of members of the legislative body on the agenda;
- Posting the agenda at the location of members of the legislative body that are remote; and
- Making publicly available remote locations from which members of the legislative body participate.

Meeting Options

There are three groups of City Legislative bodies that are considered in this memo

- City Council;
- City Council Policy Committees; and
- Boards and Commissions.

The three meeting models available are:

- In-person only;
- Virtual only; or
- Hybrid (in-person and virtual).

The scenarios below show the options available for each given set of facts.

Summary Recommendations of Meeting Options	Physical Distancing			No Physical Distancing		
	In-Person	Hybrid	Virtual*	In-Person	Hybrid	Virtual*
	City Council	X	X	X	X	X
Policy Committees			X	X		X
Board and Commissions			X	X		X

* The ability to hold virtual-only meetings is dependent on the status of Executive Order N-29-20

Currently, the Centers for Disease Control recommends physical distancing for unvaccinated persons. While the City and the community have made tremendous progress with regards to vaccination, the City would use the guidelines for unvaccinated persons when making determinations regarding public meetings.

Meeting Type Considerations

Our previous experience pre-pandemic and our experience over the past 15 months demonstrates that the City can conduct all in-person and all virtual meetings. However, the possibility of hybrid meetings presents new questions to consider. The primary concern for a return to in-person meetings using a hybrid model is the impact on the public experience and the legislative process.

Will the legislative body be able to provide a transparent, coherent, stable, informative, and meaningful experience for the both the public in attendance and virtually?

Will the legislative body be able to conduct the legislative process in an efficient, coherent, and meaningful manner with the members split between in-person and virtual, and considering the additional delays and logistical challenges of allowing for public participation in a hybrid model?

For the City Council, testing has shown that the larger space and technology infrastructure at the Boardroom will allow the Council to conduct all three types of meetings (in-person, hybrid, virtual).

For Policy Committees and Commissions, only the “all virtual” or “all in-person” meetings are recommended. Preliminary testing has shown that the audio/visual limitations of the meeting rooms available for these bodies would result in inefficient and cumbersome management of the proceedings in a hybrid model. In addition, there are considerations to analyze regarding the available bandwidth in city facilities and all members having access to adequate devices. Continuing the all virtual model for as long as possible, then switching to an all in-person model when conditions permit provides the best access, participation, and legislative experience for the public and the legislative body.

Other Considerations

Some additional factors to consider in the evaluation of returning to in-person or hybrid meetings are:

- How to address vaccination status for in-person attendees.
- Will symptom checks and/or temperature checks at entry points be required?
- Who is responsible for providing PPE for attendees?
- How are protocols for in-person attendees to be enforced?
- Physical distancing measures for the Mayor and City Councilmembers on the dais.
- Installation of physical barriers and other temporary measures.
- Will the podium and microphone need to be sanitized after every speaker?
- High number of touch points in meeting rooms.
- Will chairs for the public and staff need to be sanitized if there is turnover during the meeting?
- Determining the appropriate capacity for meeting locations.
- The condition and capacity of meeting room ventilation system and air cycling abilities.
- How to receive and share Supplemental Items, Revisions, Urgent Items, and submissions by the public both in-person and virtually.
- Budget including costs for equipment, physical improvements, A/V, PPE, and sanitization.

Conclusion

As stated above, conditions are changing daily, and there is a high degree of uncertainty surrounding the future guidance, regulations, and actions at the state level. Planning, testing and analysis are already underway to prepare for an eventual return to in-person meetings. Staff will continue to monitor the evolving legislative and public health circumstances and advise the committee at future meetings.

Attachment:

1. Executive Order N-29-20

**EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA**

EXECUTIVE ORDER N-29-20

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS despite sustained efforts, the virus continues to spread and is impacting nearly all sectors of California; and

WHEREAS the threat of COVID-19 has resulted in serious and ongoing economic harms, in particular to some of the most vulnerable Californians; and

WHEREAS time bound eligibility redeterminations are required for Medi-Cal, CalFresh, CalWORKs, Cash Assistance Program for Immigrants, California Food Assistance Program, and In Home Supportive Services beneficiaries to continue their benefits, in accordance with processes established by the Department of Social Services, the Department of Health Care Services, and the Federal Government; and

WHEREAS social distancing recommendations or Orders as well as a statewide imperative for critical employees to focus on health needs may prevent Medi-Cal, CalFresh, CalWORKs, Cash Assistance Program for Immigrants, California Food Assistance Program, and In Home Supportive Services beneficiaries from obtaining in-person eligibility redeterminations; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567 and 8571, do hereby issue the following order to become effective immediately:

IT IS HEREBY ORDERED THAT:

1. As to individuals currently eligible for benefits under Medi-Cal, CalFresh, CalWORKs, the Cash Assistance Program for Immigrants, the California Food Assistance Program, or In Home Supportive Services benefits, and to the extent necessary to allow such individuals to maintain eligibility for such benefits, any state law, including but not limited to California Code of Regulations, Title 22, section 50189(a) and Welfare and Institutions Code sections 18940 and 11265, that would require redetermination of such benefits is suspended for a period of 90 days from the date of this Order. This Order shall be construed to be consistent with applicable federal laws, including but not limited to Code of Federal Regulations, Title 42, section 435.912, subdivision (e), as interpreted by the Centers for Medicare and Medicaid Services (in guidance issued on January 30, 2018) to permit the extension of

otherwise-applicable Medicaid time limits in emergency situations.

2. Through June 17, 2020, any month or partial month in which California Work Opportunity and Responsibility to Kids (CalWORKs) aid or services are received pursuant to Welfare and Institutions Code Section 11200 et seq. shall not be counted for purposes of the 48-month time limit set forth in Welfare and Institutions Code Section 11454. Any waiver of this time limit shall not be applied if it will exceed the federal time limits set forth in Code of Federal Regulations, Title 45, section 264.1.
3. Paragraph 11 of Executive Order N-25-20 (March 12, 2020) is withdrawn and superseded by the following text:

Notwithstanding any other provision of state or local law (including, but not limited to, the Bagley-Keene Act or the Brown Act), and subject to the notice and accessibility requirements set forth below, a local legislative body or state body is authorized to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body or state body. All requirements in both the Bagley-Keene Act and the Brown Act expressly or impliedly requiring the physical presence of members, the clerk or other personnel of the body, or of the public as a condition of participation in or quorum for a public meeting are hereby waived.

In particular, any otherwise-applicable requirements that

- (i) state and local bodies notice each teleconference location from which a member will be participating in a public meeting;
- (ii) each teleconference location be accessible to the public;
- (iii) members of the public may address the body at each teleconference conference location;
- (iv) state and local bodies post agendas at all teleconference locations;
- (v) at least one member of the state body be physically present at the location specified in the notice of the meeting; and
- (vi) during teleconference meetings, a least a quorum of the members of the local body participate from locations within the boundaries of the territory over which the local body exercises jurisdiction

are hereby suspended.

A local legislative body or state body that holds a meeting via teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with the notice and accessibility requirements set forth below, shall have satisfied any requirement that the body allow

members of the public to attend the meeting and offer public comment. Such a body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

Accessibility Requirements: If a local legislative body or state body holds a meeting via teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the body shall also:

- (i) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the Americans with Disabilities Act and resolving any doubt whatsoever in favor of accessibility; and
- (ii) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to subparagraph (ii) of the Notice Requirements below.

Notice Requirements: Except to the extent this Order expressly provides otherwise, each local legislative body and state body shall:

- (i) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by the Bagley-Keene Act or the Brown Act, and using the means otherwise prescribed by the Bagley-Keene Act or the Brown Act, as applicable; and
- (ii) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in such means of public observation and comment, or any instance prior to the issuance of this Order in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of such means, a body may satisfy this requirement by advertising such means using "the most rapid means of communication available at the time" within the meaning of Government Code, section 54954, subdivision (e); this shall include, but need not be limited to, posting such means on the body's Internet website.

All of the foregoing provisions concerning the conduct of public meetings shall apply only during the period in which state or local public health officials have imposed or recommended social distancing measures.

All state and local bodies are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the provisions of the Bagley-Keene Act and the Brown Act, and other applicable local laws regulating the conduct of public meetings, in order to maximize transparency and provide the public access to their meetings.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 17th day of March 2020.



GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State