



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

MONDAY, AUGUST 30, 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/86311352473>. 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: **863 1135 2473**. 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: July 12, 2021**
2. **Review and Approve Draft Agenda:**
 - a. 9/14/21 – 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 Monday, September 13, 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 August 26, 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, JULY 12, 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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# AGENDA

**Roll Call:** 2:34 p.m. All present.

**Public Comment** – 3 speakers

## Review of Agendas

**1. Approval of Minutes: June 28, 2021**

**Action:** M/S/C (Wengraf/Hahn) to approve the minutes of 6/28/21.

**Vote:** All Ayes.

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

a. 7/27/21 – 6:00 p.m. Regular City Council Meeting

**Action:** M/S/C (Arreguin/Hahn) to approve the agenda of 7/27/21 with the changes and edits noted below.

- *Item Added: BOLT Appointment (Hahn) – Added to Consent Calendar*
- *Item Added: Restaurant Revitalization Fund (Hahn) – Added to Consent Calendar*
- *Item 12 Innovation Properties (City Manager) – Item removed from the agenda*
- *Item 21 Voting Delegates (City Manager) – Moved to Consent Calendar*
- *Item 22 Climate Fund (Commission) – Moved to Consent Calendar*
- *Item 23 Consulting Services (Arreguin) – Moved to Consent Calendar*
- *Item 24 Ghost Guns (Taplin) Councilmembers Hahn and Bartlett added as co-sponsors; Referred to Public Safety Committee*
- *Item 25 Plant-Based Foods (Hahn) – Moved to Consent Calendar*
- *Item 26 Grant Writing (Hahn) – Moved to Consent Calendar*
- *Item 27 Nuclear Weapons (Wengraf) Councilmember Hahn added as a co-sponsor; Moved to Consent Calendar*

Order of Items on Action Calendar

Item 18 Updated Fees

Item 19 Objective Standards (JSISHL)

Item 20 Rules of Procedure

**Vote:** All Ayes.

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

- None Selected

**4. Adjournments In Memory** – None

## Scheduling

**5. Council Worksessions Schedule** – presentation from StopWaste requested regarding SB 1383 mandates

**6. Council Referrals to Agenda Committee for Scheduling** – Item 3 removed from list (scheduled for July 27)

**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:** 2 speakers. No action taken.

## Unscheduled Items

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

**Action:** Item to remain on Unscheduled List.

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

**Action:** Item moved to Action Calendar for August 30, 2021 meeting.

## Items for Future Agendas

- None

## Adjournment

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

**Vote:** All Ayes.

Adjourned at 3:16 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on July 12, 2021.

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Mark Numainville  
City Clerk

## Communications

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## DRAFT AGENDA



### BERKELEY CITY COUNCIL MEETING

**Tuesday, September 14, 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**

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*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.*

1. Pledge of Allegiance to the Flag
2. Presentation on SB 1383 Implementation from StopWaste

**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: Berkeley Convention and Visitor's Bureau, d.b.a. Visit Berkeley**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution ratifying the action taken by the City Manager during recess to execute a sole source contract and any amendments with the Berkeley Convention and Visitors' Bureau, d.b.a. Visit Berkeley, to distribute one-twelfth of annual Berkeley Transient Occupancy Tax funds to support tourism marketing and promotion for the period from July 1, 2020 through June 30, 2023 for a not to exceed amount of \$700,000.  
**Financial Implications:** Transient Occupancy Tax Fund - \$700,000  
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
- 2. Contract No. 32000240 Amendment: Berkeley Unified School District for Mental Health Services Act-Funded Programs**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution ratifying the action taken by the City Manager during recess to execute an amendment to Contract No. 32000240 with Berkeley Unified School District (BUSD) to provide Mental Health Services Act (MHSA) funded programs in local schools through June 30, 2022 increasing the contract by \$245,000 for a new total not to exceed amount of \$637,778.  
**Financial Implications:** Mental Health Services Act Fund - \$245,000  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 3. Revenue Grant Contract: Fiscal Year 2021-22 Alcoholic Beverage Control Grant**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution ratifying the action taken by the City Manager during recess to execute a grant contract and any subsequent amendments with the State of California Department of Alcoholic Beverage Control (ABC) in the amount of \$72,440 for one fiscal year, July 1, 2021 through June 30, 2022.  
**Financial Implications:** \$72,440 in revenue  
Contact: Jennifer Louis, Police, (510) 981-5900
- 4. Contract: ERA Construction, Inc. for 1322 Glendale Avenue Retaining Wall Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution ratifying the action taken by the City Manager during recess to approve plans and specifications for the 1322 Glendale Avenue Retaining Wall Project, Specification No. 21-11448-C; accept the bid of ERA Construction, Inc. as the lowest responsive and responsible bidder; and execute a contract and any amendments, extensions or other change orders until completion of the project, in accordance with the approved plans and specifications in an amount not to exceed \$1,038,103, which includes a 10% contingency for unforeseen circumstances.  
**Financial Implications:** Various Funds - \$1,038,103  
Contact: Liam Garland, Public Works, (510) 981-6300

## Recess Items

5. **Contracts: TBWBH Props and Measures and V.W. Housen & Associates for Vision 2050 Implementation Services**  
**From: City Manager**  
**Recommendation:** Adopt two Resolutions ratifying the action taken by the City Manager during recess to execute contracts with: 1. TBWBH Props and Measures for one year in an amount not to exceed \$175,000; and 2. V.W. Housen & Associates for one year in an amount not to exceed \$175,000, for Vision 2050 Implementation Services.  
**Financial Implications:** General Fund - \$350,000  
Contact: Liam Garland, Public Works, (510) 981-6300

## Consent Calendar

6. **Resolution Reviewing and Ratifying the Proclamation of Local Emergency Due to the Spread of a Severe Acute Respiratory Illness Caused by a Novel (New) Coronavirus (COVID-19)**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution reviewing the need for continuing the local emergency due to the spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19) and ratifying the Proclamation of Local Emergency issued by the Director of Emergency Services on March 3, 2020, initially ratified by the City Council on March 10, 2020, and subsequently reviewed and ratified by the Council on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021 and July 20, 2021.  
**Financial Implications:** See report  
Contact: Farimah Brown, City Attorney, (510) 981-6950, Dee Williams-Ridley, City Manager, (510) 981-7000
7. **Establish 2022 City Council Meeting Schedule**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution establishing the City Council regular meeting schedule for 2022, with starting times of 6:00 p.m.  
**Financial Implications:** None  
Contact: Mark Numainville, City Clerk, (510) 981-6900
8. **Minutes for Approval**  
**From: City Manager**  
**Recommendation:** Approve the minutes for the council meetings of July 1, 2021 (closed), July 13, 2021 (closed and regular), July 14, 2021 (closed), July 20, 2021 (special-4pm and special-6pm), July 27, 2021 (closed, special and regular) and July 29, 2021 (special).  
**Financial Implications:** None  
Contact: Mark Numainville, City Clerk, (510) 981-6900

## Consent Calendar

- 9. Contract No. 108410-1 Amendment: Paw Fund for Spay and Neuter Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 108410-1 with Paw Fund to provide no cost spay and neuter surgeries to eligible pet owners, to increase the amount by \$9,812 for a total contract amount not to exceed \$116,966 and subject to the City's annual appropriation process, and to extend the contract through September 14, 2022.  
**Financial Implications:** General Fund - \$9,812  
Contact: Paul Buddenhagen, City Manager's Office, (510) 981-7000
- 10. Adopt a Resolution Authorizing MuniServices, LLC to Examine the Local Sales or Transactions and Use Tax Records on Behalf of the City of Berkeley**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing MuniServices, LLC to perform examination of the local sales or transactions and use tax records. MuniServices provides City of Berkeley sales tax audit services which includes examination of the Local Sales or Transactions and Use Tax records pertaining to the Bradley-Burns Local Sales and Use Tax Law which is part of the Revenue and Taxation Code in California.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 11. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on September 14, 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:** Various Funds - \$4,075,000  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 12. Amendments to Berkeley Municipal Code Section 19.44.020 (Housing Advisory Commission)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance amending Berkeley Municipal Code Chapter 19.44.020 to include oversight of Measure O bond-funded housing initiatives as established by Resolution No. 68,703-N.S. and future voter-approved bonds and measures dedicated to affordable housing.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

## Consent Calendar

- 13. Contract No. 10209E Amendment: Bay Area Hearing Voices Network**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to amend Contract No. 10209 with Bay Area Hearing Voices Network for hearing voices support groups for adults and youth who hear voices and have visions, to increase the amount by \$34,736 for a total contract amount not to exceed \$137,914, and to extend the contract through June 30, 2022.  
**Financial Implications:** Mental Health Services Act Fund - \$34,736  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 14. Mental Health Services Act Fiscal Year 2021-2022 Annual Update**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the Mental Health Services Act Fiscal Year 2021-2022 Annual Update, which provides information on current and proposed uses of funds for mental health programming, and forwarding the Update to appropriate state officials.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 15. Revenue Contract: Department of Health Care Services Performance Contract for City of Berkeley**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments with the California Department of Health Care Services (DHCS) from July 1, 2021 through June 30, 2024, for the Mental Health Services Act (MHSA), Lanterman-Petris-Short (LPS) Act, Projects for Assistance in Transition from Homelessness (PATH), Community Mental Health Services Block Grant (MHBG), and Crisis Counseling Assistance and Training Program (CCP) programs and county provision of community mental health services pursuant to the Bronzan-McCorquodale Act. For the purposes of this contract, DHCS considers the City of Berkeley a small County.  
**Financial Implications:** Approximately \$26,035,194 (revenue)  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 16. Revenue Contracts: FY 2022 Aging Services Programs**  
**From: City Manager**  
**Recommendation:** Adopt five Resolutions authorizing the City Manager or her designee to execute any resultant revenue agreements and amendments with Alameda County to provide congregate and home-delivered meals, family caregiver support, senior center activities, and information and assistance services to seniors for the following programs for Fiscal Year 2022: 1. Congregate Meals in the amount of \$47,000; 2. Home Delivered Meals in the amount of \$57,527; 3. Family Caregiver Support Program in the amount of \$41,195; 4. Senior Center Activities in the amount of \$28,350; and 5. Information and Assistance Services in the amount of \$61,500.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

## Consent Calendar

- 17. Classification and Salary Range: Communications Specialist**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution amending Resolution No. 69,998-N.S. Classification and Salary Resolution for Unrepresented Manual to add to Unit Z-2 (Confidential Professional Employees) the classification Communications Specialist with an hourly salary range of \$47.33 - \$56.18 effective September 14, 2021.  
**Financial Implications:** See report  
Contact: LaTanya Bellow, Human Resources, (510) 981-6800
- 18. Contract 104583-1 Amendment: Government Finance Officers Association for System Design Document Review to Support Enterprise Resource Planning Implementation**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract amendment with the Government Finance Officers Association for business process review services, increasing the amount by \$40,000 for a total contract value not to exceed \$194,285 from March 16, 2015 to December 30, 2021.  
**Financial Implications:** FUNDS\$ Replacement Fund - \$40,000  
Contact: Savita Chaudhary, Information Technology, (510) 981-6500
- 19. Contract No. 32100060 Amendment: RevolutionCyber, LLC for Professional Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 32100060 with RevolutionCyber, LLC for additional professional services for the implementation of the City's Data Safety program, for an amount not to exceed \$19,250 and a total contract value not to exceed \$121,275 from November 13, 2020 through June 30, 2022.  
**Financial Implications:** General Fund - \$19,250  
Contact: Savita Chaudhary, Information Technology, (510) 981-6500
- 20. Contract No. 10785 Amendment: West Coast Arborist, Inc. for Tree Removal and Pruning Service**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend contract No. 10785 with West Coast Arborist, Inc. for tree removal and pruning service by increasing the contract amount by \$250,000 for a not-to-exceed amount of \$1,190,000 and extending the term to November 24, 2023.  
**Financial Implications:** Parks Tax Fund - \$250,000  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

## Consent Calendar

- 21. Contract No. 31900137 Amendment: ELS Architecture and Urban Design for On-Call Architectural Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 31900137 for on-call architectural services with ELS Architecture and Urban Design by increasing the contract amount by \$900,000 for a total not-to-exceed amount of \$2,600,000.  
**Financial Implications:** Measure T1 Fund - \$900,000  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 22. Contract No. 31900202 Amendment: Bay Area Tree Specialists for As-needed Tree Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend contract No. 31900202 with Bay Area Tree Specialists for as-needed tree services, increasing the amount by \$300,000 for a total contract amount not-to-exceed \$800,000 and extend the term to May 28, 2023.  
**Financial Implications:** Various Funds - \$300,000  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 23. Contract No. 31900218 Amendment: West Coast Arborists, Inc. for As-needed Tree Services**  
**From: City Manager**  
**Recommendation:** Adopt a resolution authorizing the City Manager to amend contract No. 31900218 with West Coast Arborists Inc. for as-needed tree services, increasing the amount by \$300,000 for a total-amount-not to exceed amount of \$500,000 and extend the term to May 28, 2023.  
**Financial Implications:** Various Funds - \$300,000  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 24. Purchase Orders Extension: Diesel Direct West, Inc. for Fuel for City Vehicles and Equipment**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend the multi-year purchase orders with Diesel Direct West, Inc. for fuel for City vehicles and equipment, increasing the combined amount by \$1,400,000 for a total amount not to exceed \$8,844,000, and extending the term through June 30, 2022 or until authorized funds are exhausted.  
**Financial Implications:** Various Funds - \$1,400,000  
Contact: Liam Garland, Public Works, (510) 981-6300



## Consent Calendar

- 25. Transfer of Two Property Parcels to the State of California for the Ashby-San Pablo Intersection Improvements Project**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance authorizing the City Manager to execute the attached Grant Deed for Parcel No. 63719 and Quitclaim Deed for easement on Parcel No. 63720-1 with the State of California, Department of Transportation (“Caltrans”) and any associated documents as necessary for the transfer of the property interests in these two parcels of property to Caltrans, for the Ashby-San Pablo Intersection Improvements Project (“Project”), Specification No. 18-11182-C.  
**Financial Implications:** See report  
Contact: Liam Garland, Public Works, (510) 981-6300
- 26. Recommendations for Fleet Electrification Policy and Financing**  
**From: Energy Commission**  
**Recommendation:** Refer to the City Manager to update the Municipal Fleet Electrification Assessment and electric vehicle (EV) charging funding priorities to respond to the City Auditor’s Report “Fleet Replacement Fund Short Millions” and to align with the objectives stated in the City’s Electric Mobility Roadmap to Prioritize Municipal Fleet Modal Shift to Electric Bicycles and Other Forms of Zero-Emissions Mobility Where Feasible.  
**Financial Implications:** See report  
Contact: Billi Romain, Commission Secretary, (510) 981-7400

## Council Consent Items

- 27. 2022 UC Berkeley Chicanx Latinx Legacy Event**  
**From: Mayor Arreguin (Author)**  
**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$1,000 per Councilmember including \$1,000 from Mayor Arreguin, to the UC Berkeley Chicanx Latinx Alumni Association, the fiscal sponsor of the 2022 UC Berkeley Chicanx Latinx Legacy Events, with funds relinquished to the City’s general fund for this purpose from the discretionary Council Office Budgets of Mayor Arreguin and any other Councilmembers who would like to contribute.  
**Financial Implications:** Mayor’s Discretionary Funds - \$1,000  
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 28. Annual Appropriations Ordinance (AAO) Referral: Supply Bank**  
**From: Mayor Arreguin (Author)**  
**Recommendation:** Refer to the November 2021 Annual Appropriations Ordinance process \$25,000 for Supply Bank to support their services in providing essential school supplies to Berkeley families.  
**Financial Implications:** \$25,000  
Contact: Jesse Arreguin, Mayor, (510) 981-7100

## 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. 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.*

*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.*

### 29. Adoption of the Baseline Zoning Ordinance (BZO)

**From:** City Manager

**Recommendation:** Conduct a public hearing and, upon conclusion, adopt the first reading of an Ordinance rescinding the current Berkeley Municipal Code (BMC) Title 23 and adopting the new Baseline Zoning Ordinance (BZO) as BMC Title 23 with an effective date of October 1, 2021.

**Financial Implications:** See report

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

## Action Calendar – Old Business

### 30. Objective Standards Recommendations for Density, Design and Shadows

**From:** Joint Subcommittee for the Implementation of State Housing Laws

*(Continued from July 27, 2021) (Item contains supplemental material)*

**Recommendation:** Refer to the Planning Commission and Design Review Committee to review the recommendations from the Joint Subcommittee for the Implementation of State Housing Laws (JSISHL) for objective standards for density, design and shadows and draft Zoning Ordinance amendments for City Council consideration.

**Financial Implications:** See report

Contact: Alene Pearson, Commission Secretary, (510) 981-7400

## Action Calendar – Old Business

31. **Amending the Berkeley Election Reform Act (BERA) Relating to Officeholder Accounts** *(Reviewed by the Agenda & Rules Committee) (Continued from May 25, 2021)*

**From: Agenda & Rules Committee: Mayor Arreguin, Councilmembers Hahn and 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: Agenda & Rules Committee members: Jesse Arreguin, Committee Chair, (510) 981-7100, Sophie Hahn, Councilmember, District 5, (510) 981-7150, Susan Wengraf, Councilmember, District 6, (510) 981-7160

## Action Calendar – New Business

32. **Predevelopment Allocation, Ashby Recreation and Community Housing (ARCH) Consortium** *(Reviewed by the Budget & Finance Policy Committee)*

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

**Recommendation:** Refer to staff to work with the Ashby Recreation and Community Housing (ARCH) Consortium to develop a planning grant for the Ashby BART East Parking Lot.

*Policy Committee Recommendation: No final action was taken by the Budget & Finance Committee. The item is automatically returning to the Council agenda pursuant to the 120-day time limit for items referred to policy committees.*

**Financial Implications:** See report

Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

## Action Calendar – New Business

- 33. 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 Facilities, Infrastructure, Transportation, Environment & Sustainability (FITES) Committee** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*

**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

- 34. Letter of Support for SB-459 Political Reform Act of 1974: Lobbying**

**From: Open Government Commission**

**Recommendation:** Send a letter of support to Senator Nancy Skinner in support of SB-459 Political Reform Act of 1974: lobbying

**Financial Implications:** None

Contact: Sam Harvey, Commission Secretary, (510) 981-6950

## Action Calendar – New Business

- 35. Open Government Commission Recommendations to City Council Regarding Teleconferenced Meetings**  
**From: Open Government Commission**  
**Recommendation:** Establish City Council practices for holding public meetings via teleconference technologies: (1) clearly define how the order of public speakers is determined and maintain a speaker's queue visible to members of the public; (2) clearly outline the process by which a speaker may cede time to another speaker; and (3) require that addendums to agenda items be made accessible to the public on the City Website as soon as they are made available to members of City Council.  
**Financial Implications:** None  
Contact: Sam Harvey, Commission Secretary, (510) 981-6950
- 36. Referral Response: Recommendation to Retain Current Structure of Zero Waste Commission**  
**From: Zero Waste Commission**  
**Recommendation:** The Zero Waste Commission recommends that its current structure remain intact, and with an updated charter that reflects historic goals, and both current and future developments in the City of Berkeley's Zero Waste programs, facilities, services, policies, and state- and county-imposed mandates.  
**Financial Implications:** See report  
Contact: Heidi Obermeit, Commission Secretary, (510) 981-6300

## Action Calendar – Policy Committee Track Items

- 37. Expansion of the Berkeley Fair Elections Program**  
**From: Mayor Arreguin (Author)**  
**Recommendation:** Refer to the Fair Campaign Practices Commission (FCPC) to develop an ordinance to expand the Berkeley Fair Elections Program to include School Board Director, Rent Board Commissioner and City Auditor among the offices eligible to participate in the public financing program.  
**Financial Implications:** See report  
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 38. Resolution in Support of Observance of August 20, the International Day of the Victims of Enforced Disappearances in El Salvador**  
**From: Councilmember Kesarwani (Author)**  
**Recommendation:** Adopt a Resolution in support of retroactively enacting August 30 as a day of observance in recognition of the International Day of the Victims of Enforced Disappearances in El Salvador.  
**Financial Implications:** None  
Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

## Action Calendar – Policy Committee Track Items

- 39. Budget referral: Automated license plate readers for community safety improvement**  
**From: Councilmember Taplin (Author), Councilmember Droste (Co-Sponsor), Councilmember Wengraf (Co-Sponsor)**  
**Recommendation:** That the Berkeley City Council take the following actions to enable and deploy tactical technologies in strategic public spaces and the public ROW for the improvement of community safety and determent, intervention, prevention of illegal dumping and/or investigation of violent crime and traffic violations:  
Authorize the City Manager to install Automatic License Plate Readers (ALPRs) at strategic locations including public facilities, entrances to the city and strategic intersections in areas impacted by violent crime, traffic violations, illegal dumping, drug offenses, and other criminal activity; and refer to the budget process cost of ALPRs.  
Refer to the City Manager the development of a policy pursuant and subject to City of Berkeley Surveillance Ordinance enabling the use of ALPRs in fixed locations and mobile trailers by the Berkeley Police Department, while restricting data storage and distribution pursuant to standards set forth in Senate Bill 210 (Wiener, 2021).  
**Financial Implications:** See report  
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
- 40. Resolution Expressing Conceptual Support for an East Bay Wildfire Prevention and Vegetation Management Joint Powers Agency**  
**From: Councilmember Wengraf (Author), Mayor Arreguin (Co-Sponsor)**  
**Recommendation:** Adopt a Resolution in favor of Conceptual Support for an East Bay Wildfire Prevention and Vegetation Management Joint Powers Agency.  
**Financial Implications:** None  
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160

## Information Reports

- 41. Implementation of California Senate Bill 1383 Short-Lived Climate Pollutants**  
**From: City Manager**  
Contact: Liam Garland, Public Works, (510) 981-6300
- 42. Mental Health Services Center Renovation Project Wins American Public Works Association (APWA) National Award**  
**From: City Manager**  
Contact: Liam Garland, Public Works, (510) 981-6300
- 43. Fair Campaign Practices Commission FY2021-2022 Work Plan**  
**From: Fair Campaign Practices Commission**  
Contact: Sam Harvey, Commission Secretary, (510) 981-6950

## Information Reports

44. **Open Government Commission FY2021-2022 Work Plan**  
**From: Open Government Commission**  
Contact: Sam Harvey, Commission Secretary, (510) 981-6950
45. **City Auditor Fiscal Year 2022 Audit Plan**  
**From: Auditor**  
Contact: Jenny Wong, Auditor, (510) 981-6750

## 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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Archived indexed video streams are available at <http://www.cityofberkeley.info/citycouncil>. Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

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.







Energy Commission

CONSENT CALENDAR  
September 14, 2021

To: Honorable Mayor and Members of the City Council  
 From: Energy Commission  
 Submitted by: Janet Strömberg, Chairperson, Energy Commission  
 Subject: Recommendations for Fleet Electrification Policy and Financing

RECOMMENDATION

Refer to the City Manager to update the Municipal Fleet Electrification Assessment and electric vehicle (EV) charging funding priorities to respond to the City Auditor's Report "Fleet Replacement Fund Short Millions" and to align with the objectives stated in the City's Electric Mobility Roadmap to Prioritize Municipal Fleet Modal Shift to Electric Bicycles and Other Forms of Zero-Emissions Mobility Where Feasible.

SUMMARY

The Energy Commission recommends that Council refer to the City Manager to align an updated Municipal Fleet Electrification Assessment and transition plan<sup>1</sup> (Fleet EV Plan) and vehicle funding priorities with the objectives stated in the City's Electric Mobility Roadmap,<sup>2</sup> in Agenda Item 37<sup>3</sup> as approved by Council April 20, 2021, and in the City Auditor's Report "Fleet Replacement Fund Short Millions" (June 2, 2021)<sup>4</sup> (Audit Report). These documents aim to guide the City in achieving a zero-emission fleet by 2030 and "...prioritize municipal fleet modal shift to electric bicycles and other forms of zero-emissions mobility, where feasible."<sup>5</sup>

Specifically the Energy Commission recommends that Council refer to the City Manager:

<sup>1</sup> City of Berkeley Municipal Fleet Electrification Assessment done by East Bay Community Energy  
[https://www.cityofberkeley.info/uploadedFiles/Public\\_Works/Level\\_3\\_-\\_General/04-Municipal%20Fleet%20Electrification%20Assessment%202020.pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_General/04-Municipal%20Fleet%20Electrification%20Assessment%202020.pdf)

<sup>2</sup> Berkeley Electric Mobility Roadmap, April 2020,  
[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/City%20of%20Berkeley%20Electric%20Mobility%20Roadmap\\_2020.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/City%20of%20Berkeley%20Electric%20Mobility%20Roadmap_2020.pdf)

<sup>3</sup> Refer to the City Manager to Prioritize Municipal Fleet Modal Shift to Electric Bicycles and Other Forms of Zero-Emissions Mobility Where Feasible, from Councilmember Harrison, Item 37 on City Council Agenda 4-20-21,  
[https://www.cityofberkeley.info/Clerk/City\\_Council/2021/04\\_Apr/Documents/2021-04-20\\_Item\\_37\\_Refer\\_to\\_the\\_City\\_Manager.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/04_Apr/Documents/2021-04-20_Item_37_Refer_to_the_City_Manager.aspx)

<sup>4</sup> Fleet Replacement Fund Short Millions, Audit Report by Berkeley City Auditor, June 2, 2021,  
[https://www.cityofberkeley.info/uploadedFiles/Auditor/Level\\_3\\_-\\_General/Fleet%20Replacement%20Fund%20Short%20Millions.pdf](https://www.cityofberkeley.info/uploadedFiles/Auditor/Level_3_-_General/Fleet%20Replacement%20Fund%20Short%20Millions.pdf)

<sup>5</sup> Item 37, Note 3

1. Adjust the Fleet Replacement Funding Model and budget to ensure that the City's transition to zero emissions mobility, including Electric Vehicles (EVs), e-bikes, and other zero emissions modes of transportation, aligns with the City's greenhouse gas (GHG) emission reduction goals.
2. Incorporate the City's existing commitment to "aggressively accelerate" electrification of the City's fleet and phase out fossil fuel vehicles by 2030, as described in the Electric Mobility Roadmap<sup>6</sup> and in Item 37 into Public Works directives.
3. Implement Item 37 and the requested updated Fleet EV Plan, as a supplement to the City's response to the Auditor's recommendations regarding Public Works' plans, regulations, fleet replacement policy and priorities, RFPs and vendor contracts (i.e. the recommendations and management's responses in Auditor's report on pages 20, 27, 28, 30).
4. Dedicate adequate funds in the FY2022 budget to replace City fleet vehicles with EVs, e-bikes, and/or other zero-emission modes of transportation as scheduled. The Fleet EV Plan identified 32 vehicles to replace with EVs in FY2021 (requiring an estimated \$1.16 million). Public Works has collected \$747,000 to replace 29 vehicles scheduled to be replaced with EVs in 2021. These EV replacements – some of which could potentially be replaced with e-bikes or other zero-carbon forms of transport per Item 37 Referral – should be prioritized in the budget and in Public Works' plans.
5. Commence investment in the needed EV charging infrastructure urgently to prevent delay in operations of newly leased and purchased EVs.

#### FISCAL IMPACTS OF RECOMMENDATION

The 2020 City of Berkeley Municipal Fleet Electrification Assessment prepared by EBCE projects a \$1.42 million (17%) increase in cost over the next ten years for replacing the city's light duty vehicle fleet with electric vehicles, compared to replacing with internal combustion engine (ICE) vehicles, due primarily to expenses associated with needed charging infrastructure.<sup>7</sup> Reviewing this plan, the Auditor's Report further states the backlog of vehicles overdue for replacement may cost the City more than purchasing or leasing new vehicles.

However, shifting even a small portion of the ICE light-duty vehicle replacements to e-bikes and other zero-carbon forms of transportation could lower costs substantially, potentially sufficiently to eliminate projected added costs for fleet replacement. For example, e-bikes cost \$2,000-6,000 to purchase and require only a regular 120V outlet for charging compared with an estimated \$30,000 for a new Bolt EV, along with costs for charging infrastructure.<sup>8</sup>

#### CURRENT SITUATION AND ITS EFFECTS

On June 23, 2021, the Berkeley Energy Commission voted to send this recommendation to update the Municipal Fleet Electrification Assessment and electric vehicle (EV) charging funding priorities, moved by Commissioner Leger, second by Commissioner Gil, motion carried

<sup>6</sup> Berkeley Electric Mobility Roadmap, April 2020, see Note 2.

<sup>7</sup> City of Berkeley Municipal Fleet Electrification Assessment done by East Bay Community Energy, see Note 1

<sup>8</sup> Walk Bike Berkeley, E-bikes: Key to Berkeley's Climate & Public Safety Goals  
[https://drive.google.com/file/d/1slSMSq0h2HF2KaXVj0GC30o3P\\_oosf5t/view](https://drive.google.com/file/d/1slSMSq0h2HF2KaXVj0GC30o3P_oosf5t/view)

by vote 8-0-0-0; Ayes: Stromberg, Moore, Gil, Paulos, Zuckerman, Guliassi, Leger, Wolf. Noes: None. Abstain: None. Absent: None.

The Audit Report “Fleet Replacement Fund Short Millions” found that the City’s fleet replacement funding model is not aligned with how funding decisions are made, the replacement fund is underfunded by several million dollars, and delays in vehicle replacement may undermine the City accomplishing its goal to transition its fleet from internal combustion engines (ICE) vehicles by 2030 to reduce greenhouse gas emissions. The Audit Report prompted the Energy Commission to review City policies and plans for fleet transition. The Energy Commission agrees with the Audit Report’s recommendations that the Fleet Replacement Funding Model be adjusted to align with how funding decisions are made, and that additional funds be allocated for timely fleet replacement. However, we also recommend unequivocally that funding decisions must align with the emission reduction goals of the Electric Mobility Roadmap and the Council’s April 20, 2021 directive to “Prioritize Municipal Fleet Modal Shift to Electric Bicycles and other forms of Zero Emission Mobility Where Feasible.”

The City’s current plans to transition its municipal fleet to electric vehicles and the Audit Report on the Fleet Replacement Fund shortfall are both missing the inclusion of less expensive and less polluting electric bicycles and other micro-modal and zero-carbon forms of transportation. The climate impacts of delaying the replacement of the City’s gas-fueled vehicles with electric vehicles due to possible Fleet Replacement Fund shortfalls are substantial: millions of tons of greenhouse gases for every year of delay, as estimated below. The City could benefit significantly from both cost-savings and greenhouse gas emissions reductions by replacing some of its vehicles with e-bikes and/or other zero-carbon modes of transport. Shifting even a small portion of existing gas-fueled light-duty vehicle replacements to e-bikes and other zero-carbon forms of transportation could lower costs substantially, potentially enough to eliminate projected added costs for fleet replacement. This recommendation is consistent with the Referral Item 37 by Councilmember Harrison approved on April 20, 2021, and aligns with the City’s Strategic Plan Priorities, its municipal expenditure policy, and with its previously adopted Climate Action Policies to reduce municipal GHGs from the transportation sector.

### BACKGROUND

Item 37 notes: “In response to Council direction in 2019, the Public Works Department is in the process of transitioning its light, medium and heavy-duty fleet to zero emissions vehicles. Replacing the City’s fleet with zero-emissions vehicles will require significant budgetary and carbon investments. Given the carbon, environmental, and budgetary costs of these investments, it is in the public interest to explore opportunities to shift the mode of municipal transit, where feasible, to less-intensive modes, including electric bicycles, scooters and public transportation.”

Item 37 further states that e-bikes and micro-modal transportation have significantly lower embodied and operational carbon footprints. A University of Oxford study cited in the item “concluded that even partial substitution of vehicle travel with walking, cycling or e-biking are

critical strategies for addressing climate change and lower mobility-related lifecycle CO<sub>2</sub>, and that cyclers have 84% lower CO<sub>2</sub> emissions impact as compared to non-cyclers.”<sup>9</sup>

This is also supported by research prepared by Walk Bike Berkeley, which found that e-bikes are 18 to 32 times cleaner than EVs comparing both operational and embodied carbon dioxide equivalent (CO<sub>2</sub>e).<sup>10</sup>

A key conclusion of the Auditor’s Report is that the Fleet Replacement Fund fell \$7.2 million short of the American Public Works Association’s recommended level in FY 2020, and that the City’s funding model is not working to ensure sufficient funding for timely replacement.

Additionally the Report states **“This shortfall may also prevent the City from adhering to its plan to transition to an electric fleet by 2030.”**

**(emphasis added)** A shortfall in the Fleet Replacement Fund will undermine the City’s commitments to reduce GHG emissions.

However, the Fleet EV Plan and Auditor’s report only consider replacement of the City’s fleet with comparable EVs, and do not consider e-bikes and other zero-carbon modes of transportation, thus missing other important opportunities to further reduce the City’s GHG emissions. To prioritize the reduction of GHGs and make the best use of public funds, both the Fleet EV Plan and the Auditor’s report need to be updated to include the costs and environmental impacts of fleet replacement with e-bikes and other micro-modal and zero-carbon forms of transportation.

## ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The Fleet EV Plan previously presented to Council estimates 308 Million tons of additional greenhouse gases would be emitted cumulatively during 2021 - 2030 if the City continues with its existing Internal combustion engine (ICE) fleet and does not replace with EVs as planned.<sup>11</sup> This is a worst-case scenario if no vehicles are replaced with EVs. For example, per the Fleet EV Plan, if the City does not replace light-duty ICE cars with EVs as scheduled in 2021, it will produce an additional 10.6 MT of GHG emissions in 2021; if not replaced as planned in 2022 an additional 19.5 MT of GHGs would be emitted in 2022; and so on. The City should also plan for the replacement of medium- and heavy-duty vehicles with EVs, such as the new electric Ford F-150 coming to market.

Further GHG reductions and cost savings can be achieved if some ICE vehicles are replaced with e-bikes and other micro-modal forms of transport. As outlined on Walk Bike Berkeley’s website:

<sup>9</sup> “Study Shows Walking, Cycling, & e-Biking Make Significant Impact On Carbon Emissions,” CleanTechnica, February 3, 2021, <https://cleantechnica.com/2021/02/03/study-shows-walking-cycling-e-biking-make-significant-impact-on-carbon-emissions>

<sup>10</sup> Walk Bike Berkeley, E-bikes: Key to Berkeley’s Climate & Public Safety Goals [https://drive.google.com/file/d/1sISMSq0h2HF2KaXVj0GC30o3P\\_oosf5t/view](https://drive.google.com/file/d/1sISMSq0h2HF2KaXVj0GC30o3P_oosf5t/view)

<sup>11</sup> Estimate calculated by adding the difference between baseline and EV “well to wheels” GHG emissions for each year 2021 to 2030, as shown in Figure 5 on page 11 of Municipal Fleet Electrification Assessment. [City Council Report ##-##-####](#)

- E-bikes get anywhere from 1,000 to almost 4,000 miles per gallon equivalent.
- E-bikes can go 40 to 140 times as far as a 30-mpg gas car per pound of climate emissions with California's electricity energy mix (*Note: Berkeley's municipal electricity accounts at 100% renewable means the savings can be even larger*)
- E-bikes get 30-100 times more miles per pound of battery than an electric car.<sup>12</sup>

The Fleet EV Plan notes that in mid-2020 Public Works planned to implement a GPS tracking (telematics) system on some vehicles that would provide real-time data on vehicle usage that will help determine "right sizing" of vehicles and whether some vehicles could be shared by more staff, thereby expanding City services without adding more vehicles. It would seem reasonable that such telematics could help determine if an e-bike or other mode could be used instead of a car.<sup>13</sup>

#### RATIONALE FOR RECOMMENDATION

Fleet replacement and electrification, and shifts to zero-carbon modes of transportation, are vital elements in becoming a Fossil Fuel Free City, and align with the City's Strategic Plan Priorities. The City has many excellent goals, commitments, and plans for advancing electric mobility and zero-carbon transportation across several departments and programs. This Energy Commission recommendation is an opportunity to integrate, coordinate, and leverage the City's efforts and implement the plans into operational procedures, directives, and budgets.

The Energy Commission's mission to advise the Council on climate protection, energy conservation, and alternative energy development in Berkeley includes reducing GHGs from the transportation sector. **Missing opportunities to replace some of the City's gas-fueled vehicles with less expensive and less polluting e-bikes or other zero-carbon transport modes, and delaying replacement of the City's gas-fueled vehicles with EVs due to Fleet Replacement Fund shortfalls, will both have measurable climate and fiscal impacts due to the continued use of fossil fueled vehicles.**

**This Recommendation aligns the City's municipal expenditure policy with its previously adopted Climate Action Policies to reduce municipal GHGs from the transportation sector.**

Thank you for your consideration of our recommendations regarding the Fleet Electrification Assessment, the Fleet Replacement Fund, and plans to prioritize funds in the FY2022 budget to accelerate the City of Berkeley's transition to EVs and other zero-carbon modes of transportation.

#### ALTERNATIVE ACTIONS CONSIDERED

None

#### CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report. Staff will be updating implementation of the fleet assessment to accelerate fleet

<sup>12</sup> Walk Bike Berkeley, "E-Bike 1000 MPG Project," <https://sites.google.com/view/ebikestudy>

<sup>13</sup> Appendix A, pp. 29-30 of the Municipal Fleet Electrification Assessment, see link in Note 1

transition to electric vehicles and will consider opportunities to prioritize municipal fleet modal shift to electric bicycles and other forms of zero-emissions mobility where feasible.

CONTACT PERSON

Billi Romain, Secretary, Energy Commission, 510-981-7432



Office of the Mayor

CONSENT CALENDAR  
September 14, 2021

To: Honorable Members of the City Council  
 From: Mayor Jesse Arreguín  
 Subject: 2022 UC Berkeley Chicanx Latinx Legacy Event

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$1,000 per Councilmember including \$1,000 from Mayor Arreguín, to the UC Berkeley Chicanx Latinx Alumni Association, the fiscal sponsor of the 2022 UC Berkeley Chicanx Latinx Legacy Events, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Mayor Arreguín and any other Councilmembers who would like to contribute.

BACKGROUND

The UC Berkeley Chicanx Latinx Alumni Association (CLAA) was founded in 1984 to provide a mechanism for organizing, networking, and stewardship among alumni and students. The organization has played an important role in highlighting the role students have played on social movements and provide resources and mentorship to recruit, retain, and help Latinx students graduate.

The Legacy Event, which takes place on September 30 – October 2, 2022, aims to celebrate and uplift the contributions of Chicanx Latinx Alumni from UC Berkeley. As part of their legacy of giving back to UC Berkeley, the campus community is planning a series of events to highlight the new campus initiatives, accomplishments and current work under way.

Mayor Arreguín, an alumnus of UC Berkeley, is on the honorary committee for the Legacy Event, in which it is requested that \$1,000 be raised to support CLAA's efforts.

FINANCIAL IMPLICATIONS

No General Fund impact; \$1,000 is available from Mayor Arreguín's Office Budget discretionary accounts.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with adopting this recommendation.

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

2021 CLAA Legacy Event

CONSENT CALENDAR  
September 14, 2021

Attachments:  
1: Resolution



AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A GRANT TO PROVIDE PUBLIC SERVICES FOR A MUNICIPAL PUBLIC PURPOSE

WHEREAS, Mayor Jesse Arreguin has surplus funds in his office expenditure account; and

WHEREAS, a California non-profit tax exempt corporation, the UC Berkeley Chicanx Latinx Alumni Association, seeks funds in the amount of \$1,000 for their Legacy Event to provide the following public services: to provide resources and mentorship to recruit, retain, and help Latinx students graduate; and

WHEREAS, the provision of such services would fulfill the following municipal public purpose of supporting educational opportunities to communities that have historically been underserved and to highlight and celebrate the accomplishments of UC Berkeley Latinx students and alumni.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget up to \$1,000 per office shall be granted to the UC Berkeley Chicanx Latinx Alumni Association to fund the following services of providing resources and mentorship to recruit, retain, and help Latinx students graduate





Office of the Mayor

CONSENT CALENDAR  
September 14, 2021

To: Honorable Members of the City Council  
 From: Mayor Jesse Arreguín  
 Subject: AAO Referral: Supply Bank

RECOMMENDATION

Refer to the November 2021 Annual Appropriations Ordinance process \$25,000 for Supply Bank to support their services in providing essential school supplies to Berkeley families.

BACKGROUND

Supply Bank, formerly known as K to College, is a non-profit founded in 2008 by UC Berkeley students and alumni with the goal of equal access to higher education for low-income students. Throughout the years, Supply Bank broadened their mission from improving higher education accessibility to addressing the education resource gap afflicting low-income communities from kindergarten to college, primarily through its successful School Supply Initiative.

For over a decade, Supply Bank has partnered with the City of Berkeley and the Berkeley Unified School District to serve approximately 1,000 low-income students in Berkeley each year with a yearly citywide school supply and dental kit distribution. Despite the COVID-19 pandemic, Supply Bank was able to continue this tradition by providing supply kits to families at San Pablo Park on August 14.

Historically, the City Council has approved the request of Supply Bank to provide \$25,000 annually for their program. However, due to the COVID-19 pandemic, Supply Bank was unable to make this request in time for the FY22 budget adoption in June. The \$25,000 would be retroactively applied to fund the event at San Pablo Park, and ensure that they can continue this essential program in future years.

FINANCIAL IMPLICATIONS

\$25,000

ENVIRONMENTAL SUSTAINABILITY

There are no environmental impacts associated with the recommendations in this report.

CONTACT PERSON

AAO Referral: Supply Bank

CONSENT CALENDAR  
September 14, 2021

Mayor Jesse Arreguín      510-981-7100

**Attachments:**

1: Program Summary of 2021 Supply Bank Fair

## 2021 Citywide Berkeley School Supply Distribution and Resource Fair, Program Summary

### Background

SupplyBank.Org's K to College program serves approximately 1,000 low-income students in Berkeley each year with a yearly citywide school supply and dental kit distribution in partnership with the City of Berkeley. SupplyBank.Org's collaborative effort, which also includes the Berkeley Unified School District, the Berkeley Public Education Fund, the City of Berkeley, First Covenant Church, local businesses and community leaders, will provide comprehensive grade-appropriate school supply and dental supply kits for low income (free/reduced price meal eligible) TK-12 Berkeley students.

### Timeline

- July and August 2021:** As described in K to College's memorandum of understanding (MOU) with Berkeley Unified School District (BUSD), BUSD will utilize its "robo-call" system, mailing lists and/or any other outreach methods to inform eligible and target students and families about planned distributions of the assembled kits.
- August 2021:** Due to COVID-19, SupplyBank.Org was unable to host our annual school and dental supply assembly with several hundred volunteers at the Chevron Auditorium of the UC Berkeley International House in Berkeley. SupplyBank.Org leveraged our local relationships to have the kits built at a warehouse, transferring none of the additional costs to BUSD or the City of Berkeley.
- August 14, 2021:** SupplyBank.Org coordinated with BUSD and the City of Berkeley Parks, Recreation & Waterfront Department to conduct a one-day citywide distribution of the assembled kits. In addition to distributing supplies, this distribution was an excellent opportunity to continue the citywide resource fair where volunteers and staff from other organizations provided resources and other information to families. The distribution site remains San Pablo Park (2800 Park Street, Berkeley). A list of participating partners can be found below.
- Summary:** The 2021 effort has served 1,110 BUSD students to date, with another 240 school supply kits being reserved for students identified as homeless or otherwise in need throughout the academic year. This is 1,350 students in total.



Above: Volunteers assembling supply kits at 2010 K to College event in UC Berkeley Pauley Ballroom



Above: Families line up to receive school supply kits at the K to College distribution event in Berkeley

- **History:** This is SupplyBank.Org’s oldest event and 12<sup>th</sup> citywide distribution (11<sup>th</sup> at San Pablo Park). The program has grown over the years and merged with several other citywide efforts to provide a one-stop back-to-school event for low-income children and families in Berkeley.

**Current Sponsors and Volunteer Groups:**

- City of Berkeley
- Covenant Church (food boxes)
- Berkeley Public Education Fund
- Junior League Volunteers East Bay,
- BUSD Student Services
- BUSD Information Technology department
- BUSD Admissions Office
- City of Berkeley



Office of the City Manager

## SUPPLEMENTAL AGENDA MATERIAL

**Meeting Date:** March 23, 2021

**Item Number:** 17

**Item Description:** Objective Standard Recommendations for Density, Design and Shadows

**Supplemental/Revision Submitted By:** Alene Pearson, Secretary, Joint Subcommittee for the Implementation of State Housing Laws (JSISHL)

**“Good of the City” Analysis:**

*The analysis below must demonstrate how accepting this supplement/revision is for the “good of the City” and outweighs the lack of time for citizen review or evaluation by the Council.*

JSISHL’s recommendation for objective design standards references a set of proposed standards for review by other City Commissions. This supplemental communication provides the matrix of proposed objective design standards, for benefit of Council and public while discussing this item.

*[from page two of the staff report]*

*To aid JSISHL in making a recommendation, staff created a matrix of design guidelines to identify design goals, introduced objective language to reflect desired design outcomes, and test-fit approved projects to double-check objective language. JSISHL recommended the **proposed objective design standards** be reviewed by the Design Review Committee and further refined by Planning Commission.*

***Consideration of supplemental or revised agenda material is subject to approval by a two-thirds roll call vote of the City Council. (BMC 2.06.070)***

A minimum of **42 copies** must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Copies of the supplemental/revised agenda material may be delivered to the City Clerk Department by 12:00 p.m. the day of the meeting. Copies that are ready after 12:00 p.m. must be delivered directly to the City Clerk at Council Chambers prior to the start of the meeting.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.

| Objective Standards for Design Guidelines |                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                  | Row # |
|-------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| Section                                   | Subsection                                                                                                                                            | Proposed Objective Design Standards                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Definitions                                                                                                                                                                                                                                                                                      |       |
| 1. Neighborhood Context                   | <p><b>Massing</b></p> <p>Goal: Promote harmony in scale and massing.</p>                                                                              | <p>Differentiate the base. A base shall visually carry the weight of the building. A base <i>is defined as a plane or material change between the ground floor and the upper floors</i> and can be made by thickening the walls or a change in material and color and <i>shall extend</i> at least 75% of <i>each individual</i> building facade.</p> <p>Buildings over three stories tall shall have major massing breaks at least every 100 feet <i>along every building frontage</i> through the use of varying setbacks, building entries, and recesses, courtyards or structural bays. Major breaks shall be a minimum of 5 feet deep and 10 feet wide and shall extend at least two-thirds of the height of the building.</p> | Base - a plane or material change between the ground floor and the upper floors                                                                                                                                                                                                                  | 1     |
|                                           | <p><b>Materials</b></p> <p>Goal: Provide texture and visual interest while minimizing glare.</p>                                                      | <p>At least two materials shall be used on any building face visible from the street or adjacent parcel in addition to glazing and railings. Any one material must comprise at least 20% of <i>street facing building facade</i>.</p> <p>Materials shall not cause glare on the public right of way or adjacent parcels.</p>                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                  | 2     |
| 2. Building Design                        | <p><b>Rooflines</b></p> <p>Goal: Vertically break up building mass at the roofline.</p>                                                               | Rooflines shall be <i>articulated at least every 50 feet along the street frontage, through the use of architectural elements such as cornices, clerestory windows, canopies, or varying roof height and/or form.</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Roofline - Top termination of the massing.                                                                                                                                                                                                                                                       | 3     |
|                                           | <p><b>Façade Design</b></p> <p>Goal: Give depth to the building façade.</p>                                                                           | <p>Provide balconies or upper facade projections or recesses every 25 to 30 feet.</p> <p>Blank walls on side and rear facades shall not exceed 30 ft in length.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <p>Upper façade projection or recess - Any balcony, window box, window articulation that either creates a recess in or projects out from the building face.</p> <p>Blank wall - A length of uninterrupted wall space that does not include a window, door, material change, or plane change.</p> | 4     |
|                                           | <p><b>Windows</b></p> <p>Goal: Give depth to the building façade.</p>                                                                                 | <p>Windows <i>shall not exceed 75% of upper facades</i>.</p> <p>Windows set in wall surfaces shall be recessed a minimum of 2 inches <i>unless in a contiguous vertical bay, in which case the recess may be substituted with a vertical fin or projection.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                  | 5     |
| 3. Ground Floor Design                    | <p><b>Residential Lobbies</b></p> <p>Goal: Create a focal point for residents and pedestrians.</p>                                                    | <p>A primary building entrance shall be visible from the street. Direct pedestrian access shall be provided between the public sidewalk and such primary entrance.</p> <p><i>A primary building entrance</i> must have a roofed projection <i>in the form of either a canopy or the extension of a vertical bay</i>, or recess with a minimum depth of 5 feet and a minimum area of 60 sq. feet. <i>Entrances to upper floors shall be distinguished with either plane changes, material transitions, or building signage.</i></p>                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                  | 6     |
|                                           | <p><b>Ground Floor Height</b></p> <p>Goal: Enhance ground floor experience.</p>                                                                       | Ground floor <i>commercial spaces</i> shall have a minimum interior height of <i>13 feet</i> .                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                  | 7     |
|                                           | <p><b>Storefronts</b></p> <p>Goal: Enhance pedestrian experience and provide visual cues that distinguish between retail and residential entries.</p> | <p>Retail spaces shall be accessed directly from the sidewalk, rather than through lobbies or other internal spaces. Clear glass shall comprise at least 60% of the street facing façade where it is between 3 feet and 8 feet above elevation of adjacent sidewalk.</p> <p>Maintain the typical rhythm of 15-30 foot storefronts at ground level. Provide at least one of the following architectural features to protect pedestrians from inclement weather:</p> <p>A) awnings<br/>B) canopies<br/>C) recessed entries</p> <p>Except for recessed entries, a majority of storefront glazing shall be at the property line.</p>                                                                                                    |                                                                                                                                                                                                                                                                                                  | 8     |



| Objective Standards for Design Guidelines |                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                  |             | Row # |
|-------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|-------|
| Section                                   | Subsection                                                                                                                 | Proposed Objective Design Standards                                                                                                                                                                                                                                                                                                                                                                                                              | Definitions |       |
| 3. Ground Floor Design                    | <p><b>Public Service Street Frontages</b></p> <p>Goal: Activate the public street.</p>                                     | <p>At least one publicly-accessible street-level entrance shall be provided for every 40 feet along a streetfacing property line. Any remainder exceeding 30 feet shall also have a publicly-accessible street-level entrance. No two entrances shall be separated by more than 50 feet.</p> <p>~ <i>Downtown only</i></p> <p>*reference Figure 43: Public Serving Frontages on page 61 of the Downtown Design Guidelines for applicability.</p> |             | 9     |
| 4. Parking Lots, Garages and Driveways    | <p><b>General Guidelines</b></p> <p>Goal: Reduce visual impact of parking on the street frontage.</p>                      | Locate parking structures underground or behind buildings or provide either landscape or architectural elements to screen view of parking from the street.                                                                                                                                                                                                                                                                                       |             | 10    |
|                                           | <p><b>Surface Lots</b></p> <p>Goal: Screen surface lots from view of the street while providing shade and landscaping.</p> | Perimeter landscaping shall include trees and shrubs. In addition to required screening, parking area shall have trees which achieve a canopy coverage of at least 50% within seven years.                                                                                                                                                                                                                                                       |             | 11    |
|                                           | <p><b>Garage Lighting and Ventilation</b></p> <p>Goal: Reduce impact of garages on neighboring parcels.</p>                | All parking garage lighting shall be shielded so that light does not shine through vents at night and headlights are not visible from the street and adjacent parcels. If forced venting is required for the garage, air shall not vent directly onto the sidewalk or podium courtyards.                                                                                                                                                         |             | 12    |
| 5. Building Accessories                   | <p><b>Lighting</b></p> <p>Goal: Prevent glare on public right of way.</p>                                                  | All lighting shall be downcast and not cause glare on the public right of way or neighboring parcels.                                                                                                                                                                                                                                                                                                                                            |             | 13    |
|                                           | <p><b>Security and Fences</b></p> <p>Goal: Reduce visual impact.</p>                                                       | <p>Security devices and grillwork visible from the street shall be integrated into the overall building design.</p> <p>Perimeter fencing utilized along public street shall be constructed of decorative iron, pre-painted welded steel, or wood picket material.</p>                                                                                                                                                                            |             | 14    |
|                                           | <p><b>Trash Service, Mechanical and Utilities</b></p> <p>Goal: Reduce visual impact.</p>                                   | Garbage receptacles, utility meters and mechanical and electrical equipment at rooftop and ground shall be screened from the view of pedestrians.                                                                                                                                                                                                                                                                                                |             | 15    |
| 6. Street Trees                           | <p>Goal: Preserve and/or add street trees.</p>                                                                             | Existing street trees shall be retained and protected <i>if determined to be healthy by the Urban Forester</i> . Work with Berkeley's Urban Forestry Department and Public Works to determine preferred locations for new street trees.                                                                                                                                                                                                          |             | 16    |
| 7. Signs and Awnings                      | <p>Goal: Cohesive sign program that is in keeping with the building design</p>                                             | <p>Coordinate the design and alignment of signs and awnings on buildings with multiple storefronts in order to achieve a cohesive appearance to the base of the building.</p> <p>Signs and awnings shall not obscure architectural elements such as clerestory windows or columns.</p> <p>All front faces shall be opaque.</p>                                                                                                                   |             | 17    |



Joint Subcommittee for the Implementation of State Housing Laws

ACTION CALENDAR  
September 14, 2021  
(Continued from July 27,  
2021)

To: Honorable Mayor and Members of the City Council

From: Joint Subcommittee for the Implementation of State Housing Laws  
(JSISHL)

Submitted by: Igor Tregub, Chairperson

Subject: Objective Standards Recommendations for Density, Design and Shadows

#### RECOMMENDATION

Refer to the Planning Commission and Design Review Committee to review the recommendations from the Joint Subcommittee for the Implementation of State Housing Laws (JSISHL) for objective standards for density, design and shadows and draft Zoning Ordinance amendments for City Council consideration.

#### FISCAL IMPACTS OF RECOMMENDATION

This project will involve staff and consultant time that will total approximately \$200,000. Budget for the consultant time was previously allocated from the General Fund in the 2021-2022 fiscal year budget (\$115,000). Additional staff time amounting to \$100,000 would have to be covered by re-arranging staff priorities within existing resources to support the effort.

#### CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley's Zoning Ordinance and permitting process for residential and mixed use projects relies heavily on discretion and subjective development standards. State laws, such as Senate Bill (SB) 35, limit interpretation of zoning regulations and require a streamlined permit approval process for many housing projects. JSISHL was tasked with reviewing approaches to objective standards for density, design, shadows and views. Between April 2018 and July 2020 JSISHL, including representatives of the Planning Commission, Zoning Adjustments Board, and Housing Advisory Commission, met eleven times to discuss these topics and ultimately prepared the recommendations summarized below.

#### Objective Standards for Density (Building Intensity)

The referral specifically requested that JSISHL consider dwelling units per acre as an objective measurement of density. JSISHL also considered a form-based code method and floor area ratio (FAR) as approaches to objectively regulate lot buildout and development proportions. No unanimous agreement could be reached as to the best

path forward. In the end, a recommendation was made using FAR as the primary density standard in residential and commercial districts and form-based code<sup>1</sup>, which emphasizes standards with predictable physical outcome such as build-to lines and frontage and setback requirements, as a secondary approach. There was also an interest in a units/acre approach that assumed average unit sizes and bedroom counts; however, this approach was not adopted. See Attachment 1 (July 22, 2020 Final Minutes) for the text of these options. **JSISHL recommended developing an objective standard for density using FAR and potentially form-based code.**

#### Objective Standards for Design

Berkeley's design review process relies heavily on four sets of design guidelines:

1. Design Review Guidelines (applied citywide);
2. Downtown Design Guidelines;
3. Southside Strategic Plan Design Guidelines; and
4. University Strategic Plan Design Guidelines.

This process heavily relies on the discretion of staff and the Design Review Committee; however, recent State laws require that cities develop objective standards for streamlined and ministerial approval processes for qualified projects. To aid JSISHL in making a recommendation, staff created a matrix of design guidelines to identify design goals, introduced objective language to reflect desired design outcomes, and test-fit approved projects to double-check objective language. **JSISHL recommended the proposed objective design standards be reviewed by the Design Review Committee and further refined by Planning Commission.**

#### Objective Standards for Shadows

The Berkeley Municipal Code (BMC) addresses shadows as follows:

- Section 23E.36.070(C)(1)(a): Projects on the north side of University Avenue within the University Avenue Strategic Plan Overlay area must meet a Solar Rear Yard Setback (subject to override by Density Bonus waivers). Required daylight plane analysis is incorporated directly into the development standards: “...*shall not cast a shadow at noon more than 20 feet onto any lot in a residential zone as calculated when the sun is at a 29 degree angle above the horizon (winter solstice).*”
- Section 23B.34.070(C): Green Pathway Projects<sup>2</sup> within the Downtown Mixed-Use District (C-DMU) that are between 60 and 75 feet tall. Shadow analysis for these projects must show that:

<sup>1</sup> <https://formbasedcodes.org/standards-of-practice/>

<sup>2</sup> As defined in in Chapter 23B.34 of the municipal code, the “Green Pathway” is a streamlined permit process for buildings that exceed the Green Building requirements applicable to the C-DMU district and confer extraordinary public benefits.

1. *The extent of shading on public sidewalks and open spaces within a radius of 75 feet of the closest building wall that would be cast at two (2) hours after sunrise, 12 p.m., and two (2) hours before sunset, on March 21, June 21, December 21, and September 21, by a building 60 feet in height that complies with all applicable setback requirements; and*
2. *Features incorporated into the building design, including, but not limited to, additional upper floor setbacks that will reduce the extent of shadowing of the proposed building to no more than 75 percent of the shadowing projected in paragraph 1 above.*

Otherwise, shading impacts are evaluated on a discretionary basis during Use Permit review and are permissible provided they are not “unreasonable” or provided they will not result in a “significant reduction in sunlight.” Although the review of shadow studies is somewhat objective – administrative guidelines establish methods for analyzing impacts by time of day and time of year on living area windows and yards - the ultimate finding is subjective. Therefore, while shadow studies provide accurate information on shading due to proposed projects, the amount of shading from new development that is deemed “reasonable” depends on the context.

JSISHL discussed many aspects of shadow impacts, including shading of solar panels and roofs, windows, yards and gardens. The recommendation is fairly detailed, including five applicability considerations and four methods of measuring shadow impacts that depend on project elements. **JSISHL recommended that the proposal for objective shadow standards be reviewed and further refined by staff and the Planning Commission.**

#### BACKGROUND

On July 17, 2017, the City Council adopted a referral to address the State Housing Accountability Act (Government Code Section 65589.5) and to preserve local land use discretion (see Attachment 2). The referral requested research into a set of objective zoning standards for new development projects in the following four topic areas:

- Density and/or building intensity;
- Public health and safety standards;
- Design review standards; and
- Views, shadows, and other impacts that often underlie detriment findings.

In the time since the referral was adopted by City Council in 2017, the State adopted several bills to streamline the approval process for housing developments. Legislation facilitates housing production for projects that comply with a jurisdiction’s objective standards and prohibits localities from adopting standards what would reduce the number of residential units allowed (i.e. downzones a property or area). As a result of

these legislative actions, jurisdictions benefit from adopting objective planning standards that can guide the development process and reflect goals of the local community.

JSISHL's first few meetings in 2018 were focused on understanding and analyzing 2017 State housing laws and associated City Council referrals. At its fourth meeting, in January 2019, JSISHL adopted a work plan (see Attachment 3) to direct efforts towards researching approaches to objective standards for density, design, shadows and views. In March and May of 2019, JSISHL examined existing conditions at the City of Berkeley and implementation of the Zoning Ordinance and of State law (i.e. Density Bonus, SB-35, the Housing Accountability Act). Since September 2019, JSISHL has evaluated objective standards for density, design and shadows in order to develop a recommendation to City Council. At its final meeting on July 22, 2020, JSISHL recommended approaches to objective standards for design, density and shadows to City Council for consideration. JSISHL was not able to address objective standards for views.

#### ENVIRONMENTAL SUSTAINABILITY

Adoption of objective standards will streamline the permitting process for housing projects, encouraging infill development and density, creating opportunities to live and work within close proximity and reduce reliance on private vehicle use and/or vehicles miles traveled.

#### RATIONALE FOR RECOMMENDATION

State law requires that jurisdictions adopt objective standards in order to ministerially approved projects.

#### ALTERNATIVE ACTIONS CONSIDERED

The city can choose to not adopt objective standards, in which case projects will be ministerially approved without meeting certain standards.

#### CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report.

#### CONTACT PERSON

Alene Pearson, Subcommittee Secretary, Planning and Development Department, 510-981-7489

#### Attachments:

- 1: Meeting Minutes (July 22, 2020)
- 2: City Council Referral (July 17, 2017)
- 3: Work Plan (January 17, 2019)



Planning Commission

**DRAFT MINUTES OF THE REGULAR MEETING OF THE JSISHL  
(JOINT SUBCOMMITTEE FOR IMPLEMENTATION OF STATE HOUSING LAWS)**

**July 22, 2020**

The meeting was called to order at 7:02 p.m.

**Location: N/A** (This meeting was conducted exclusively through videoconference and teleconference)

**Commissioners Present:** Teresa Clarke, Dohee Kim, Thomas Lord, Shoshana O’Keefe, Igor Tregub, Alfred Twu, Jeff Vincent, Marian Wolfe (left at 9:29), Rob Wrenn

**Commissioners Absent:** None

**Staff Present:** Alene Pearson, Nilu Karimzadegan, Anne Burns and Desiree Dougherty

**ORDER OF AGENDA:** No Change

**CONSENT CALENDAR:** N/A

**PUBLIC COMMENT:** 1 speaker

**PLANNING STAFF REPORT:** Staff announced that three supplemental communications were sent out via email prior to the meeting and are posted on the online agenda. Communications received “At the Meeting” will be posted by the end of Friday.

**COMMUNICATIONS IN PACKET:**

- Email from Cantor Lois on 10/24/19 re: BART apartments
- Email from Vicki Sommer on 10/24/19 re: Objective Standards for Sunlight Detriment
- Email from Alene Pearson on 11/15/19 to JSISHL re: JSISHL October follow up and December supplemental material request
- Letter from Toni Mester on 12/2/19 re: density and solar recommendation
- Letter from David Ushijima on 12/2/19 re: Objective Standards for Shadow and Sunlight
- Email from Commissioner Wolfe on 12/2/19 re: JSISHL October follow up and December supplemental material request

**COMMISSIONER ATTACHMENTS IN PACKET:**

- Email from Alene Pearson to JSISHL on June 26, 2020 re: JSISHL Meeting scheduled for July 22
- Email from Alene Pearson to JSISHL on May 15, 2020 re: JSISHL Meeting via Zoom

- Email from Timothy Burroughs, Planning Director on April 23, 2020 re: Update on status of board and commission meetings
- Email from Commissioner Lord on April 13, 2020 re: “The Constitution.....”
- Email from Commissioner Lord on March 30, 2020 re: Objectifying and Modernizing Study Standards
- Email from Commissioner Kim on March 30, 2020 re: Follow Up to February 26 JSISHL Meeting
- Email from Commissioner Wolfe on March 28, 2020 re: Follow Up to February 26 JSISHL Meeting
- Email from Commissioner Wright on March 12, 2020 re: Follow Up to February 26 JSISHL Meeting
- Email from Alene Pearson to JSISHL on March 6, 2020 re: Follow Up to February 26 JSISHL Meeting

**LATE COMMUNICATIONS** (Received after the Packet deadline):

- Supplemental Communication 1
- Supplemental Communication 2
- Supplemental Communication 3

**LATE COMMUNICATIONS** (Received and distributed at the meeting):

- Supplemental Communication 4

**CHAIR REPORT:** None

**COMMITTEE REPORT:** None

**7. APPROVAL OF MINUTES:**

Motion/Second/Carried (Wolfe/Clarke) to approve the JSISHL Meeting Minutes from February 26, 2020. Ayes: Clarke, Kim, Lord, Tregub, Vincent, Wolfe, Wrenn. Noes: None. Abstain: O’Keefe, Twu. Absent: None (7-0-2-0)

**8. FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:** None

**AGENDA ITEMS**

**9. Action: Objective Standards for Density**

**PUBLIC COMMENT:** 4 speakers

Primary Motion/Second/No Action Taken (O’Keefe/Wrenn) to recommend that the City Council refer to staff and Planning Commission development of a dwelling units per acre standard in all commercial districts and in the MULI and MUR districts with consideration of a cap on average number of bedrooms. Take into consideration size of parcel and develop an average bedroom/unit (to be determined) for multi-unit buildings. Develop Floor Area Ratios (FARs) for residentially zoned (“R” prefix) districts such as R-2, R-2A, and R-3, to help clarify and make more objective what is permitted in these districts.

Substitute Motion/Second/Carried (Kim/Clarke) to recommend using FAR as a density standard with a secondary form-based approach in Residential and Commercial districts. Ayes: Clarke, Kim, Wolfe, Twu, Vincent. Noes: Lord, O’Keefe, Tregub, Wrenn. Abstain: None  
Absent: None  
(5-4-0-0)

**10. Action: Objective Standards for Design**

**PUBLIC COMMENT:** 1 speakers

Primary Motion/Second/Carried (Wolfe/Clarke) to recommend to City Council the proposed design standards be reviewed and further developed by the Design Review Committee and Planning Commission. These standards were included in JSISHL’s July 22, 2020 packet. Ayes: Clarke, Kim, O’Keefe, Tregub, Vincent, Wolfe, Wrenn. Noes: None. Abstain: Lord, Twu. Absent: None  
(7-0-2-0)

Substitute Motion/Second/Not Carried (Twu/O’Keefe) to recommend to City Council the proposed design standards -- minus the first four design standards (massing, material, rooflines, facades) -- be reviewed and further developed by the Design Review Committee and Planning Commission. These standards were included in JSISHL’s July 22, 2020 packet. Ayes: O’Keefe, Twu. Noes: Clarke, Kim, Lord, Tregub, Vincent, Wolfe, Wrenn. Abstain: None. Absent: None  
(2-7-0-0)

**11. Action: Objective Standards for Shadows**

**PUBLIC COMMENT:** 2 speakers

Motion/Second/Not Carried (Wrenn/Tregub) to recommend to City Council the following:

In developing draft objective standards, staff should start with existing daylight plane standards, including the standards for San Pablo Avenue in El Cerrito, and with the City’s own standard in effect for University Avenue.

Shadowing standards would only apply if the proposed project was asking for a Use Permit, AUP, waiver or density bonus to exceed the “base” residential and commercial zoning district development standards that are in effect as of 7/1/20.

Where there is a lot coverage limit, adjustments to the location and orientation of the massing can be required in order to minimize shadowing impacts.

In the development of shadowing standards, impacts on light and air and existing windows and door openings of the applicable adjacent buildings will be taken into consideration.



JSISHL should recommend that the City Council direct staff to go forward with drafting of an objective standard to protect existing rooftop solar panels from shadowing by new development on adjacent and nearby parcels.

JSISHL should recommend that the City Council direct staff to go forward with drafting objective shadowing standards to limit shadowing of residential buildings by new development on adjacent or nearby parcels.

Standards should apply in residentially zoned (“R” prefix) districts and to properties in commercially zoned (“C” prefix) districts that are adjacent to residential properties, where new development could cause shadowing impacts on residential properties. Staff could present to Council a range of options with draft language for each.

JSISHL should recommend that the City Council direct staff to work on standards to protect open, currently unshadowed areas of public parks, and open currently unshadowed areas of school grounds that are used for student recreation.

Ayes: O’Keefe, Tregub, Vincent, Wrenn. Noes: Lord, Abstain: Clarke, Kim, Twu. Absent: Wolfe (4-1-3-1)

Motion/Second/Carried (Clarke/Vincent) to recommend to City Council the following proposed shadow standards be reviewed and further developed by the staff and Planning Commission.

1. Applicability of Shadow Impacts:
  - a. Shadow impacts would not be considered when a proposed new building or new construction meets all base development standards.
  - b. Shadow impacts on an adjacent property would only be considered when a side or rear yard setback reduction or an increase in height is requested by use permit or by state density bonus over the allowable standard. Shadow impacts for Front or Street yard setback reductions would not be included or considered.
  - c. The shadow impact would only be calculated on the increase in shadow caused by the additional height or reduced setback portion of the project, not the cumulative.
  - d. Adjustments would seek to limit reductions in overall building envelope and could compensate with increases in height in another portion of the building, or reduced setback in another portion of the site, or some other mutually agreed adjustment to a development standard or mitigation. Adjustments may require, if no other solution can be proposed to mitigate the impact, a reduction in the overall total building envelope proposed. However, for state density bonus projects, adjustments to a proposed new residential construction shall not require a reduction in the overall total building envelope, habitable area, or cause the number of bedrooms or units to be reduced.
  - e. If the adjacent building being affected has a reduced building setback on the adjacent side or rear yard, a light and air impact would not be applicable, except in those cases where the building has a historic designation or was built prior to the implementation of the zoning code.

2. Elements of consideration for Shadow Impact:

- a. Light & Air for Building Openings of Applicable adjacent buildings: The light and air shadow impact shall consider impact to light and air access only of the existing windows and door openings of the applicable adjacent buildings. The new construction would be required to adjust its setback such that a minimum 3 foot perpendicular distance was achieved and a 6 foot width, with minimum 1 foot on either side of the window or door for 2 stories (min. 6 foot for courts with openings on both sides) and 1 foot additional setback for each additional story up to 14 stories, or a total maximum setback of 15 feet from the adjacent building. For instance if the building is 3 feet away from the property line, a 12 foot maximum from the property line for the new building.
- b. Minimum Required Open Space of Adjacent properties: An increase in shadow impact caused by the additional height or reduced setback on the minimum required open space of the adjacent impacted property shall not be more than a 50% increase in direct shade averaged over the entire year. If the affected property has more than the required open space, the calculation would be made on the open space that is least impacted by the shadow. The setback or height shall be adjusted to result in a net shadow increase of no more than 50% (or suggest alternate per staff research) as limited in Section 1 above. The shadow impact would only be calculated on the increase in shadow caused by the additional height or reduced setback portion of the project, not the cumulative.
- c. Solar Access: An increase for the additional impact only of more than 50% of direct shading on existing solar panels averaged over the entire year and over the entire area of solar array would require that an adjustment to the requested height or setback be made, or other mutually agreed adjustment to a development standard or mitigation be made. If a mitigation such as moving the solar panels or re-orienting the solar panels has been mutually agreed upon in lieu of a development standard adjustment, this mitigation should be completed prior to building permit issuance, if possible.

The shadow impact would only be calculated on the increase in shadow caused by the additional height or reduced setback portion of the project, not the cumulative.

Ayes: Clarke, Kim, O’Keefe, Twu, Vincent. Noes: Lord, Wrenn. Abstain: Tregub. Absent: Wolfe. (5-2-1-1)

**The meeting was adjourned at 11: 01 p.m.**

**Commissioners in attendance: 9 of 9**

**Members in the public in attendance: 7**

**Public Speakers: 7**

**Length of the meeting: 2 hours and 59 minutes**

**APPROVED:**

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Alene Pearson

Page 6 of 6

Secretary to the JSISHL

DRAFT

RESOLUTION NO. 69,159-N.S.

EXTENSION OF THE JOINT SUBCOMMITTEE FOR THE IMPLEMENTATION OF  
STATE HOUSING LAWS

WHEREAS, the Joint Subcommittee for the Implementation of State Housing Laws (JSISHL) was established under Resolution No. 68,308-N.S. in January 2018; and

WHEREAS, the mission of JSISHL is to advise Council regarding issues around density bonuses, the Housing Accountability Act, inclusionary zoning, and permit streamlining to attain compliance with state law and take advantage of new opportunities for the development of affordable housing; and

WHEREAS, under its enabling legislation, JSISHL is tasked with completing its work by January 2020, reporting to Council by March 2020; and

WHEREAS, in order to fulfill its mission an extension is needed to provide adequate time to review recently passed State housing laws, and to provide adequate feedback on recommendations on units per acre density standards, Floor to Area Ratios (FARs) and daylight plane shadowing standards, along with anything else such as an objective definition of detriment.


NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby extends the timeline for the Joint Subcommittee for the Implementation of State Housing Laws to complete its work by July 2020, with the recommendations being brought to the City Council for consideration by the end of September 2020.

The foregoing Resolution was adopted by the Berkeley City Council on October 29, 2019 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: None.

  
\_\_\_\_\_  
Jesse Arreguin, Mayor

Attest:   
\_\_\_\_\_  
Mark Numainville, City Clerk

RESOLUTION NO. 68,308–N.S.

ESTABLISHING A JOINT SUBCOMMITTEE FOR THE IMPLEMENTATION OF STATE HOUSING LAWS.

WHEREAS, Berkeley and California is facing an unprecedented housing affordability crisis; and

WHEREAS, rents for a two bedroom apartment in Berkeley have risen by 62.5% over the past five years; and

WHEREAS, Berkeley has so far achieved 48% of its housing allocation goals for 2014-2022 set out by the Association of Bay Area Governments, including 0% for extremely low income and moderate income; and

WHEREAS, many residential developments that have received zoning approval have yet to receive a building permit; and

WHEREAS, to address the rising crisis of housing in the State of California, 15 state bills were signed into law, with many dealing with how local municipalities respond to the development of new units; and

WHEREAS, issues around density bonuses, the Housing Accountability Act, inclusionary zoning, and permit streamlining need to be addressed by the City to be compliant with state law and to take advantage of new opportunities for the development of affordable housing; and

WHEREAS, because the Zoning Adjustments Board, Housing Advisory Commission, and Planning Commission have policy and quasi-judicial powers around housing, it would be beneficial for representatives of these commissions to meet jointly to develop policies for consideration by the Planning Commission and City Council; and

WHEREAS, community input is of vital importance in the review and implementation of these housing policies, and such input can be encouraged by regular publicly-noticed meetings of the Task Force; and

WHEREAS, the Joint Subcommittee should be comprised of nine voting members, with representatives from each commission.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley does hereby establish a Joint Subcommittee composed of members from the Zoning Adjustments Board, Housing Advisory Commission, and Planning Commission.

BE IT FURTHER RESOLVED that the Joint Subcommittee members shall be appointed from the membership of the Zoning Adjustments Board, Planning Commission or Housing Advisory Commission. Any Commissioner on any of those commissions is eligible for appointment to the Joint Subcommittee, as long as there is representation from each commission on the Joint Subcommittee.


BE IT FUTHER RESOLVED that the Joint Subcommittee shall complete its work by January 2020. Staff shall forward the Joint Subcommittee's recommendations to each parent Commission for comment, and bring the Joint Subcommittee's recommendations to the City Council for consideration by the end of March 2020, along with comments by any parent commissions.

The foregoing Resolution was adopted by the Berkeley City Council on January 23, 2018 by the following vote:

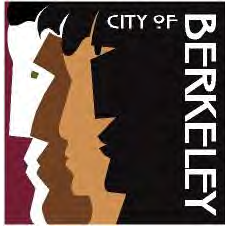
Ayes: Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: Bartlett.

  
\_\_\_\_\_  
Jesse Arreguin, Mayor

Attest:   
\_\_\_\_\_  
Mark Numalville, City Clerk



Mayor Jesse Arreguin  
Councilmember Sophie Hahn, District 5

## **SUPPLEMENTAL AGENDA MATERIAL**

**Meeting Date:** June 13, 2017

**Item Number:** # 59

**Item Description:** Housing Accountability Act

**Submitted by:** Mayor Jesse Arreguin and Councilmember Sophie Hahn

The revision removes the idea that staff and the Planning Commission consider as one of several options downzoning and then upzoning by increasing development standards on a discretionary basis.

These ideas largely reflect those originally proposed by the City Attorney and Planning staff.



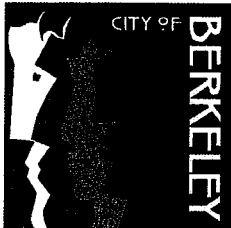
Mayor Jesse Arreguin  
Councilmember Sophie Hahn, District 5

### **Motion, Item # 59: Housing Accountability Act**

Refer to the City Manager and Planning Commission to consider the following actions, and others they may find appropriate, to address the potential impacts of the Housing Accountability Act and to preserve local land use discretion:

- Amend the General Plan and Zoning Ordinance to adopt numerical density and/or building intensity standards that can be applied on a parcel-by-parcel basis in an easy and predictable manner. These would constitute reliable and understandable “objective general plan and zoning standards” that would establish known maximum densities. This could be done across the board or for specified districts.
- Devise and adopt “objective, identified written public health or safety standards” applicable to new housing development projects.
- Adopt “design review standards that are part of ‘applicable, objective general plan and zoning standards and criteria’”.
- ~~Downzone & increase the number and amount of additional height, setback, and other elements available on a discretionary basis.~~
- Quantify and set standards for views, shadows, and other impacts that often underlie detriment findings.





Office of the Mayor

RECEIVED AT  
COUNCIL MEETING OF:

MAY 30 2017

OFFICE OF THE CITY CLERK  
CITY OF BERKELEY

**Motion, Item # 46: Housing Accountability Act**

Refer to the City Manager and Planning Commission to consider the following actions, and others they may find appropriate, to address the potential impacts of the Housing Accountability Act and to preserve local land use discretion:

- Amend the General Plan and Zoning Ordinance to adopt numerical density and/or building intensity standards that can be applied on a parcel-by-parcel basis in an easy and predictable manner. These would constitute reliable and understandable “objective general plan and zoning standards” that would establish known maximum densities. This could be done across the board or for specified districts.
- Devise and adopt “objective, identified written public health or safety standards” applicable to new housing development projects.
- Adopt “design review standards that are part of ‘applicable, objective general plan and zoning standards and criteria’”.
- Downzone & increase the number and amount of additional height, setback, and other elements available on a discretionary basis.
- Quantify and set standards for views, shadows, and other impacts that often underlie detriment findings.

Meeting Date: January 17, 2019

To: Joint Subcommittee for the Implementation of State Housing Law (JSISHL)

From: Chris Schildt, Chairperson

Subject: JSISHL background, mission, objectives, and developing 2019 Workplan

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## Background

JSISHL held three meetings last year in April, May, and July, and had two meetings cancelled in September and November. Due to the long gap since our last meeting, I thought it'd be helpful to revisit the mission and objectives of this subcommittee, as background to a discussion of our workplan for the coming year.

At our April 17, 2018 meeting, we reviewed the mission and objectives of this subcommittee (from April 17, 2018 staff presentation to JSISHL):

**Mission:** Assist the City of Berkeley to effectively implement new State housing laws and advance City Council priorities that are designed to increase affordable housing.

### Objectives:

- Learn about the new State housing law package and its implications for our community
- Assist the City to incorporate new practices designed to enable implementation of new State housing laws
- Based on City Council priorities and referrals, assist with development of new policies for consideration by parent commissions and City Council.

At our subsequent meetings, we heard information about and discussed new state housing laws and a range of related issues, including developing objective standards, streamlining affordable housing, density bonus, and inclusionary zoning.

## Developing a 2019 Workplan

While we heard information and had a lot of discussion last year, my aim for this coming year is for this body to move forward on a finite number of items that will best position the City to implement State housing laws. To that aim, I recommend we develop a workplan with agreed upon priorities that we will work on in the coming year. This would not preclude commissioners from submitting agenda items on other topics for JSISHL to consider, but would help to align our efforts and focus.

The workplan should build off of our existing work and discussion. In last year's meetings, we discussed the following areas that relate to implementation of new State housing laws:

- Developing objective standards
- Streamlining affordable housing
- Density bonus
- Inclusionary housing

**Proposal:**

Numerous state laws, including the Housing Accountability Act, SB 35, and other potential future state legislation (e.g. SB 50) have made it difficult to implement our local laws, which were developed to be flexible with local discretion. The City has recently undertaken a review of the applicable standards that can be enforced under these laws in the light of three recent projects that have applied for approval under SB 35. For an example of how the City applied objective standards for one of the projects, 1601 Oxford Street, see:

[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_ZAB/2018-12-21\\_Attachment%20C\\_SB35\\_Objective%20Standards\\_1601%20Oxford.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_ZAB/2018-12-21_Attachment%20C_SB35_Objective%20Standards_1601%20Oxford.pdf)

One outcome of the recent reviews has been the clear identification of those areas where the City does not have objective standards, including design review and use permit findings, which are by necessity discretionary and flexible to address unique circumstances. Developing objective standards in areas such as view, sunlight, density, and detriment could help to ensure local needs and goals are included in the development review process for all projects. These objective standards would also help address some of the other topics that have come up on this commission, such as facilitating streamlined review of affordable housing projects and improving the density bonus process.

As a proposed workplan, we could decide as a commission to use each of the next several meetings to do research and discussion on a separate topic within objective standards, and develop a set of recommendations for the City Council and/or our parent commissions. For each topic, commissioners and members of the public would be encouraged to submit information and research to this commission related to the topic to inform discussion. Attached is an example of research provided by a member of public, David Ushijima, on providing objective standards for sunlight detriment.

For example, we could dedicate one of each of these topics for each upcoming meeting:

- Daylight.
- Views.
- Density standards (Note: The city has hired a consultant, Opticos Design, to develop density standards this year. They will be presenting to this commission in 2019, date TBD).
- Detriments to health, comfort, and general welfare.

We could also agendaize for a future meeting to review the City's existing objective standards table.

At the end of the year, we can compile our research and discussion and develop a set of recommendations to send to the City Council and/or our parent bodies.

**Questions for discussion:**

- Do the members of the commission agree to develop a workplan for 2019?
- If yes, what should our priorities be for 2019?



Planning Commission

1                   **DRAFT MINUTES OF THE REGULAR MEETING OF THE JSISHL**  
2                   **(JOINT SUBCOMMITTEE FOR IMPLEMENTATION OF STATE HOUSING LAWS)**

3  
4                   **January 17, 2019**

5                   The meeting was called to order at 7:05 p.m.

6                   **Location:** 2180 Milvia Street 1st Floor, Cypress Conference Room

7                   **Commissioners Present:** Thomas Lord, Shoshana O'Keefe (arrived at 7:16), Christine Schildt  
8                   Igor Tregub, Marian Wolfe, Rob Wrenn.

9                   **Commissioners Absent:** None

10                  **Staff Present:** Alene Pearson, Nilu Karimzadegan and Beth Greene

11                  **ORDER OF AGENDA:** Order of Agenda was changed to:

12                  Discussion Item 9 (Adopt 2019 JSISHL Work Plan ), Discussion Item 10 (Renewing  
13                  Democratized Planning in Berkeley), Action Item 11 (Approve 2019 JSISHL Meetings Calendar)  
14                  and Action Item 12 (Elections: Elect 2019 JSISHL Chair and Vice Chair).

15                  Motion/Second/Carried (Lord/ Tregub) to move Agenda Item 12 to Agenda Item 10 and vote  
16                  on the 2019 JSISHL Work Plan after Agenda Item 10. Ayes: Lord, O'Keefe, Schildt, Tregub,  
17                  Wolfe, Wrenn. Noes: None. Abstain: None. Absent: None (6-0-0-0)

18  
19                  **CONSENT CALENDAR:** N/A.

20                  **PUBLIC COMMENT:** 1 speaker

21                  **PLANNING STAFF REPORT:**

22                  Staff announced that 2019 meeting dates will be decided tonight with Agenda Item 11 and future  
23                  meeting location will depend upon room availability.

24                  **COMMUNICATIONS IN PACKET:**

- 25                  • White Paper on Sunlight Impacts by David Ushijima (October 15, 2018).  
26                  • 2019-01-08\_Communication\_BNC\_Support of White Paper by Dean Metzger (January 8,  
27                  2019)

28  
29                  **LATE COMMUNICATIONS** (Received after the Packet deadline): None

31 **LATE COMMUNICATIONS** (Received and distributed at the meeting): None

32 **CHAIR REPORT:** None

33 **COMMITTEE REPORT:** None

34 **7. APPROVAL OF MINUTES:**

35 Motion/Second/Carried (Tregub/Wrenn) to approve the JSISHL Meeting Minutes from July 17,  
36 2018. Ayes: Lord, O’Keefe, Schildt, Tregub, Wrenn. Noes: None. Abstain: Wolfe. Absent:  
37 None (5-0-1-0)

38  
39 **8. FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:** None.

40 **AGENDA ITEMS**

41 **9. Discussion:** Adopt 2019 JSISHL Work Plan:

42 The Commission discussed a work plan for 2019 and developed a proposed schedule with  
43 meeting dates and topics that focus on objective standards for the implementation of State  
44 Housing Law. Below is a summary of that discussion:

45 January 17: Work Plan Development

46 March 27: Existing Objective Standard Framework

47 May 22: Density Standards and Density Bonus

48 September 25: Daylight, shadowing, and solar access

49 October 23: Views and other objective standards

50 December 12: Report out.

51 The Commissioners and the members of the public were encouraged to submit information and  
52 research related to future meeting topics. This work plan will result in a set of recommendations  
53 to parent commissions and/or City Council.

54 **PUBLIC COMMENT:** 1 speaker

55 **10. Discussion:** Renewing Democratized Planning in Berkeley

56 Commissioner Lord explained his memo and suggested modifications to the work plan  
57 developed during discussion of Agenda Item 9. The Commission added the topic of local  
58 overlay zones to the September and October meetings.

59 **PUBLIC COMMENT:** 1 speaker

60 Motion/Second/Carried (O’Keefe/Wolfe) to adopt the proposed 2019 workplan. Ayes: O’Keefe,  
61 Schildt, Tregub, Wolfe, Wrenn. Noes: Lord. Abstain: None. Absent: None (5-1-0-0)

62  
63 **11. Action:** Approve 2019 JSISHL Meetings Calendar:

64 The Commission discussed their availability and agreed on the following 2019 calendar:

65 January 17, 2019 (Wednesday)

66 March 27, 2019 (Wednesday)

67 May 22, 2019 (Wednesday)

68 September 25, 2019 (Wednesday)

69 October 23, 2019 (Wednesday)

70 December 12, 2019 (Thursday)

71 Motion/Second/Carried (O’Keefe/Tregub) to adopt the proposed 2019 calendar. Ayes: Lord,  
72 O’Keefe, Schildt, Tregub, Wolfe, Wrenn. Noes: None. Abstain: None. Absent: None  
73 (6-0-0-0)

74  
75 **12. Elections:** Elect 2019 JSISHL Chair and Vice Chair:

76 Motion/Second/Carried (Wolfe/O’Keefe) to Elect Chris Schildt as Chair and Igor Tregub as  
77 Vice Chair for 2019 JSISHL. Ayes: Lord, O’Keefe, Schildt, Tregub, Wolfe, Wrenn. Noes: None.  
78 Abstain: None. Absent: None (6-0-0-0)

79  
80 **The meeting was adjourned at 9: 03 p.m.**

81 **Commissioners in attendance: 6 of 6**

82 **Members in the public in attendance: 2**

83 **Public Speakers: 2**

84 **Length of the meeting: 1 hour and 58 minutes**



Agenda & Rules Committee

**ACTION CALENDAR**

September 14, 2021

*(Continued from May 25, 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:<sup>1</sup> 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.

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<sup>1</sup> [https://www.cityofberkeley.info/uploadedFiles/Clerk/City\\_Council/2021/03\\_Mar/Documents/03-29%20Minutes%20-%20Agenda%20Committee.pdf](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.<sup>2</sup> 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.”<sup>3</sup>

The Agenda & Rules Committee considered this referral with input from FCPC commissioners. The FCPC and Open Government Commission (OGC)<sup>4</sup> 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.<sup>5</sup>

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

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<sup>2</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/02\\_Feb/Documents/2020-02-04\\_Special\\_Item\\_02\\_Amendments\\_to\\_the\\_Berkeley\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/02_Feb/Documents/2020-02-04_Special_Item_02_Amendments_to_the_Berkeley_pdf.aspx)

<sup>3</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/02\\_Feb/Documents/02-04\\_Special\\_Annotated\\_Agenda\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/02_Feb/Documents/02-04_Special_Annotated_Agenda_pdf.aspx)

<sup>4</sup> 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.

<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</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, and similar expenses. Cities can place limits on officeholder accounts, as Oakland has done.<sup>8</sup> 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."<sup>9</sup> 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.

<sup>6</sup> [https://www.cityofberkeley.info/uploadedFiles/Clerk/City\\_Council/2021/03\\_Mar/Documents/03-29%20Minutes%20-%20Agenda%20Committee.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/City_Council/2021/03_Mar/Documents/03-29%20Minutes%20-%20Agenda%20Committee.pdf)

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

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

<sup>9</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/02\\_Feb/Documents/02-04\\_Special\\_Annotated\\_Agenda\\_pdf.aspx](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](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/travel](http://www.dgs.ca.gov/travel)<sup>1</sup>, 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.gov](http://www.gsa.gov)<sup>2</sup>, whichever is greater. Any exceptions to these rates must be approved at a public Council meeting before the expense is incurred.

<sup>1</sup> California Department of General Services Statewide Travel Program (DGS): [www.dgs.ca.gov/travel](http://www.dgs.ca.gov/travel)

<sup>2</sup> U.S. General Services Administration (GSA): [www.gsa.gov](http://www.gsa.gov)

ITEM 14  
ATTACHMENT 2

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.

**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:

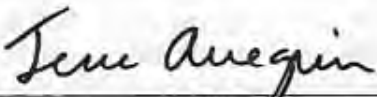
1. loss of reimbursement privileges;
2. a demand for restitution to the City;
3. the City's reporting the expenses as income to the elected official to state and federal tax authorities;
4. civil penalties of up to \$1,000 per day and three times the value of the resources used; and
5. prosecution for 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 Policy**Introduction – 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 ( <i>e.g.</i> , 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 ( <i>e.g.</i> , 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 ( <i>e.g.</i> , 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.



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# California LEGISLATIVE INFORMATION

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(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 Opinion Index: ILE 1 and IILG

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







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

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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.

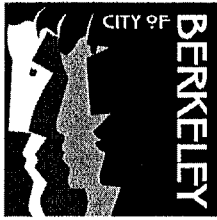
Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication 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

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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.

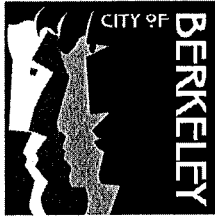
Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

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

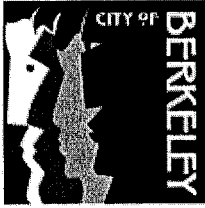
**Item Number:** 2

**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 |                   |                   |                    |                     |                     |
|                        | <b>1,788,656</b>  | <b>1,892,881</b>  | <b>1,918,324</b>   | <b>2,028,441</b>    | <b>2,074,738</b>    |
| <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      |                   |                   |                    |                     |                     |
|                        | <b>1,788,656</b>  | <b>1,892,881</b>  | <b>1,918,324</b>   | <b>2,028,441</b>    | <b>2,074,738</b>    |
| <b>By Fund:</b>        |                   |                   |                    |                     |                     |
| General Fund           | 1,788,656         | 1,892,881         | 1,918,324          | 2,028,441           | 2,074,738           |
|                        | <b>1,788,656</b>  | <b>1,892,881</b>  | <b>1,918,324</b>   | <b>2,028,441</b>    | <b>2,074,738</b>    |

|                         |       |       |       |       |       |
|-------------------------|-------|-------|-------|-------|-------|
| <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

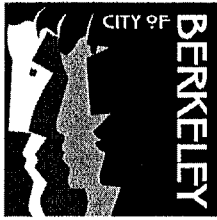
CONTACT PERSON

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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**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 (SFPPC) 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

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<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.

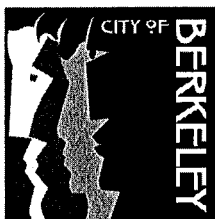
Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

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

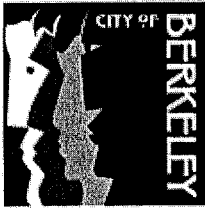
Item Number: 2

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



BEN BARTLETT

CITY COUNCILMEMBER, DISTRICT 3

ACTION CALENDAR

September 14, 2021

To: Honorable Mayor and Members of the City Council
 From: Councilmember Ben Bartlett (Author), Mayor Jesse Arreguin (Co-Sponsor)
 and Councilmember Terry Taplin (Co-Sponsor)
 Subject: Predevelopment Allocation, Ashby Recreation and Community Housing
 (ARCH) Consortium

RECOMMENDATION

Refer to staff to work with the Ashby Recreation and Community Housing (ARCH) Consortium to develop a planning grant for the Ashby BART East Parking Lot.

POLICY COMMITTEE RECOMMENDATION

No final action was taken by the Budget & Finance Committee. The item is automatically returning to the Council agenda pursuant to the 120-day time limit for items referred to policy committees.

BACKGROUND

A joint non-profit housing and recreation proposal is being proposed for the BART lot east of the Ed Robert's Campus (ERC). The proposal, ARCH (Ashby Recreation and Community Housing) envisions a state-of-the-art recreation facility coupled with deeply affordable housing. The partners are BORP (Bay Area Outreach & Recreation), EBSHC (East Bay Supportive Housing Collaborative) and the ERC. ARCH has a managing developer for the entire site and is contacting non-profit housing developers.

ARCH will be a destination for the Bay Area's disabled community providing a fully adaptive recreation center, including a warm pool, all also available to the public. This will be combined with a deeply affordable housing complex for those living with mental illness, those with physical disabilities, and persons who are homeless or at risk of homelessness." On-site services will be included as needed. The housing complex will provide, as feasible, a right of return for displaced South Berkeley residents.

RECREATIONAL COMPONENT: Bay Area Outreach & Recreation Program (BORP) has 45 years of providing adaptive sports and recreation for people with physical disabilities in the East Bay. We are committed to leading a partnership of individuals and organizations to develop a facility that will provide the disability community with reliable and permanent opportunities for fitness and recreational activities. Situated next to BART and the Ed Roberts Campus, and built using universal design and green building principles, the facility will leverage public transit and existing services to provide broad access to the disability community.

The envisioned complex will be more than an athletic facility or recreation center; it will be a community hub, providing an inspirational environment for individuals with disabilities, offering regular opportunities for fitness, wellness, recreation, enjoyment and competition. The opportunity to merge with affordable housing only strengthens our vision. Recognizing the tremendous need for increased recreational programming for

people with disabilities, the Wayne & Gladys Valley Foundation has generously made a \$5 million-dollar matching grant commitment to the BORP project.

HOUSING COMPONENT: The recreational structure will be surrounded by deeply affordable housing, the need for which has never been greater. Aside from our general housing crisis there is a critical shortage of homes for those with disabilities and mental illness. Board and Care homes have historically provided housing for the mentally ill and are closing at an alarming rate. A “slice” of the ARCH housing will serve this population and provide staff and services for the special needs residents.

The number of housing units, their configuration, height and bulk, is to be determined and will evolve as the zoning and agreements between the City and BART are finalized. The EBSHC envisions between 50 to 100 units of completely universal design. It is too early in the BART/City process to predict further. Funds from a variety of sources will be needed: Conventional financing, Section 8, and every government and private source will be pursued--as is often the case with non-profit endeavors.

ACTIVITIES

ARCH members have been actively engaged in efforts to prevent homelessness and influencing critical policy decisions. In 2020 EBSHC worked successfully with Assemblyman David Chiu and State Senator Nancy Skinner to pass AB 2377, which requires Board and Care facilities to give the counties and cities in which they are located 6-month notice before closure, and local government the first opportunity to offer to purchase. Having stable and affordable living places, with supportive services when needed, is key to solving the problems of homelessness in our community.” A City of Berkeley predevelopment allocation will enable ARCH to create feasibility and architectural scenarios, assemble research and background materials, all necessary to apply for various funding from County, State and Federal sources and to respond to calls for proposals.

CURRENT SITUATION

The push for affordable housing has been growing in the past few years. In September 2018, California authorized BART to construct housing on its property in order to address the housing crisis. Since then, there have been ongoing discussions between community members and city officials to clarify the planning process and provide a unified vision for how to best use the land. In December 2020, the City passed the Adeline Corridor plan, which aims to transform South Berkeley’s housing landscape through the creation of affordable housing. To build off of this momentum, the City should explore the feasibility of ARCH.

RATIONALE FOR RECOMMENDATION

ARCH provides an opportunity to infuse recreational activities with housing. Ultimately, its goals align with the City’s plans to expand access to affordable housing and, therefore, should be explored.

FISCAL IMPACTS OF RECOMMENDATION

To be determined by staff.

CONTACT PERSON

Councilmember Ben Bartlett
James Chang

510-981-7130
jchang@cityofberkeley.info



Kate Harrison
Councilmember District 4

CONSENT CALENDAR
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 successor Commission) to hold joint meetings to conduct community outreach and education events and recommend proposed changes and appropriate phasing to the

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
September 14, 2021

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 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
- Charges \$0.10 for paper bags at:

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
September 14, 2021

- 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.

ENVIRONMENTAL SUSTAINABILITY

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
September 14, 2021

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: **X**



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

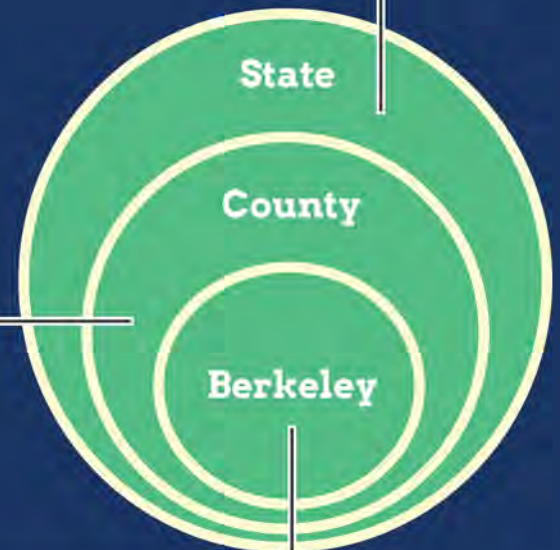
Regulation:



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 **X**



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.



Open Government Commission

ACTION CALENDAR
September 14, 2021

To: Honorable Mayor and Members of the City Council
 From: Open Government Commission
 Submitted by: Brad Smith, Chairperson, Open Government Commission
 Samuel Harvey, Secretary, Open Government Commission
 Subject: Letter of Support for SB-459 Political Reform Act of 1974: lobbying

RECOMMENDATION

Send a letter of support to Senator Nancy Skinner in support of SB-459 Political Reform Act of 1974: lobbying (Attached).

SUMMARY

Current lobbying reports don't provide information about who is funding lobbying efforts until after the bills have passed or died. SB-459 would require the following reforms:

1. Monthly, rather than quarterly, disclosures for the largest lobbyist.
2. 72-hour reporting of significant spending on issue ads and the naming of the special interests that bought the ads.
3. Requiring lobbying reports to disclose their position (e.g., "Support" or "Oppose")

Passage of SB-459 will increase lobbying transparency with the public being more capable of "following the money."

M/S/C (Smith/O'Donnell) to submit recommendation to City Council
 Ayes: Metzger, O'Donnell, Ching, Sheahan, Blome, Hynes, Humbert, Tsang, Smith; Noes: none; Abstain: none; Absent: none.)

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Difficult for the public to know who is attempting to influence our elected officials.

BACKGROUND

Currently, it is impossible to know who is spending money lobbying our lawmakers until after their votes have been cast and the session ends. This legislation will increase the transparency of money spent to influence legislation.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identified environmental effects related to this recommendation.

RATIONALE FOR RECOMMENDATION

To increase transparency about who is funding lobbying efforts.

ALTERNATIVE ACTIONS CONSIDERED

Not sending a letter to Senator Nancy Skinner.

CITY MANAGER

The City Manager takes no position.

CONTACT PERSON

Brad Smith, Chair, Open Government Commission
Samuel Harvey, Secretary, Open Government Commission

Attachments:

1. SB-459 Senate Committee Analyses
2. SB-459 Political Reform Act of 1974: lobbying, text

AMENDED IN SENATE APRIL 28, 2021

AMENDED IN SENATE APRIL 12, 2021

AMENDED IN SENATE MARCH 10, 2021

SENATE BILL

No. 459

Introduced by Senator Allen
(Coauthors: Senators Glazer and Newman)
(Coauthor: Assembly Member Mullin)

February 16, 2021

An act to amend Sections 86114, 86116, 86117, and 86118 of, and to add Section 86119 to, the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

SB 459, as amended, Allen. Political Reform Act of 1974: lobbying.

Existing law, the Political Reform Act of 1974, regulates the activities of lobbyists, lobbying firms, and lobbyist employers in connection with attempts to influence legislative and administrative action by legislative and other state officials, including by requiring that lobbyists, lobbying firms, and lobbyist employers register and file periodic reports with the Secretary of State.

This ~~bill~~ *bill*, beginning January 1, 2023, would require lobbyists, lobbying firms, and lobbyist employers to include information in the periodic reports that identifies each bill or administrative action subject to lobbying activity, and the respective position advocated for, during that period. This bill would require a lobbying firm or lobbyist employer to file a monthly report for any calendar month in which the total amount of payments subject to reporting exceeds \$15,000, and would require a lobbying firm or lobbyist employer to file monthly reports for 12

months following any calendar quarter in which the total amount of payments subject to reporting exceeds \$45,000. The bill would require certain persons to file specified reports following a calendar quarter in which that person incurs cumulative costs equal to or exceeding \$5,000 for issue lobbying advertisements, as defined.

A violation of the act is punishable as a misdemeanor, and reports and statements filed under the act are required to be signed under the penalty of perjury. By expanding the scope of existing crimes, this bill would impose a state-mandated local program.

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

This bill would provide that no reimbursement is required by this act for a specified reason.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act’s purposes upon a 2/3 vote of each house of the Legislature and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: 2/3. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Section 86114 of the Government Code, as
2 amended by Section 38 of Chapter 662 of the Statutes of 2018, is
3 amended to read:
4 86114. (a) Lobbying firms shall file periodic reports containing
5 all of the following:
6 (1) The full name, address, email address, and telephone number
7 of the lobbying firm.
8 (2) (A) The full name, business address, and telephone number
9 of each person who contracted with the lobbying firm for lobbying
10 services, a description of the specific lobbying interests of the
11 person, and the total payments, including fees and the
12 reimbursement of expenses, received from the person for lobbying
13 services during the reporting period.
14 (B) (i) For each client, the report shall indicate the name or
15 number of each bill or administrative action, with regard to which
16 a partner, owner, officer, or employee of the lobbying firm either

1 engaged in direct communication, including through issue lobbying
2 advertisements, or was directed by that client to engage in direct
3 communication, with an elective state official, agency official, or
4 legislative official on behalf of that client for the purpose of
5 influencing legislative or administrative action during the reporting
6 period, either by reference to its legislative or administrative
7 identification number if one exists or by brief description if no
8 such number exists.

9 (ii) For each bill or issue lobbying advertisement related to a
10 bill, the report shall indicate one of the following that most closely
11 describes the client position publicly communicated: “support,”
12 “oppose,” “support if amended,” “oppose unless amended,”
13 “neutral seeking amendment,” “neutral expressing concerns.” The
14 report shall list in chronological order any changes in position
15 during that reporting period but shall not be required to disclose
16 the date of any change in position.

17 (iii) The report shall not include bills or administrative actions
18 which have failed passage prior to the reporting period, bills or
19 administrative actions which the lobbying firm is only watching
20 or monitoring, or bills or administrative actions which the lobbying
21 firm has not attempted to influence during the reporting period.

22 (3) The total amount of payments received for lobbying services
23 during the period.

24 (4) A periodic report completed and verified by each lobbyist
25 in the lobbying firm pursuant to Section 86113.

26 (5) Each activity expense incurred by the lobbying firm
27 including those reimbursed by a person who contracts with the
28 lobbying firm for lobbying services. A total of all activity expenses
29 of the lobbying firm and all of its lobbyists shall be included.

30 (6) If the lobbying firm subcontracts with another lobbying firm
31 for lobbying services:

32 (A) The full name, address, email address, and telephone number
33 of the subcontractor.

34 (B) The name of the person for whom the subcontractor was
35 retained to lobby.

36 (C) The total amount of all payments made to the subcontractor.

37 (7) The date, amount, and the name of the recipient of any
38 contribution of one hundred dollars (\$100) or more made by the
39 filer to an elected state officer, a state candidate, a committee
40 controlled by an elected state officer or state candidate, or a

1 committee primarily formed to support or oppose those officers
2 or candidates. If this contribution is reported by the lobbying firm
3 or by a committee sponsored by the lobbying firm in a campaign
4 statement filed pursuant to Chapter 4 which is required to be filed
5 with the Secretary of State, the filer may report only the name of
6 the committee and the identification number of the committee.

7 (8) Any other information required by the commission consistent
8 with the purposes and provisions of this chapter.

9 (b) In addition to the information required by subdivision (a),
10 lobbying firms which qualify pursuant to paragraph (2) of
11 subdivision (a) of Section 82038.5 shall also report the name and
12 title of each partner, owner, officer, and employee of the lobbying
13 firm who, on at least five separate occasions during the reporting
14 period, engaged in direct communication with any elective state
15 official, legislative official, or agency official, for the purpose of
16 influencing legislative or administrative action on behalf of a
17 person who contracts with the lobbying firm for lobbying services.
18 This does not include individuals whose actions were purely
19 clerical.

20 SEC. 2. Section 86116 of the Government Code, as amended
21 by Section 39 of Chapter 662 of the Statutes of 2018, is amended
22 to read:

23 86116. Every person described in Section 86115 shall file
24 periodic reports containing the following information:

25 (a) The name, business address, email address, and telephone
26 number of the lobbyist employer or other person filing the report.

27 (b) The total amount of payments to each lobbying firm.

28 (c) The total amount of all payments to lobbyists employed by
29 the filer.

30 (d) (1) A description of the specific lobbying interests of the
31 filer.

32 (2) The information required by subparagraph (B) of paragraph
33 (1) of subdivision (a) of Section 86114. A person described in
34 Section 86115 may, through a form adopted by the commission,
35 refer to and incorporate by reference the information contained in
36 a report filed by the person's lobbying firm pursuant to Section
37 86114 to meet the requirement of this paragraph.

38 (e) A periodic report completed and verified by each lobbyist
39 employed by a lobbyist employer pursuant to Section 86113.

1 (f) Each activity expense of the filer. A total of all activity
2 expenses of the filer shall be included.

3 (g) The date, amount, and the name of the recipient of any
4 contribution of one hundred dollars (\$100) or more made by the
5 filer to an elected state officer, a state candidate, or a committee
6 controlled by an elected state officer or state candidate, or a
7 committee primarily formed to support or oppose the officer or
8 candidate. If this contribution is reported by the filer or by a
9 committee sponsored by the filer in a campaign statement filed
10 pursuant to Chapter 4 which is required to be filed with the
11 Secretary of State, the filer may report only the name of the
12 committee, and the identification number of the committee.

13 (h) (1) Except as set forth in paragraph (2), the total of all other
14 payments to influence legislative or administrative action including
15 overhead expenses and all payments to employees who spend 10
16 percent or more of their compensated time in any one month in
17 activities related to influencing legislative or administrative action.

18 (2) A filer that makes payments to influence a ratemaking or
19 quasi-legislative proceeding before the Public Utilities
20 Commission, as defined in subdivision (b) or (c), respectively, of
21 Section 82002, may, in lieu of reporting those payments pursuant
22 to paragraph (1), report only the portion of those payments made
23 to or for the filer's attorneys for time spent appearing as counsel
24 and preparing to appear as counsel, or to or for the filer's witnesses
25 for time spent testifying and preparing to testify, in this type of
26 Public Utilities Commission proceeding. This alternative reporting
27 of these payments made during a calendar month is not required
28 to include payments made to an attorney or witness who is an
29 employee of the filer if less than 10 percent of the attorney's or
30 witness's compensated time in that month was spent in appearing,
31 testifying, or preparing to appear or testify before the Public
32 Utilities Commission in a ratemaking or quasi-legislative
33 proceeding. For the purposes of this paragraph, time spent
34 preparing to appear or preparing to testify does not include time
35 spent preparing written testimony.

36 (i) Any other information required by the commission consistent
37 with the purposes and provisions of this chapter.

38 SEC. 3. Section 86117 of the Government Code is amended
39 to read:

1 86117. (a) Reports required by Sections 86114 and 86116
2 shall be filed during the month following each calendar quarter.
3 The period covered shall be from the first day of January of each
4 new biennial legislative session through the last day of the calendar
5 quarter prior to the month during which the report is filed, except
6 as specified in subdivision (b), and except that the period covered
7 shall not include any information reported in previous reports filed
8 by the same person. When total amounts are required to be
9 reported, totals shall be stated both for the period covered by the
10 statement and for the entire legislative session to date.

11 (b) The period covered by the first report a person is required
12 to file pursuant to Sections 86114 and 86116 shall begin with the
13 first day of the calendar quarter in which the filer first registered
14 or qualified. On the first report a person is required to file, the total
15 amount shall be stated for the entire calendar quarter covered by
16 the first report.

17 (c) In addition to the requirements of subdivision (a), a person
18 described in Section 86115 shall also do both of the following:

19 (1) File a monthly report pursuant to Section 86116 for any
20 calendar month where the sum of the total amount of all payments
21 subject to reporting pursuant to that section exceeds fifteen
22 thousand dollars (\$15,000). The monthly report required by this
23 subdivision shall be filed during the first 15 days of the month
24 following any qualifying calendar month.

25 (2) During the period beginning 60 days before the deadline for
26 the passage of ~~bills established by joint resolution of the~~
27 ~~Legislature, bills~~, file a report within 72 hours of retaining a
28 lobbying firm to influence legislative or administrative action
29 during those 60 days, including the amount paid to the lobbying
30 firm upon being retained or to be paid to the lobbying firm pursuant
31 to a contract for lobbying. The report required by this subparagraph
32 shall be made public within 24 hours of receipt, either through the
33 internet or distribution or posting of portable document formats
34 (PDFs) of the documents or summaries of the documents online.

35 (d) If the sum described in paragraph (1) of subdivision (c)
36 exceeds forty-five thousand dollars (\$45,000) in a calendar quarter,
37 the person described in Section 86115 shall file monthly reports
38 pursuant to Section 86116 for the next 12 months.

39 (e) In addition to the requirements of subdivision (a), a lobbying
40 firm shall also file a monthly report pursuant to Section 86114 for

1 any calendar month where the total amount of payments received
2 for lobbying services exceeds fifteen thousand dollars (\$15,000).
3 The monthly report required by this subdivision shall be filed
4 during the first 15 days of the month following any qualifying
5 calendar month.

6 (f) If the sum described in subdivision (e) exceeds forty-five
7 thousand dollars (\$45,000) in a calendar quarter, the person
8 described in Section 86115 shall file monthly reports for the next
9 12 months.

10 (g) Regardless of the total amounts of payments made or
11 received, any person described in Section 86115, or any lobbying
12 firm, may elect to file monthly reports pursuant to subdivision (c)
13 or (e). Notwithstanding subdivision (a), any person described in
14 Section 86115, or any lobbying firm, that files monthly reports
15 pursuant to subdivision (c) or (e) for each month of a calendar
16 quarter shall not file a quarterly report covering that same period.

17 (h) When total amounts are required to be reported, totals shall
18 be stated both for the period covered by the statement and for the
19 entire legislative session to date.

20 SEC. 4. Section 86118 of the Government Code, as amended
21 by Section 40 of Chapter 662 of the Statutes of 2018, is amended
22 to read:

23 86118. (a) Reports required by Sections 86114 and 86116
24 shall be filed online or electronically with the Secretary of State.

25 (b) Original documents may be signed and filed with electronic
26 signatures.

27 SEC. 5. Section 86119 is added to the Government Code, to
28 read:

29 86119. (a) (1) "Issue lobbying advertisement" as used in this
30 chapter means any communication as described in Section 84501
31 that is authorized and paid for, directly or indirectly, by a person
32 described in Section 86115 and that refers to one or more clearly
33 identified pending legislative or administrative actions and does
34 any of the following:

35 (A) Solicits or urges persons other than the person described in
36 Section 86115 to communicate directly with an elective state
37 official, agency official, or legislative official for the primary
38 purpose of attempting to influence state legislative or administrative
39 action.

1 (B) Refers to a state legislative or administrative action and
2 urges its defeat, amendment, postponement, enactment, or
3 promulgation.

4 (2) The types of communications that may qualify as an issue
5 lobbying advertisement include those described in Section 82041.5,
6 subdivision (a) of Section 84501, subdivision (a) of Section
7 84504.3, a prerecorded telephone call made to more than 200
8 persons, a substantially similar email, text message, or other
9 electronic communication that is sent to over 200 recipients, or
10 any other substantially similar communication determined by
11 regulations adopted by the commission.

12 (3) A pending legislative or administrative action is clearly
13 identified if the communication states a legislative or administrative
14 identification number, official title, or popular name associated
15 with the action. In addition, the action is clearly identified if the
16 communication refers to the subject matter of the action and either
17 states that the measure is before an elective state official, agency
18 official, or legislative official for a vote or decision or, taken as a
19 whole and in context, unambiguously refers to the action.

20 (b) (1) An issue lobbying advertisement shall clearly and
21 conspicuously indicate in the communication the person described
22 in Section 86115 that authorized and paid for the communication
23 as the source or payor of the communication. If the person who
24 authorized and paid for the issue lobbying advertisement is a
25 lobbying firm, the lobbyist employer on whose behalf the issue
26 lobbying advertisement was authorized and paid for shall be
27 disclosed in place of the lobbying firm.

28 (2) An issue lobbying advertisement complies with this
29 subdivision if the communication does either of the following:

30 (A) Clearly and conspicuously identifies the person described
31 in Section 86115 as the sender, broadcaster, or creator of the
32 communication.

33 (B) Includes the words “Paid for by” or a ~~smaller~~ *similar* phrase
34 followed by the name of the person.

35 (c) A copy of any issue lobbying advertisement which clearly
36 identifies an elective state official, agency official, or legislative
37 official shall be provided by mail, email, or hand delivery to that
38 elective state official, agency official, or legislative official within
39 72 hours of being communicated.

1 (d) (1) A person described in Section 86115 that incurs
2 cumulative costs equal to or exceeding five thousand dollars
3 (\$5,000) for issue lobbying advertisements in a calendar quarter
4 shall file a report with the Secretary of State within 72 hours. The
5 report shall be filed with the Secretary of State by online or
6 electronic transmission only using the online filing system
7 described in subdivision (b) of Section 84602.

8 (2) The cost of an issue lobbying advertisement shall include
9 actual costs attributable to the communications, but shall not
10 include the payment of salary for staff time.

11 (3) A report required by this subdivision shall include the
12 following information:

13 (A) The dates or period of time that each issue lobbying
14 advertisement was communicated.

15 (B) The legislative or administrative identification numbers
16 associated with the legislative or administrative action that was
17 the subject of the lobbying issue advertisement. If an action is not
18 associated with an identification number, a short description of
19 the subject matter of the action.

20 (C) For each legislative or administrative action for which there
21 were issue lobbying advertisements, the position on the legislative
22 or administrative action urged on the lobbying issue advertisement,
23 which may include “support,” “oppose,” “support if amended,”
24 “oppose unless amended,” “neutral seeking amendment,” or a
25 similar short description.

26 (D) For each legislative or administrative action for which there
27 were issue lobbying advertisements, the medium of the issue
28 lobbying advertisements which referenced the action, which may
29 include, for example, direct mail, text messages, television
30 advertisements, radio advertisements, social media advertisements,
31 search engine advertisements, or other online advertisements.

32 (E) For each legislative or administrative action for which there
33 were issue lobbying advertisements, the cumulative cost of the
34 issue lobbying advertisements they appear in. If an issue lobbying
35 advertisement referenced more than one legislative or
36 administrative action, then the cost of the advertisement for
37 purposes of this paragraph shall be apportioned between those
38 actions.

39 (F) Any other relevant information determined by regulations
40 adopted by the commission.

1 (4) Issue lobbying advertisement costs shall be reported on
2 subsequent periodic lobbying reports without regard to reports
3 filed pursuant to this subdivision.

4 ~~(e) This section shall become operative on January 1, 2023.~~

5 ~~(f)~~

6 (e) The commission may, by regulation, increase the dollar
7 amounts specified in this section.

8 SEC. 6. No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section 17556 of
14 the Government Code, or changes the definition of a crime within
15 the meaning of Section 6 of Article XIII B of the California
16 Constitution.

17 SEC. 7. Sections 1 to 5 of this act shall not become operative
18 until January 1, 2023.

19 SEC. 8. The Legislature finds and declares that this bill furthers
20 the purposes of the Political Reform Act of 1974 within the
21 meaning of subdivision (a) of Section 81012 of the Government
22 Code.

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SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair

2021 - 2022 Regular Session

SB 459 (Allen) - Political Reform Act of 1974: lobbying

Version: April 28, 2021

Policy Vote: E. & C.A. 4 - 0

Urgency: No

Mandate: Yes

Hearing Date: May 10, 2021

Consultant: Robert Ingenito

Bill Summary: SB 459 would (1) require lobbying entities to disclose additional information on lobbying reports, as specified, (2) increase the frequency of reporting if certain conditions are met, and (3) require additional disclosures on issue lobbying advertisements, as specified.

Fiscal Impact: The Fair Political Practices Committee (FPPC) indicates that it would incur costs of \$387,000 in 2021-22, and \$336,000 annually thereafter, to implement the provisions of the bill (General Fund). Potential costs to the Secretary of State (SOS) have yet to be identified.

Background: In 1974, California voters passed the Political Reform Act (Proposition 9), which created FPPC and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. The PRA stipulates that amendments to it are not required to be submitted to voters if the amendments further the purposes of the PRA, are approved by a two-thirds vote of both houses of the Legislature, and chaptered. Additionally, the PRA requires periodic reports to be filed that disclose payments made in connection with efforts to influence legislative or administrative action. These periodic lobbying disclosure reports are also required to include information about the legislative and administrative actions that were lobbied during the period covered by the report.

In 1997, SB 49 (Karnette) established the Online Disclosure Act of 1997, which required SOS, in consultation with FPPC, to develop and implement a process whereby reports and statements required by the PRA could be filed online and viewed by the public. Consequently, SOS established the California Automated Lobby Activity and Campaign Contribution and Expenditure Search System, commonly known as Cal-Access. SB 49 also required certain candidates, committees, slate mailer organizations, lobbyists, lobbyist employers, and lobbying firms to file campaign reports online.

In 2016, the Legislature passed and Governor Brown signed SB 1349 (Hertzberg), which required SOS, in consultation with FPPC, to develop and certify for public use a new online filing and disclosure system for statements and reports that provides public disclosure of campaign finance and lobbying information in a user-friendly, easily understandable format. This new system, also known as the Cal-Access Replacement System (CARS), will be available for filers and public use on June 30, 2021.

Current law requires disclosures of certain payments made for issue advocacy advertisements. Specifically, existing law requires payments in connection with these advertisements be disclosed on lobbying disclosure reports, under certain circumstances. Lobbyist employers and persons who do not employ an in-house

lobbyist or contract with a lobbying firm, but who directly or indirectly make payments of \$5,000 or more in any calendar quarter to influence or attempt to influence legislative or administrative action, must file periodic lobbying disclosure reports. Among the types of expenditures that count toward the \$5,000 filing threshold are payments for or in connection with soliciting or urging other persons to enter into direct communication with state officials, including payments made for advertisements that urge voters to communicate with elected officials on pending legislation.

However, the information that is required to be disclosed by \$5,000 filers and lobbyist employers with respect to payments made for issue advocacy communications can be limited. Lobbyist employers and \$5,000 filers must disclose the total of all payments to influence legislative or administrative action, and must provide information about the recipients of payments of \$2,500 or more made to influence legislative or administrative action. They are not required to link specific payments with the legislative or administrative action that those payments were designed to influence, specify the position expressed in the advertisement, or provide a copy of the advertisement to the targeted official.

Proposed Law: This bill, beginning January 1, 2023 would, among other things, do the following:

- Require specific lobbying entities to provide in their periodic reports the name or number of each bill or administrative action that either engaged in direct communication or was directed by that entity to engage in direct communication with an elective state official, agency official, or legislative official on the entity's behalf for the purpose of influencing legislative or administrative action during the reporting period, as specified. Require the report to indicate, in chronological order, a specific position that most closely describes the client position publicly communicated, as specified.
- Require monthly reporting of lobbying disclosure reports if the sum of the total amount of all payments subject to reporting exceeds \$15,000, as specified. Requires this monthly report be filed during the first 15 days of the month following any qualifying calendar month.
- Require, during the period beginning 60 days before the deadline for the passage of bills established by joint resolution of the Legislature, the filing of a report within 72 hours of retaining a lobbying firm to influence legislative or administrative action during those 60 days, including the amount paid to the lobbying firm upon being retained or to be paid to the lobbying firm pursuant to a contract for lobbying.
- Provide that the types of communications that may qualify as an issue lobbying advertisement, as defined, include those established in specific provisions of existing law, a prerecorded telephone call made to more than 200 persons, a substantially similar email, text message, or other electronic communication that is sent to over 200 recipients, or any other substantially similar communication determined by regulations adopted by the FPPC.

- Provide that a pending legislative or administrative action is clearly identified if the communication states a legislative or administrative identification number, official title, or popular name associated with the action. Provides that the action is also clearly identified if the communication refers to the subject matter of the action and either states that the measure is before an elective state official, agency official, or legislative official for a vote or decision or, taken as a whole and in context, unambiguously refers to the action.
- Require an issue lobbying advertisement to clearly and conspicuously indicate in the communication the person that authorized and paid for the communication as the source or payor of the communication, as specified. Provides that if the person who authorized and paid for the issue lobbying advertisement is a lobbying firm, the lobbyist employer on whose behalf the issue lobbying advertisement was authorized and paid for shall be disclosed in place of the lobbying firm.
- Require a copy of any issue lobbying advertisement which clearly identifies an elective state official, agency official, or legislative official be provided by mail, email, or hand delivery to that elective state official, agency official, or legislative official within 72 hours of being communicated, as specified.
- Require a person that incurs cumulative costs equal to or exceeding \$5,000 for issue lobbying advertisements in a calendar quarter to file a report with SOS within 72 hours, as specified. Require a report regarding issue lobbying advertisements to include specified information.

Related Legislation:

- AB 1217 (Mullin, 2019), among other provisions, would have required individuals who publish an “issue lobbying communication” within 60 days of the end of the legislative session to disclose the funders of the advertisement, as specified. The bill died in the Senate Committee on Elections and Constitutional Amendments.
- SB 1239 (Hertzberg, Chapter 662, Statutes of 2018) among other changes associated with filing campaign and lobbying reports to the CARS, eliminated the requirement to file paper copies of lobbying reports required to be filed online or electronically upon the certification of CARS by the SOS.
- SB 49 (Karnette, Chapter 866, Statutes of 1997) required SOS, in consultation with the FPPC, to develop and implement a process whereby reports and statements required under the PRA could be filed online and viewed by the public, as specified. This system is known as Cal-Access.

Staff Comments: FPPC indicates that it would require three new positions to accommodate the additional workload generated by the bill, resulting from (1) the increase in referrals due to the increased filing and reporting requirements, and (2) the new issue lobbying advertisements requirements.

Any local government costs resulting from the mandate in this measure are not state-reimbursable because the mandate only involves the definition of a crime or the penalty for conviction of a crime.

-- END --

**SENATE COMMITTEE ON
ELECTIONS AND CONSTITUTIONAL AMENDMENTS**
Senator Steven Glazer, Chair
2021 - 2022 Regular

Bill No: SB 459 **Hearing Date:** 4/26/21
Author: Allen
Version: 4/12/21
Urgency: No **Fiscal:** Yes
Consultant: Scott Matsumoto

Subject: Political Reform Act of 1974: lobbying

DIGEST

This bill requires lobbying entities to disclose additional information on lobbying reports, as specified, and increases the frequency of reporting if certain conditions are met. This bill also requires additional disclosures on issue lobbying advertisements, as specified.

ANALYSIS

Existing law:

- 1) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act of 1974 (PRA).
- 2) Requires lobbying firms, lobbyist employers, lobbying coalitions, and individual lobbyists to register and file periodic reports with the Secretary of State (SOS), as specified. Requires the SOS to maintain on the internet an updated list of lobbyists, lobbying firms, and lobbyist employers.
- 3) Requires a lobbyist to complete and verify periodic reports containing all activity expenses by the lobbyist during the reporting period. Requires this report be provided to their lobbyist employer or lobbying firm within two weeks following the end of each calendar quarter, as specified.
- 4) Requires lobbying firms to file periodic reports containing specified information about the lobbying firm and the services provided, as specified. This includes, but is not limited to, a description of the specific lobbying interests of the person and the total amount of payments, as specified, during the reporting period. Requires these reports to be filed quarterly, as specified.

This bill:

- 1) Requires specific lobbying entities to provide in their periodic reports the name or number of each bill or administrative action that either engaged in direct communication or was directed by that entity to engage in direct communication with an elective state official, agency official, or legislative official on the entity's behalf for the purpose of influencing legislative or administrative action during the reporting

period, as specified. Requires the report to indicate, in chronological order, a specific position that most closely describes the client position publicly communicated, as specified.

- 2) Requires monthly reporting of lobbying disclosure reports if the sum of the total amount of all payments subject to reporting exceeds \$15,000, as specified. Requires this monthly report be filed during the first 15 days of the month following any qualifying calendar month.
- 3) Requires, during the period beginning 60 days before the deadline for the passage of bills established by joint resolution of the Legislature, the filing of a report within 72 hours of retaining a lobbying firm to influence legislative or administrative action during those 60 days, including the amount paid to the lobbying firm upon being retained or to be paid to the lobbying firm pursuant to a contract for lobbying.
- 4) Provides that if the sum of the total amount of payments exceeds \$45,000 in a calendar quarter, then monthly reports shall be filed for the next 12 months, as specified.
- 5) Defines “issue lobbying advertisement” to mean any communication that is authorized and paid for, directly or indirectly, by a specified lobbying entity, that refers to one or more clearly identified pending legislative or administrative actions and does any of the following:
 - a) Solicits or urges persons other than the lobbying entity to communicate directly with an elective state official, agency official, or legislative official for the primary purpose of attempting to influence state legislative or administrative action, as specified.
 - b) Refers to a state legislative or administrative action and urges its defeat, amendment, postponement, enactment, or promulgation.
- 6) Provides that the types of communications that may qualify as an issue lobbying advertisement include those established in specific provisions of existing law, a prerecorded telephone call made to more than 200 persons, a substantially similar email, text message, or other electronic communication that is sent to over 200 recipients, or any other substantially similar communication determined by regulations adopted by the FPPC.
- 7) Provides that a pending legislative or administrative action is clearly identified if the communication states a legislative or administrative identification number, official title, or popular name associated with the action. Provides that the action is also clearly identified if the communication refers to the subject matter of the action and either states that the measure is before an elective state official, agency official, or legislative official for a vote or decision or, taken as a whole and in context, unambiguously refers to the action.
- 8) Requires an issue lobbying advertisement to clearly and conspicuously indicate in the communication the person that authorized and paid for the communication as the source or payor of the communication, as specified. Provides that if the person

who authorized and paid for the issue lobbying advertisement is a lobbying firm, the lobbyist employer on whose behalf the issue lobbying advertisement was authorized and paid for shall be disclosed in place of the lobbying firm.

- 9) Provides that an issue lobbying advertisement complies if the communication does either of the following:
 - a) Clearly and conspicuously identifies the person as the sender, broadcaster, or creator of the communication, as specified.
 - b) Includes the words "Paid for by" or a smaller phrase followed by the name of the person.
- 10) Requires a copy of any issue lobbying advertisement which clearly identifies an elective state official, agency official, or legislative official be provided by mail, email, or hand delivery to that elective state official, agency official, or legislative official within 72 hours of being communicated, as specified.
- 11) Requires a person that incurs cumulative costs equal to or exceeding \$5,000 for issue lobbying advertisements in a calendar quarter to file a report with the SOS within 72 hours, as specified. Requires a report regarding issue lobbying advertisements to include the following information:
 - a) The dates or period of time that each issue lobbying advertisement was communicated.
 - b) The legislative or administrative identification numbers associated with the legislative or administrative action that was the subject of the lobbying issue advertisement, as specified.
 - c) For each legislative or administrative action for which there were issue lobbying advertisements, the position on the legislative or administrative action urged on the lobbying issue advertisement.
 - d) For each legislative or administrative action for which there were issue lobbying advertisements, the medium of the issue lobbying advertisements which referenced the action.
 - e) For each legislative or administrative action for which there were issue lobbying advertisements, the cumulative cost of the issue lobbying advertisements they appear in, as specified.
 - f) Any other relevant information determined by regulations adopted by the FPPC.
- 12) Provides that the provisions of this bill shall not become operative until January 1, 2023.
- 13) Makes technical, nonsubstantive changes.

BACKGROUND

Political Reform Act of 1974. In 1974, California voters passed Proposition 9, also known as the PRA, and created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. The PRA stipulates that amendments to the PRA are not required to be submitted to voters if the amendments further the purposes of the PRA, approved by a two-thirds vote of both houses of the Legislature, and chaptered.

Additionally, the PRA requires periodic reports to be filed that discloses payments made in connection with efforts to influence legislative or administrative action. These periodic lobbying disclosure reports are also required to include information about the legislative and administrative actions that were lobbied during the period covered by the report.

Cal-Access and the Cal-Access Replacement System. In 1997, the Legislature passed and Governor Wilson signed SB 49 (Karnette), Chapter 866, Statutes of 1997, and established the Online Disclosure Act of 1997. SB 49 required the SOS, in consultation with the FPPC, to develop and implement a process whereby reports and statements required by the PRA could be filed online and viewed by the public. As a result, the SOS established the California Automated Lobby Activity and Campaign Contribution and Expenditure Search System, commonly known as Cal-Access. SB 49 also required certain candidates, committees, slate mailer organizations, lobbyists, lobbyist employers, and lobbying firms to file campaign reports online.

In 2016, the Legislature passed and Governor Brown signed SB 1349 (Hertzberg), Chapter 845, Statutes of 2016. SB 1349 required the SOS, in consultation with the FPPC, to develop and certify for public use a new online filing and disclosure system for statements and reports that provides public disclosure of campaign finance and lobbying information in a user-friendly, easily understandable format. According to the SOS website, this new system, also known as the Cal-Access Replacement System (CARS), will be available for filers and public use on June 30, 2021.

Issue Lobbying Advertisements. Existing law currently requires disclosures of certain payments made for issue advocacy advertisements. Specifically, existing law requires payments in connection with these advertisements be disclosed on lobbying disclosure reports, under certain circumstances. Lobbyist employers and persons who do not employ an in-house lobbyist or contract with a lobbying firm, but who directly or indirectly make payments of \$5,000 or more in any calendar quarter to influence or attempt to influence legislative or administrative action, must file periodic lobbying disclosure reports. Among the types of expenditures that count toward the \$5,000 filing threshold are payments for or in connection with soliciting or urging other persons to enter into direct communication with state officials, including payments made for advertisements that urge voters to communicate with elected officials on pending legislation.

However, the information that is required to be disclosed by \$5,000 filers and lobbyist employers with respect to payments made for issue advocacy communications can be limited. Lobbyist employers and \$5,000 filers must disclose the total of all payments to

influence legislative or administrative action, and must provide information about the recipients of payments of \$2,500 or more made to influence legislative or administrative action. They are not required to link specific payments with the legislative or administrative action that those payments were designed to influence, specify the position expressed in the advertisement, or provide a copy of the advertisement to the targeted official.

COMMENTS

- 1) According to the author: In California, lobbying firms and interest groups that hire them must file quarterly reports on their lobbying activity. These reports are due one month after the close of each quarter. The third quarter (Q3) lobbying report covers the most significant legislative quarter of the year: July through September. This period includes the Legislature's final committee and floor votes and, in even-years, the Governor's entire bill-signing period. Unsurprisingly, in terms of lobbying expenditures, this is the most expensive quarter of the year, with over \$100 million being spent in both Q3 of 2020 and 2019.

However, because of quarterly lobbying reporting, these three months of increased lobbying are not disclosed until *after* the Legislature has decided which bills to pass or defeat and *after* the Governor has decided which bills to sign or veto. Thus, Q3 reporting provides no useful transparency and accountability about the most intense lobbying affecting whether bills live or die.

More must be done to ensure that accurate, timely and useful information about the millions of dollars spent every year to influence the fate of legislation is available to lawmakers, the press and the public.

- 2) Argument in Support. In a letter supporting SB 459, the League of Women Voters of California stated, in part, the following:

SB 459 would increase the frequency of reporting for major lobbyists, requiring monthly reporting for lobbying firms and interest groups that report more than \$15,000 in lobbying activity in a month. In addition, lobbying groups that report more than \$45,000 in lobbying activity in a quarter would be required to report monthly for the next 12 months. During the 60-day period before the deadline for passage of bills, a report would need to be filed within 24 hours of retaining a lobbying firm hired to influence legislative action. The careful parsing of fiscal triggers ensures visibility into the influence of the wealthiest, most powerful interests while safeguarding small non-profits from costly reporting requirements.

SB 459 would also expand transparency by requiring: lobbyists to disclose the public positions they are taking on bills; 72-hour reporting of issue ads buys over a specified amount; and interest groups to put their names on their ads, thereby eliminating anonymous pressure campaigns.

The League of Women Voters of California strongly supports SB 459 because Californians deserve to know who is spending millions of dollars to influence legislation being made in their names.

- 3) Apply it to Everybody? Lobbying reports are required to be filed quarterly. Under the provisions of the bill, a lobbying entity could be required to file these reports monthly if a certain monetary spending threshold within a specified period of time is met and/or exceeded. Once this threshold is met, the report must be filed monthly for the next 12 months. This would create an additional requirement for lobbying entities because they would have to keep track of their spending within a month or quarter and may have to track the start and end of a 12-month period. The author should consider whether these additional reporting requirements should be required monthly for all lobbying entities currently required to file these periodic reports regardless of the amount spent within a period of time.
- 4) Positions Publicly Communicated. This bill specifies a lobbying disclosure report is required to provide the name or number of each bill or administrative action as well as the position publicly communicated. The position reported must indicate one of the following that most closely describes the client position publicly communicated: “support,” “support if amended,” “neutral seeking amendment,” “neutral expressing concerns,” “oppose unless amended,” and “oppose.”

While there is not a universal standard for positions taken on actions and legislation, there is a general understanding that a position can be “support,” “neutral,” or “opposed.” Depending on the entity, “support if amended” and “oppose unless amended” is also a common stance taken on actions or bills. However, even though a “support if amended” position is used frequently in legislative conversation, for some entities that officially lists positions on an action or on a bill, “support if amended” is considered the same as “neutral” and is not different than “watch,” “with concerns,” “neutral expressing concerns,” “request amendments,” or “neutral seeking amendments.” A similar comparison could also be used for “oppose” and “oppose unless amended” because “oppose” and “oppose unless amended” both signal opposition to an action or bill. The difference is that “oppose unless amended” provides a recommended path to remove an entity’s opposition position versus outright opposition.

As the bill moves through the legislative process, the author should consider having a “neutral” option instead of “neutral seeking amendment or “neutral expressing concerns.” The author should also consider whether “support if amended” and “oppose unless amended” provides an accurate and insightful portrayal of an entity’s position. If the bill is amended and changes are made to these positions, then it should also apply to the reporting requirements for issue lobbying advertisements.

- 5) Copies of an Issue Lobbying Advertisement. For issuing lobbying advertisements, the bill requires a copy of any issue lobbying advertisement that clearly identifies an elective state official, agency official, or legislative official be provided by mail, email, or hand delivery to that elective state official, agency official, or legislative official within 72 hours of being communicated. This includes, but is not limited to, an issuing lobbying advertisement that is a piece of mail, an email, a text message, or any other electronic communication.

As the bill moves through the legislative process, the author should consider whether an email, text message, or other typically internal method of communication should be delivered to the targeted individual and whether this provision interferes

with the ability of a person to freely communicate and urge a position to a wider audience. The required reports regarding issue lobbying advertisements, as prescribed by this bill, will likely provide an appropriate level of disclosure regarding how much is being spent on an advertisement and the type of advertisement.

- 6) It's the Final Countdown. This bill requires a lobbying report to be filed within 72 hours of retaining a lobbying firm to influence legislative or administrative action during those 60 days, including the amount paid to the lobbying firm upon being retained or to be paid to the lobbying firm pursuant to a contract for lobbying during the period beginning 60 days before the deadline for the passage of bills established by joint resolution of the Legislature. The goal is to encompass and provide additional insight during the final days of the legislative year.

However, the Legislature establishes deadlines through joint rules in a concurrent resolution and the Senate uses custom and practice if joint rules are not in place. For the deadline to pass legislation in the second year of a legislative session, the California Constitution provides that “no bill may be passed by either house on or after September 1 of an even-numbered year except statutes calling elections, statutes providing for tax levies or appropriations for the usual current expenses of the State, and urgency statutes, and bills passed after being vetoed by the Governor.”

Committee staff recommends removing “established by joint resolution of the Legislature” from the bill so it reads, “...beginning 60 days before the deadline for the passage of bills” (Page 6, Lines 21-22).

- 7) Minor Amendments. On Page 8, Lines 27-28, there is a provision specifying that an issue lobbying advertisement is in compliance with the requirements prescribed by the bill if the words “Paid for by” or a smaller phrase followed by the name of the person is used in the communication. Committee staff recommends the bill be amended to replace “smaller” with “similar.”

Additionally, this bill has an operative date of January 1, 2023. However, the operative date is mentioned in two places. First, it is mentioned in Section 5 (Page 9, Line 37) of the bill. It is also mentioned in Section 7 (Page 10, Lines 10-11) of the bill. Committee staff recommends the author delete the operative date in Section 5 of the bill since Section 7 of bill includes Section 5 and states, “Sections 1 to 5 of this act shall not become operative until January 1, 2023.”

RELATED/PRIOR LEGISLATION

AB 1217 (Mullin) of 2019, among other provisions, would have required individuals who publish an “issue lobbying communication” within 60 days of the end of the legislative session to disclose the funders of the advertisement, as specified.

AB 1574 (Mullin) of 2019 would have required lobbying disclosure reports be filed monthly instead of quarterly.

SB 1239 (Hertzberg), Chapter 662, Statutes of 2018, among other changes associated with filing campaign and lobbying reports to the CARS, eliminated the requirement to file paper copies of lobbying reports required to be filed online or electronically upon the certification of CARS by the SOS.

AB 71 (Huber) of 2011 would have, among other changes, clarified that when a filer describes their lobbying interests on a periodic lobbying report, the lobbying entity include the bill number, if any, of legislation lobbied for or against during the reporting period. AB 1274 (Huber) of 2009 was similar to AB 71.

SB 49 (Karnette), Chapter 866, Statutes of 1997, required the SOS, in consultation with the FPPC, to develop and implement a process whereby reports and statements required under the PRA could be filed online and viewed by the public, as specified. This system is known as Cal-Access.

POSITIONS

Sponsor: California Common Cause

Support: California Clean Money Campaign
Courage Campaign
League of Women Voters of California
Mi Familia Vota

Oppose: None received

-- END --



Open Government Commission

ACTION CALENDAR
September 14, 2021

To: Honorable Mayor and Members of the City Council

From: Open Government Commission

Submitted by: Brad Smith, Chairperson, Open Government Commission

Subject: Open Government Commission Recommendations to City Council
Regarding Teleconferenced Meetings

RECOMMENDATION

Establish City Council practices for holding public meetings via teleconference technologies: (1) clearly define how the order of public speakers is determined and maintain a speaker's queue visible to members of the public; (2) clearly outline the process by which a speaker may cede time to another speaker; and (3) require that addendums to agenda items be made accessible to the public on the City Website as soon as they are made available to members of City Council.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

This recommendation was approved by the Open Government Commission ("OGC") at its regular meeting of June 17, 2021.

M/S/C (Ching/Tsang) to adopt recommendation as written and submit to City Council
Ayes: Newman, O'Donnell, Ching, Sheahan, Blome, Hynes, Humbert,
Tsang, Smith; Noes: none; Abstain: none; Absent: none

This recommendation is provided by the OGC pursuant to its authority under BMC § 2.06.190.A.2 to "propose additional legislation or procedures that it deems advisable to ensure the City's compliance with [the Open Government Ordinance], the Brown Act, the Public Records Act, and the Lobbyist Registration Act, and advise the City Council

as to any other action or policy that it deems advisable to enhance open and effective government in Berkeley.”

BACKGROUND

With the transition of Berkeley City Council meetings to teleconference technologies, the OGC has observed many difficulties that have reduced the public’s ability to effectively organize and voice their opinions in meetings held through Zoom. Because public participation is a necessary ingredient in democratic governance, the Open Government Commission recommends that the Berkeley City Council consider the changes below. We acknowledge that this recommendation is being made at a time when we may soon be able to return to in-person meetings. However, the OGC recognizes these technologies may continue to be used as a supplement, or may be put in place again in the future. Having policies readily available will ensure that the rights guaranteed to the public through the Berkeley City Council Rules of Procedure and Order are maintained.

First, unlike in-person meetings, where like-minded speakers could line up in an order of their choosing, there is currently no mechanism to maintain any sort of speaker’s queue that is visible to the public. Consequently, whereas members of the public may have an idea of when they will be called for public comment in an in-person meeting, this does not currently exist for members of the public in virtual meetings. We recommend that some mechanism or service be made available to the public to inform them of the order of speakers.

In a similar vein, during public comment, there have been instances where a member of the public may wish to cede time to another, permitted under the Rules of Procedure and Order. Through in-person meetings, this right could be exercised by simply lining up together, or by spontaneously offering to cede time when another speaker’s time has elapsed. However, with virtual meetings and the restricted abilities of participants in Zoom Webinars, there is no way to indicate the desire to cede time effectively (in either of the aforementioned cases). We recommend that a written policy be developed to address this issue and give clarity to the process of ceding time (a possible recommendation could be for the presiding officer to make an announcement at the beginning of the meeting, giving the public the opportunity to announce intent to cede time).

Lastly, we understand that supplemental materials are often introduced within the 72-hour public notice requirement, and often, such addendums are introduced within 24 hours of the meeting, or even during the meeting itself. This gives the public less time and opportunity to formulate opinions for public comment. Per the Brown Act, “they [agenda materials] must be made available to the public as soon as they are distributed to the members of the legislative body.” To fulfill this requirement, we request that all supplemental materials be made available on the City Website at the time that they are introduced to City Council, ideally 24 hours in advance. Adopting this practice will allow for civic engagement by all members of the public, including those who may have limited access to the internet.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

These recommendations aim to ensure the public has the ability to fully access and participate in City Council meetings.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

The City Manager takes no position on the content of the recommendation. To assist the Council in its consideration, the City Manager is providing information on the proposed recommendation based on current City practices and policies. For the first recommendation, City staff has researched possible alternatives, and there is no feasible method within the Zoom platform to show the list of speakers to attendees. For the second recommendation, ceding of time is not permitted in virtual meetings pursuant to the City Council Rules of Procedure. For the third recommendation, City staff currently, and since the beginning of the pandemic, posts all supplemental and revised materials to the website with the agenda item at the same time the materials are made available to members of City Council.

CONTACT PERSON

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



Zero Waste Commission

ACTION CALENDAR

September 14, 2021

To: Honorable Mayor and Members of the City Council

From: Zero Waste Commission

Submitted by: Christienne de Tournay Birkhahn, Chairperson, Zero Waste Commission

Subject: Referral Response: Recommendation to Retain Current Structure of Zero Waste Commission

RECOMMENDATION

The Zero Waste Commission recommends that its current structure remain intact, and with an updated charter that reflects historic goals, and both current and future developments in the City of Berkeley's Zero Waste programs, facilities, services, policies, and state- and county-imposed mandates.

FISCAL IMPACTS OF RECOMMENDATION

Moderate amount of Zero Waste Division staff time, as follows current practice.

CURRENT SITUATION AND ITS EFFECTS

Zero Waste is a Strategic Plan Priority Project, advancing our goal to be a global leader in addressing climate change, advancing environmental justice, protecting the environment, and achieve our established goal of 100% waste diverted from landfill by 2020. The Zero Waste Division's top focus falls close behind police and fire in terms of providing essential city services that affect everyone (note that this service was completely uninterrupted or abbreviated during the entire ongoing pandemic period).

The people of Berkeley care deeply and passionately about where their discards go, who handles them, and how they are handled. Large corporate forces continue to contend for control over the very structure that has evolved over time from entrepreneurial efforts in Berkeley. Citizen advisory voices are necessary to continue movement toward Berkeley's Zero Waste goal.

On June 15, 2021, City Council voted to consolidate the Zero Waste Commission, the Community Environmental Advisory Commission, and the Energy Commission into one 9-member Commission on Climate and the Environment. Zero Waste issues related to facilities are consolidated with the Public Works Commission and issues related to policy are consolidated with the Commission on Climate and the Environment. Council referred additional considerations regarding the reorganization to staff and Commissions for feedback.

On July 26, 2021, the Zero Waste Commission approved submitting a recommendation to Council to retain the current structure of the Zero Waste Commission with the following vote: M/S/C (de Tournay/Sherman) Ayes: de Tournay, Poliwka, Sherman, Doughty, Stein, Curtis, Ulakovic; Abstain: None; Absent: Schueler, Grubb

BACKGROUND

Established in 1972, the Berkeley Zero Waste Commission would celebrate its 50th Anniversary next year. In 2005, Berkeley was one of the first cities in the United States to adopt a Zero Waste goal, aiming for 75% recovery by 2010, which it achieved. It continues to work toward its ambitious goal of 100% zero waste to landfill. With a history of being a leader in waste reduction and resource recovery, Berkeley became the first city in the nation to offer curbside recycling pickup in 1973.

Berkeley is one of the few cities to operate their own waste collection and disposal company. Berkeley's Zero Waste Program is a \$50 million dollar-a-year enterprise that ensures public health through the collection and processing of discarded materials, including trash, recyclables, compostables, and universal (hazardous) wastes.

To this end, the City employs independent local non-profit organizations and businesses as contractors (Ecology Center, Community Conservation Centers, Urban Ore), who build our local economy, returning profits back to the community through recycling and materials recovery. The upcoming rebuild of the City's Solid Waste & Recycling Transfer Station is an example of how the on-going existence of a commission specifically focused on disposal management is a key asset.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

A unified Zero Waste Commission will help further our City's mandated goal to achieve 100% of waste diverted from landfill by 2020, as well as the state's SB1383 goals.

RATIONALE FOR RECOMMENDATION

For Zero Waste efforts to succeed, its policies and implementation, operation of facilities and services, and necessary public outreach and education both merit and demand a unified, holistic approach.

ALTERNATIVE ACTIONS CONSIDERED

The Zero Waste Commission recommends *against* the action of taking the unprecedented step to inefficiently divide and subsume the Zero Waste Commission's purview into two separate advisory bodies, as Zero Waste by nature is achieved through a comprehensive, holistic, and systemic approach.

CITY MANAGER

On June 15, 2021, City Council voted to consolidate the Zero Waste Commission with other commissions that have similar missions. The consolidation will allow for issues of sustainability to be addressed more comprehensively and efficiently. Staff supports the consolidation and is developing new enabling legislation to effectuate the council direction.

CONTACT PERSON

Heidi Obermeit, Zero Waste Commission Secretary, Recycling Program Manager,
Public Works, (510) 981-6357



Office of the Mayor

CONSENT CALENDAR
September 14, 2021

To: Members of the City Council
 From: Mayor Jesse Arreguín (Author)
 Subject: Expansion of the Berkeley Fair Elections Program

RECOMMENDATION

Refer to the Fair Campaign Practices Commission (FCPC) to develop an ordinance to expand the Berkeley Fair Elections Program to include School Board Director, Rent Board Commissioner and City Auditor among the offices eligible to participate in the public financing program.

BACKGROUND

In November 2016 Berkeley voters approved Measure X1 by a vote of 65% Yes, 35% No. This measure amended the City Charter and Berkeley Election Reform Act to create a system of public funding of municipal election campaigns, called the Berkeley Fair Elections Act. The Fair Elections Act provides limited public matching funds to participating candidates who commit to raising small dollar donations from Berkeley residents.

The Fair Elections Act is currently available to candidates for City Council and Mayor. The program has worked as designed in both the 2018 and 2020 Berkeley elections, decreasing barriers to running for office and helping increase trust in government, as participating candidates are funded by small donations from Berkeley residents instead of relying on larger donations from individuals and wealthy interest groups.

The Fair Elections Act is currently funded, per Article III, Section 6.2 of the City Charter, with a specified amount every year. This amount was \$250,000 in 2016 and is adjusted for inflation and population changes each year. The program was designed with funding sufficient to support all five City offices: Mayor, City Councilmember, School Board Director, Rent Board Commissioner, and City Auditor. However, the supporters of Measure X1, which included California Common Cause, MapLight, the NAACP, the ACLU, and other groups and citizens, decided to write the measure to implement the program for Mayor and Council first, starting in 2018, thus allowing the Council and the Berkeley Fair Campaign Practices Commission (FCPC) to expand the program to School Board, Rent Board, and Auditor later. This allowed the City the opportunity to launch the program and evaluate its effectiveness before expanding it to other offices.

Since launching the program in 2018, the City has been able to sufficiently budget funding for administration and matching funds, while also balancing other budget

priorities. Additionally, numerous candidates have participated in the program, and the City has adjusted regulations and administration procedures to streamline implementation.

The City Council and FCPC can implement this expansion to School Board Director, Rent Board Commissioner, and City Auditor with the "double green light" process of amending the Berkeley Election Reform Act, as prescribed in Berkeley Municipal Code Section 2.12.051. This process requires a two-thirds vote of the Commission, followed by a two-thirds vote of the Council. By passing this referral today, the Council signals its strong support for expanding the program to these additional offices, to level the playing field, increase opportunities for residents to have a voice in our elections and reduce the impact of money in politics. The specific details of the expanded program would be developed and potentially passed by the Commission and then come to Council for review and potential approval.

FINANCIAL IMPLICATIONS

To be determined

ENVIRONMENTAL SUSTAINABILITY

There are no environmental impacts associated with the recommendations in this report.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

- 1: BMC Chapter 2.12, Article 8. Berkeley Fair Elections Act of 2016
- 2: City of Berkeley campaign expenditures 2014-2020 for School Board, Rent Board, and Audit

penalties enumerated in California Government Code Section [91013](#), which is incorporated herein. (Ord. 7234-NS § 5, 2012; Ord. 6096-NS, § 2 (part), 1991)

Article 8. Berkeley Fair Elections Act of 2016

2.12.490 Title and purpose.

This Article shall be known as the Berkeley Fair Elections Act of 2016. Its purposes are to:

- A. Diminish the public perception of corruption and strengthen public confidence in the governmental and election processes.
- B. Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- C. Help reduce the influence of private campaign contributions on Berkeley government.
- D. Reduce the impact of wealth as a determinant of whether a person becomes a candidate.
- E. Foster more meaningful participation in the political process.
- F. Provide candidates who participate in the program with sufficient resources with which to communicate with voters.
- G. Increase the accountability of elected officials to the constituents who elect them, as opposed to the contributors who fund their campaigns.
- H. Free candidates from the time needed to raise campaign money, and allow officeholders more time to carry out their official duties. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.495 Offices covered.

Candidates for the offices of Mayor and City Council shall be eligible to participate in the public campaign financing program established by this chapter. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.500 Eligibility for Fair Elections campaign funding.

A. To be eligible to be certified as a participating candidate, a candidate must:

- 1) During the qualifying period for the election involved, choose to participate in the Fair Elections program by filing with the City a written application for certification as a participating candidate in such form as may be prescribed by the Commission, containing the identity of the candidate, the office that the candidate seeks, and the candidate's signature, under penalty of perjury, certifying that:
 - a) The candidate has complied with the restrictions of this chapter during the election cycle to date;
 - b) The candidate's campaign committee has filed all campaign finance reports required by law during the election cycle to date and that they are complete and accurate; and
 - c) The candidate will comply with the requirements of this Act during the remainder of the election cycle and, specifically, if certified an eligible participating candidate, will comply with the requirements applicable to participating candidates.
- 2) Meet all requirements to be eligible to hold the office of Mayor or Councilmember as set forth in Sections 9 and 10 of Article V of the Charter of the City of Berkeley;
- 3) Before the close of the qualifying period, collect and submit at least 30 qualified contributions, from at least 30 unique contributors, of at least ten dollars (\$10), for a total dollar amount of at least five-hundred dollars

(\$500).

a) Each qualified contribution shall be acknowledged by a receipt to the contributor, with a copy retained by the candidate. The receipt shall include the contributor's signature, printed name, home address, and telephone number, if any, and the name of the candidate on whose behalf the contribution is made. In addition, the receipt shall indicate by the contributor's signature that the contributor understands that the purpose of the qualified contribution is to help the candidate qualify for Fair Elections campaign funding and that the contribution is made without coercion or reimbursement.

b) A contribution for which a candidate has not obtained a signed and fully completed receipt shall not be counted as a qualified contribution.

4) Maintain such records of receipts and expenditures as required by the Commission;

5) Obtain and furnish to the Commission or City staff any information they may request relating to his or her campaign expenditures or contributions and furnish such documentation and other proof of compliance with this chapter as may be requested by such Commission or City staff;

6) Not make expenditures from or use his or her personal funds or funds jointly held with his or her spouse, domestic partner, or unemancipated children in connection with his or her election except as a monetary or non-monetary contribution to his or her controlled committee of \$250 or less. Contributions from a participating candidate to his or her own controlled committee are not eligible for matching funds.

7) Not accept contributions in connection with the election for which Fair Elections funds are sought other than qualified contributions, contributions not greater than fifty dollars (\$50) made by a natural person non-resident of Berkeley, or non-monetary contributions with a fair market value not greater than fifty dollars (\$50). The aggregate value of all contributions from any individual must not be greater than fifty dollars (\$50);

8) Not solicit or direct contributions in connection with any election during the election cycle in which Fair Elections funds are sought other than qualified contributions, contributions not greater than fifty dollars (\$50) made by a natural person non-resident of Berkeley, or non-monetary contributions with fair market value not greater than fifty dollars (\$50) to such candidate's controlled committee.

9) Not accept loans from any source.

10) The City has the authority to approve a candidate's application for public financing, despite a violation by the candidate related to participation and qualification in the public financing program, if the violation is minor in scope and the candidate demonstrates a timely, good-faith effort to remedy the violation. The Commission shall adopt regulations setting forth guidelines for what constitutes a minor violation under this provision.

B. At the earliest practicable time after a candidate files with the City a written application for certification as a participating candidate, the City shall certify that the candidate is or is not eligible. Eligibility can be revoked if the Commission determines that a candidate has committed a substantial violation of the requirements of this Act, in which case all Fair Elections funds shall be repaid.

C. At the discretion of the Commission or at the applying candidate's request, the City's denial of eligibility is subject to review by the Commission. The Commission's determination is final except that it is subject to a prompt judicial review pursuant to Section [2.12.235](#).

D. If the City or Commission determines that a candidate is not eligible, the candidate is not required to comply with provisions of this Act applicable only to participating candidates. (Ord. 7723-NS § 1, 2020: Ord. 7691-NS § 2, 2020: Ord. 7674-NS § 1, 2019: Ord. 7564-NS § 7, 2017: Ord. 7524-NS § 3.6 (part), 2016)

2.12.505 Fair Elections fund payments.

- A. A candidate who is certified as an eligible participating candidate shall receive payment of Fair Elections funds equal to six-hundred percent (600 percent) of the amount of qualified contributions received by the candidate during the election cycle with respect to a single election subject to the aggregate limit on the total amount of Fair Elections funds payments to a candidate specified in Section [2.12.505.B](#).
- B. The aggregate amount of Fair Elections funds payments that may be made to a participating candidate during an election cycle may not exceed:
- 1) \$120,000 for a candidate running for the office of Mayor;
 - 2) \$40,000 for a candidate running for the office of City Council.
- C. A participating candidate's application for Fair Elections funds, including an initial request submitted with an application for certification as a participating candidate, shall be made using a form prescribed by the Commission and shall be accompanied by qualified contribution receipts and any other information the Commission deems necessary. This application shall be accompanied by a signed statement from the candidate indicating that all information on the qualified contribution receipts is complete and accurate to the best of the candidate's knowledge.
- 1) All Qualified Contributions, of any dollar amount, eligible for matching Fair Elections funds must be publicly disclosed with the contributor information required under Sections [2.12.280](#) and [2.12.283](#).
 - 2) All campaign filings must be current in order for a Participating Candidate to receive a disbursement of Fair Elections funds and the Participating Candidate and a Participating Candidate's controlled committee must not have any outstanding fines related to campaign filings or violations of municipal, state or federal election law. All applications for Fair Elections funds shall include a certification by the Participating Candidate that the Participating Candidate or his or her controlled committee does not have any outstanding fines or penalties related to campaign filings. Upon submission of outstanding campaign filings and payment of any outstanding fines, withheld Fair Elections funds will be disbursed at the next regularly scheduled distribution for that election cycle.
- D. The City shall verify that a candidate's qualified contributions meet all of the requirements and restrictions of this Act prior to the disbursement of Fair Elections funds to the candidate. A participating candidate who receives a qualified contribution that is not from the person listed on the qualified contribution receipt shall be liable to pay the Fair Elections Fund the entire amount of the inaccurately identified contribution, in addition to any penalties.
- E. The City shall make an initial payment of Fair Elections funds within seven business days of the City's certification of a participating candidate's eligibility, or as soon thereafter as is practicable. City staff shall report a certification or denial to the Commission no later than the Commission's next regular meeting, consistent with the Brown Act.
- F. The Commission shall establish a schedule for the submission of Fair Elections funds payment requests, permitting a candidate to submit a Fair Elections funds payment request at least once per month. However, the Commission shall schedule a minimum of three payment request submission dates within the thirty days prior to an election.
- G. The City shall provide each participating candidate with a written determination specifying the basis for any non-payment of Fair Elections funds. The Commission shall provide participating candidates with a process by which they may immediately upon receipt of such determination petition the Commission for reconsideration of any such non-payment and such reconsideration shall occur within seven business days of the filing of such petition. In the event that the Commission denies such petition then it shall immediately notify the candidate of his or her right to seek judicial review of the Commission's denial pursuant to Section [2.12.235](#).

H. Unspent funds of any Participating Candidate who does not remain a candidate until the election for which they were distributed, or such funds that remain unspent by a Participating Candidate following the date of the election for which they were distributed shall be deposited into the Fair Elections Fund. A Participating Candidate shall deposit all unspent funds into the Fair Elections Fund, up to the total amount of funds that the Participating Candidate received as Fair Elections Fund distributions in that election cycle, within sixty (60) days after the date of the election. (Ord. 7723-NS § 2, 2020: Ord. 7691-NS § 3, 2020: Ord. 7674-NS § 2, 2019: Ord. 7564-NS § 8, 2017: Ord. 7524-NS § 3.6 (part), 2016)

2.12.510 Candidate statement notice.

A candidate certified as a Fair Elections program participant shall be identified as such by a notice printed on the same page as the candidate's statement of qualifications distributed to voters pursuant to City Charter Article III Section 6.1. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.515 Transition rule for current election cycle.

During the first election cycle that occurs after Council implementation of this Act, a candidate may be certified as a participating candidate, notwithstanding the acceptance of contributions other than qualified contributions before the date of enactment that would, absent this Section, disqualify the candidate as a participating candidate, provided that any funds other than qualified contributions accepted but not expended before the effective date of this Act shall be:

- A. Returned to the contributor;
- B. Held in a special campaign account and used only for retiring a debt from a previous campaign; or
- C. Submitted to the City for deposit in the Fair Elections Fund. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.520 Special municipal elections.

The provisions of this chapter apply to special municipal elections as defined in City Charter Article III Section 4. The Commission shall adjust the deadlines in this Act to account for the circumstances of the special municipal election. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.525 Campaign accounts for participating candidates.

- A. During an election cycle, each participating candidate shall conduct all campaign financial activities through a single campaign expenditure and contribution account as required by Section [2.12.250](#).
- B. A participating candidate may maintain a campaign account other than the campaign account described in subsection A if the other campaign account is for the purpose of retiring a campaign debt that was incurred during a previous election campaign in which the candidate was not a participating candidate.
- C. Contributions for the purposes of a retiring a previous campaign debt that are deposited in the kind of "other campaign account" described in subsection B shall not be considered "contributions" to the candidate's current campaign.
- D. Participating candidates shall file reports of financial activity related to the current election cycle separately from reports of financial activity related to previous election cycles. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.530 Use of Fair Elections funds.

- A. A participating candidate shall use Fair Elections funds and contributions only for direct campaign purposes.
- B. A participating candidate shall not use Fair Elections funds or contributions for:
 - 1) Costs of legal defense in any campaign law enforcement proceeding under this Act, or penalties arising from violations of any local, state, or federal campaign laws;

- 2) The candidate's personal support or compensation to the candidate or the candidate's family;
- 3) Indirect campaign purposes, including but not limited to:
 - a) Any expense that provides a direct personal benefit to the candidate, including clothing and other items related to the candidate's personal appearance;
 - b) Capital assets having a value in excess of five hundred dollars (\$500) and useful life extending beyond the end of the current election period determined in accordance with generally accepted accounting principles;
 - c) A contribution or loan to the campaign committee of another candidate or to a party committee or other political committee;
 - d) An independent expenditure as defined in Berkeley Municipal Code Section [2.12.142](#) as may be amended;
 - e) Any payment or transfer for which compensating value is not received;

C. The term "Contribution" is defined in [2.12.100](#) and includes "Qualified Contributions" as defined in [2.12.167](#) and contributions from non-residents of Berkeley as described in [2.12.500.A.7](#).

D. The dollar amounts in Section 2.12.530.B.3.b may be adjusted for cost-of-living changes by the Commission through regulation, pursuant to Section 2.12.545. (Ord. 7691-NS § 4, 2020: Ord. 7674-NS § 3, 2019: Ord. 7564-NS § 9, 2017: Ord. 7524-NS § 3.6 (part), 2016)

2.12.535 Administrative modification of timelines.

Notwithstanding any provision in this chapter to the contrary, the Commission may alter any of the time periods or deadlines listed herein if it finds that they are impracticable, so long as the readjusted period or deadline meets the objectives of this chapter. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.540 Insufficient funds in the program.

If the Commission determines that there are insufficient funds in the Fair Elections Fund to fund adequately all participating candidates, the Commission shall notify participating candidates that the Commission will not likely be capable of distributing to all participating candidates the maximum aggregate amount of Fair Elections funds payments permissible under Section [2.12.505.B](#). Under such circumstances, at such time as the Commission is unable to fulfill a valid application for Fair Elections funds submitted by a participating candidate pursuant to Section [2.12.505.C](#), the participating candidate may solicit for such candidate's controlled committee and accept any contributions permissible under City law and shall no longer be subject to the restriction on use of personal funds established by Section [2.12.500.A.6](#). (Ord. 7524-NS § 3.6 (part), 2016)

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 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 Section [2.12.505.B](#). (Ord. 7691-NS § 5, 2020: Ord. 7564-NS § 10, 2017: Ord. 7524-NS § 3.6 (part), 2016)

2.12.550 Fair Elections Act penalties.

In addition to other enforcement and penalty provisions of this Article:

- A. It is a violation of the law for candidates to accept more Fair Elections Act benefits than those to which they are entitled or misuse such benefits or Fair Elections funding.
- B. If a participating candidate knowingly or willfully accepts or spends Fair Elections funding in violation of this Act, then the candidate shall repay to the Fair Elections Fund an amount equal to twice the value of Fair Elections funding unlawfully accepted or spent.
- C. The Commission shall, after a hearing held pursuant to Section [2.12.230](#), have the authority to impose the fine created by this section upon a two-thirds vote. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.555 Violation--Persons ineligible for public funds--Time limit.

No person who commits a substantial violation of this chapter shall be eligible to receive public funds for a period of four years from and after the date that the Commission determines, upon a two-thirds vote, that such a violation has occurred, following a hearing held pursuant to Section [2.12.230](#). The Commission shall by regulation state the criteria to be satisfied in order to make a finding of a substantial violation. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.560 Review by Commission.

After each of the first two election cycles that occur after Council implementation of this Act, the Commission shall review the Fair Elections program and make recommendations to Council for policy changes to improve and refine the program. (Ord. 7524-NS § 3.6 (part), 2016)

The Berkeley Municipal Code is current through Ordinance 7778-NS, passed June 29, 2021.

Disclaimer: The City Clerk's Office has the official version of the Berkeley Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: <https://www.cityofberkeley.info/Home.aspx>
 (<https://www.cityofberkeley.info/Home.aspx>)
 Telephone number: (510) 981-6900
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 City Clerk (<http://www.cityofberkeley.info/clerk>) , 2180 Milvia Street, Berkeley, CA 94704
 Questions or comments? Email: clerk@cityofberkeley.info (<mailto:clerk@cityofberkeley.info>) Phone: (510) 981-6900

CITY OF BERKELEY CAMPAIGN EXPENDITURES 2014-2020

for Auditor, Rent Board, and School Board

Data collected from the City of Berkeley's Public Portal for Lobbyist and Campaign Finance Disclosure by MapLight, a nonprofit research organization.

Candidates with less than \$500 in total expenditures were excluded from this dataset.

Winning candidates are indicated by an asterisk*

2014

Office Sought	Candidate	Total Expenditures
Auditor	Anne-Marie Hogan*	\$ 2,639
Rent Stabilization Board	James Chang*	\$ 2,092
Rent Stabilization Board	John Selawsky*	\$ 1,894
Rent Stabilization Board	Jesse Townley*	\$ 1,705
Rent Stabilization Board	Katherine Harr*	\$ 1,553
Rent Stabilization Board	Paola Laverde*	\$ 1,110
School Board Trustee	Ty Alper*	\$ 48,298
School Board Trustee	Julie Sinai	\$ 30,220
School Board Trustee	Joshua Daniels*	\$ 22,430
School Board Trustee	Karen Hemphill*	\$ 11,533

Independent Expenditures

No independent expenditures found for the above contests.

2016

Office Sought	Candidate	Expenditures
Rent Stabilization Board	Judy Hunt	\$ 7,991
Rent Stabilization Board	Christina Murphy*	\$ 6,846
Rent Stabilization Board	Leah Simon-Weisberg*	\$ 5,615
Rent Stabilization Board	Igor Tregub*	\$ 5,110
Rent Stabilization Board	Alejandro Soto-Vigil*	\$ 4,013
Rent Stabilization Board	Nathan Wollman	\$ 3,551
School Board Trustee	Judy Appel*	\$ 5,342
School Board Trustee	Beatriz Leyva-Cutler*	\$ 1,301
School Board Trustee	Abdur Sikder	\$ 1,069

Independent Expenditures

Committee	Candidate	Support or Oppc	Total Expenditures	Office Sought
Berkeley Working Families	Alejandro Soto-Vigil	support	734	Rent Stabilization Board
Berkeley Working Families	Christina Murphy	support	734	Rent Stabilization Board
Berkeley Working Families	Igor Tregub	support	734	Rent Stabilization Board
Berkeley Working Families	Leah Simon-Weisberg	support	734	Rent Stabilization Board

2018

Office Sought	Candidate	Total Expenditures
Auditor	Jennifer Wong*	\$ 24,875
Auditor	Vladislav Davidzon	\$ 14,714
Auditor	John Selawsky	\$ 1,970
Rent Stabilization Board	James Chang*	\$ 9,749
Rent Stabilization Board	Judy Hunt	\$ 5,161
Rent Stabilization Board	Maria Poblet*	\$ 2,089
Rent Stabilization Board	John Selawsky*	\$ 1,970
Rent Stabilization Board	Solomon Alpert*	\$ 1,959
Rent Stabilization Board	Paola Laverde*	\$ 1,844
School Board Trustee	Ty Alper*	\$ 37,567
School Board Trustee	Julie Sinai*	\$ 29,767
School Board Trustee	Ka'Dijah Brown*	\$ 10,594
School Board Trustee	Lea Baechler-Brabo	\$ 500

Independent Expenditures

Committee	Candidate	Support or Opp	Total Expenditures	Office Sought
California Federation Of Teachers	Jule Sinai	support	2,420	School Board
California Federation Of Teachers	Ka'Dijah Brown	support	2,420	School Board
California Federation Of Teachers	Ty Alper	support	2,420	School Board

2020

Office Sought	Candidate	Total Expenditures
Rent Stabilization Board	Andy Kelley*	\$ 16,104
Rent Stabilization Board	Bahman Ahmadi	\$ 13,600
Rent Stabilization Board	Soulmaz Panahi	\$ 11,970
Rent Stabilization Board	Dan McDunn	\$ 8,756
Rent Stabilization Board	Leah Simon-Weisberg*	\$ 8,646
Rent Stabilization Board	Wendy Hood	\$ 7,638
Rent Stabilization Board	Carole Marasovic	\$ 6,762
Rent Stabilization Board	Pawel Moldenhawer	\$ 5,823
Rent Stabilization Board	Timothy Johnson*	\$ 4,848
Rent Stabilization Board	Mari Mendonca*	\$ 4,547
Rent Stabilization Board	Dominique Walker*	\$ 4,115
School Board Trustee	Ana Vasudeo*	\$ 23,061
School Board Trustee	Laura Babbit*	\$ 12,291
School Board Trustee	Michael Chang	\$ 16,503
School Board Trustee	Jose Bedolla	\$ 3,371
School Board Trustee	Esfandiar Imani	\$ 2,732

Independent Expenditures

Committee	Candidate	Support or Oppose	Expenditures	Office Sought
National Association Of Realtors Fund	Bahman Ahmadi	support	54,143	Rent Stabilization Board
National Association Of Realtors Fund	Dan McDunn	support	17,791	Rent Stabilization Board
National Association Of Realtors Fund	Soulmaz Panahi	support	17,791	Rent Stabilization Board
National Association Of Realtors Fund	Wendy Saenz Hood Ne	support	17,791	Rent Stabilization Board
Committee For Ethical Housing, Suppo	Pawel Moldenhawer	support	5,756	Rent Stabilization Board
Committee For Ethical Housing, Suppo	Wendy Saenz Hood Ne	support	5,756	Rent Stabilization Board
Committee For Ethical Housing, Suppo	Dan McDunn	support	5,756	Rent Stabilization Board
Committee For Ethical Housing, Suppo	Soulmaz Panahi	support	5,756	Rent Stabilization Board
Committee For Ethical Housing, Suppo	Bahman Ahmadi	support	5,756	Rent Stabilization Board



Rashi Kesarwani
Councilmember District 1

CONSENT CALENDAR
September 14, 2021

TO: Honorable Mayor and Members of City Council

FROM: Councilmember Rashi Kesarwani

SUBJECT: Resolution in Support of Observance of August 20, the International Day of the Victims of Enforced Disappearances in El Salvador

RECOMMENDATION

Adopt a resolution in support of retroactively enacting August 30 as a day of observance in recognition of the International Day of the Victims of Enforced Disappearances in El Salvador.

BACKGROUND

The Salvadoran civil war (1980-1992) was a time of a militarily repressive regime, aided in part by United States tax dollars, that brought about the displacement, death and forced disappearances of hundreds of thousands of Salvadoran civilians. The multi-year armed conflict instigated an exodus of tens of thousands of Salvadoran migrants to the United States, many of whom have family members that were disappeared during this war. Current Salvadoran migrants living in the United States seek to be made whole through recognition of their collective trauma of the forced disappearances symbolized by this resolution, and through the continuing search for the remains of their loved ones.

CURRENT SITUATION AND ITS EFFECTS

The Mauricio Aquino Foundation (MAF), with offices in Berkeley, was founded in 2013 by Salvadoran Americans with the goal to help their community members find closure to the traumas of forced disappearances experienced during the Salvadoran civil war; educate Americans about the causes of the diaspora that brought Salvadoran migrants to the United States; and build a strong community engaged in social change and empowerment for themselves and the community at large. The MAF has been working in cities with large Salvadoran communities (such as San Francisco; Los Angeles; Washington, D.C.; and Houston) for the past several years to bring reconciliation to thousands of the grieving families in the United States and in

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E-Mail: rkesarwani@cityofberkeley.info

El Salvador by working towards securing the remains of their loved ones. During this time, they have built coalitions with eleven other human rights groups that have put pressure on the U.S. and Salvadoran governments, achieving significant results. In 2016, the sitting Salvadoran president acknowledged the forced disappearance of adults during the civil war. That same year, 26 members of the U.S. Congress signed MAF's letter asking then-President Barack Obama to declassify records of the disappeared in El Salvador's war. And in 2018 the first Salvadoran government-sanctioned commission, called the Commission for the Search of the Disappeared Adults during the Armed Conflict, was established and charged with investigating cases of disappeared relatives. The work continues, however, as the current Salvadoran President and legislature refuse to resolve the disappearances any further. The MAF, in conjunction with The Central American Resource Center (CARECEN) and the SHARE Foundation, is requesting solidarity from city, regional, state, and national elected leaders and governments to pass resolutions in support of the Salvadoran American community as they advance their cause. Such resolutions will help to address collective trauma while reckoning with the past and providing models of truth and reconciliation, and providing some measures of accountability.

FISCAL IMPLICATIONS

None.

ENVIRONMENTAL IMPACTS

This resolution will have no negative environmental effects.

CONTACT PERSON

Councilmember Rashi Kesarwani, District 1 (510) 981-7110

Attachment:
Resolution

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

RESOLUTION IN SUPPORT OF OBSERVANCE OF AUGUST 30 THE
INTERNATIONAL DAY OF THE VICTIMS OF ENFORCED DISAPPEARANCES IN
EL SALVADOR

WHEREAS, the United Nations declared August 30 The International Day of the Victims of Enforced Disappearances; and

WHEREAS, El Salvador endured a civil war (1980-1992) that displaced 500,000 people, forced the migration of 1 Million, killed 75,000, and forcibly disappeared at least another 10,000; and

WHEREAS, the U.S. Government supported government and military repression, providing more than \$4 billion in U.S. tax dollars for training and aid to the Salvadoran military; and

WHEREAS, over 2 million Salvadorans currently live and work in the United States forming the third largest Latinx community in the country, with over 740,000 Salvadorans residing in California and over 105,000 in the Bay Area; and

WHEREAS, the families and friends of the victims of forced disappearance experience post-traumatic stress disorder, mental anguish, alternating between hope and despair, wondering and waiting, sometimes for years, for news that may never come with the impunity compounding the suffering and anguish; and

WHEREAS, the United Nations declared Forced Disappearance a crime against humanity in its 1992 Declaration on the Protection of All Persons from Enforced Disappearance; and

WHEREAS, El Salvador's National Assembly and President have not ratified the United Nations International Convention for the Protection of All Persons from Enforced Disappearance; and

WHEREAS, forced disappearance has frequently been used by dictatorships as a strategy to spread terror within the society, and affects the communities and society as a whole; and

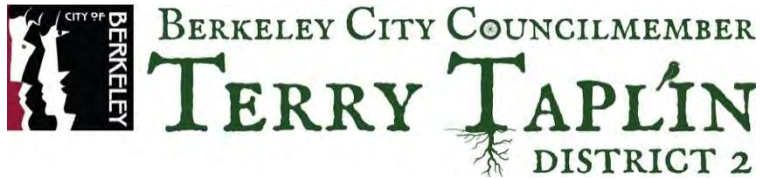
WHEREAS, the victims' families have the right to seek reparations, and to demand the truth about the disappearance of their loved ones; and

WHEREAS, remembering dignifies the victims and their families, and constructs bridges to transmit historical memory to younger generations of Salvadoran Americans; and

WHEREAS, the mothers and relatives of the disappeared in El Salvador and in the Bay Area have been searching for the whereabouts of their loved ones for decades, demanding that the Salvadoran National Assembly recognize and enact August 30 the International Day of the Victims of Enforced Disappearances;

THEREFORE, BE IT RESOLVED, that the Berkeley City Council enacts the observance of August 30 as the International Day of the Victims Enforced Disappearances in El Salvador as a special tribute to U.S. Salvadorans.

AND, BE IT FURTHER RESOLVED, that the Berkeley City Council calls on the Salvadoran National Assembly to recognize and declare August 30 The International Day of the Victims of Enforced Disappearances, and requests that President Biden declassify U.S. records that relate to disappearances and other human rights violations that took place during the civil war.



CONSENT CALENDAR
DATE: September 14, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin, Vice Mayor Droste (co-sponsor), Councilmember Wengraf (co-sponsor)

Subject: Budget referral: Automated license plate readers for community safety improvement

RECOMMENDATION

That the Berkeley City Council take the following actions to enable and deploy tactical technologies in strategic public spaces and the public ROW for the improvement of community safety and determent, intervention, prevention of illegal dumping and/or investigation of violent crime and traffic violations:

- Authorize the City Manager to install Automatic License Plate Readers (ALPRs) at strategic locations including public facilities, entrances to the city and strategic intersections in areas impacted by violent crime, traffic violations, illegal dumping, drug offenses, and other criminal activity; **and refer to the budget process cost of ALPRs.**
- Refer to the City Manager the development of a policy pursuant and subject to City of Berkeley Surveillance Ordinance enabling the use of ALPRs in fixed locations and mobile trailers by the Berkeley Police Department, while restricting data storage and distribution pursuant to standards set forth in Senate Bill 210 (Wiener, 2021).

CURRENT SITUATION AND ITS EFFECTS

According to the Berkeley Police Department's 2019/2020 Crime Report, Berkeley has seen marked increases in aggravated assault, homicides, auto theft and larceny over the past two years.¹ While the overall crime rate remained relatively flat, specific categories of property crimes increased sharply—especially vehicle thefts, which increased by 66% in 2020.

¹ https://www.cityofberkeley.info/Clerk/City_Council/2020/10_Oct/Documents/2020-10-13_Presentations_Item_19__Pres_Police_pdf.aspx

According to a 2018 study² by the Center for Policing Equity, Black people comprise only 8% of Berkeley's population, but a disproportionate 46% of people subject to police uses of force. In light of this evidence, and in the wake of the national outcry over the death of George Floyd, the City Council adopted a resolution³ on July 14, 2020 directing the City Manager in part to "identify elements of police work that could be achieved through alternative programs, policies, systems, and community investments."

Currently, the police department's Parking Enforcement Bureau uses Automated License Plate Readers (ALPRs) for time zone parking and scofflaw enforcement, replacing the practice of physically "chalking" car tires, but ALPR technology has not been implemented in the city for other law enforcement purposes. According to the City Manager's 2020 Surveillance Technology Report, there were an average of 12,059 successful license plate "reads" per day in the month of September, 2020. From October 2019 to October 2020, there were 44,068 "hits" detecting a positive violation, roughly 25% (14,945) of which resulted in enforcement by citation issuance.⁴

Pursuant to Berkeley Municipal Code Chapter 2.99 Section 2.99.070, the City Manager's office is required to report on surveillance technology on an annual basis.

BACKGROUND

Some research has found that ALPRs contribute to marginal improvements in public safety outcomes with respect to vehicle thefts and traffic safety. The use of LPR technology has increased significantly in law enforcement agencies across the US in the past decade, but outcomes have been inconsistently tracked, which limits available research.⁵ One qualitative case study found that criminal investigators adapted LPR technology to a broader range of investigative work, such as rapid responses and corroborating suspect alibis.⁶

An analysis of a randomized control trial in the City of Vallejo found that ALPRs attached to police vehicles enabled a 140% increase in detection of stolen vehicles, while arrests were more efficient with stationary ALPRs in fixed locations.⁷ A study on LPR technology in Mesa, AZ

² Buchanan, K.S., Pouget, E., Goff, P.A. (2018). The Science of Justice: Berkeley Police Department. *Center for Policing Equity*. Retrieved from <https://www.berkeleyside.org/wp-content/uploads/2018/05/Berkeley-Report-May-2018.pdf>

³ https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-14_Item_18d_Transform_Community_Safety_pdf.aspx

⁴ https://www.cityofberkeley.info/Clerk/City_Council/2020/11_Nov/Documents/2020-11-10_Item_19_Resolution_Accepting_the_Surveillance.aspx

⁵ Lum, C., Koper, C.S., Willis, J., Happeny, S., Vovak, H. and Nichols, J. (2019). The rapid diffusion of license plate readers in US law enforcement agencies. *Policing: An International Journal*, (42)3, pp. 376-393. <https://doi.org/10.1108/PIJPSM-04-2018-0054>

⁶ James J. Willis, Christopher Koper & Cynthia Lum (2018). The Adaptation of License-plate Readers for Investigative Purposes: Police Technology and Innovation Re-invention, *Justice Quarterly*, 35:4, 614-638, DOI: 10.1080/07418825.2017.1329936

⁷ Potts, J. (2018). Research in brief: assessing the effectiveness of automatic license plate readers. *POLICE CHIEF*. Retrieved from <http://www.theiacp.org/sites/default/files/2018-08/March%202018%20RIB.pdf>

found that LPRs resulted in an eightfold increase in the number of plates scanned, more positive scans, arrests and recovery of stolen vehicles, and a reduction in calls for drug offenses. However, the study did not find a statistically significant reduction in vehicle thefts in hot spots compared to manual checks, possibly because the presence of law enforcement officers performing manual checks had a more preventative effect.⁸ Another study of the Charlotte-Mecklenburg Police Department found that “LPR use may have contributed to modest improvements in case closures for auto theft and robbery”—the former in the long term, and the latter both short- and long term.⁹

According to recent analysis by the National Highway Traffic Safety Administration, one law enforcement agency found that drivers with suspended, revoked, or restricted licenses were 2.2 times more likely to be involved in serious or fatal crashes than other drivers, and that identifying these drivers with ALPRs “could affect traffic safety positively by targeting violator vehicles that are more prone to crash risk.”¹⁰ A quasi-experimental survey of data from Buffalo, NY found a reduction in violent crime and traffic accidents associated with roadblocks using LPRs.¹¹

RATIONALE FOR RECOMMENDATION

Reimagining public safety necessitates significant improvements in public safety outcomes, including practical solutions to traffic safety and property crime. California law currently preempts municipalities from transferring law enforcement into civilian duties or automated speed cameras.

While auto thefts in Berkeley increased by 66% in 2020, a 2021 City Auditor analysis¹² of the Berkeley Police Department found that Officer-Initiated Stops disproportionately target Black and Latino drivers relative to their share of the city’s population.

⁸ Taylor, B., Koper, C. S., & Woods, D. J. (2012). Combatting auto theft in Arizona: A randomized experiment with license plate recognition technology. *Criminal Justice Review*, 37, 24-50.

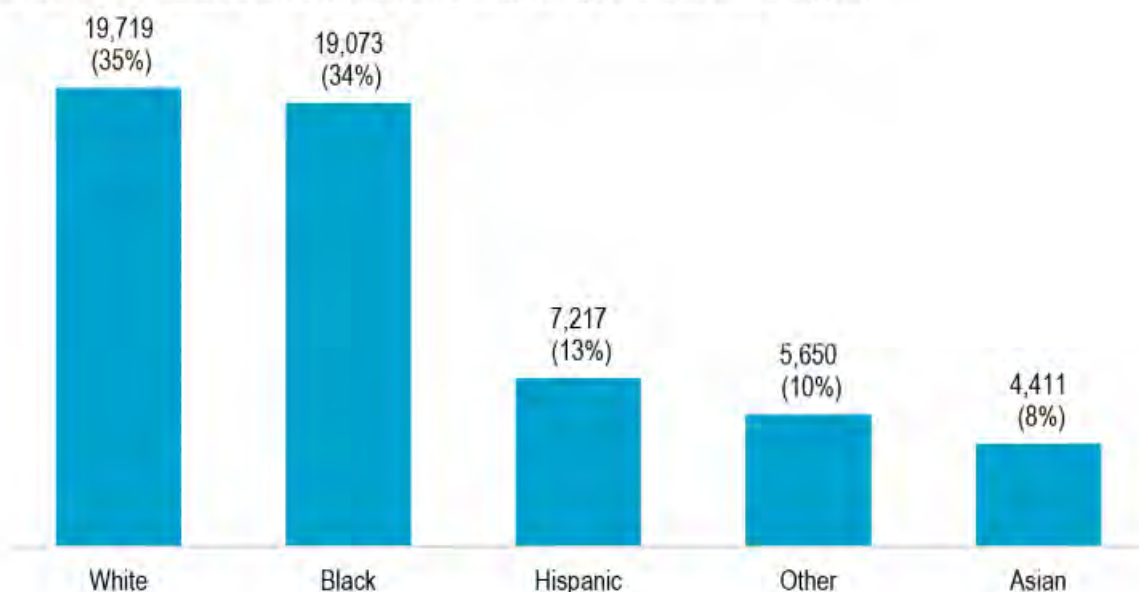
⁹ Koper, C. S., & Lum, C. (2019). The Impacts of Large-Scale License Plate Reader Deployment on Criminal Investigations. *Police Quarterly*, 22(3), 305–329. <https://doi.org/10.1177/1098611119828039>

¹⁰ Zmud, J., Walden, T., Ettelman, B., Higgins, L. L., Graber, J., Gilbert, R., & Hodges, D. (2021). State of Knowledge and Practice for Using Automated License Plate Readers for Traffic Safety Purposes. Retrieved from https://rosap.nhtl.gov/view/dot/55586/dot_55586_DS1.pdf

¹¹ Wheeler, A.P., Phillips, S.W. (2018). A quasi-experimental evaluation using roadblocks and automatic license plate readers to reduce crime in Buffalo, NY. *Secur J* 31, 190–207. <https://doi.org/10.1057/s41284-017-0094-1>

¹² Berkeley City Auditor. (2021, Apr. 22). Data Analysis of the City of Berkeley’s Police Response. Retrieved from https://www.cityofberkeley.info/uploadedFiles/Auditor/Level_3_-_General/Data%20Analysis%20of%20the%20City%20of%20Berkeley's%20Police%20Response.pdf

Figure 18. Officer-Initiated Stops by Race, 2015-2019 (n = 56,070 individuals stopped)



Source: Auditor's analysis of Berkeley Police Department Computer Aided Dispatch data

ALPRs therefore present an opportunity to reduce property crimes and improve traffic safety while also reducing civilian encounters with police officers conducting ad hoc traffic enforcement, which the 2021 audit found to have a significant racial bias against Black and Latino drivers. ALPRs could make enforcement more fair, impartial, and effective.

However, ALPR data storage gives rise to several privacy concerns. In *Carpenter v. United States*, the U.S. Supreme Court ruled that accessing location data tracking an individual's movements from their cell phone constitutes a search under the Fourth Amendment and requires a search warrant.¹³ While ALPR scans are subject to reasonableness standards for searches under Fourth Amendment jurisprudence, state courts have found that ALPR alerts are sufficient to establish a reasonable suspicion, though there are situations that require further intervention to establish reasonableness or avoid error.¹⁴

In *Neal v. Fairfax County Police Department*, the Virginia Supreme Court ruled that GPS data and images associated with license plate numbers were private personal information (PPI), but license plate numbers themselves stored in ALPR databases were not.¹⁵ The California Supreme Court has also underscored such a distinction between "bulk data collection" of license plate numbers that did not "produce records of investigations" for particular crimes.¹⁶ By

¹³ *Carpenter v. United States*, 138 S. Ct. 2206 (2018).

¹⁴ Fash, L. (2018). Automated License Plate Readers: The Difficult Balance of Solving Crime and Protecting Individual Privacy. *Md. L. Rev. Endnotes*, 78, 63.

¹⁵ *Neal v. Fairfax County Police Dept.*, 812 S.E.2d 444, 295 Va. 334 (2018).

¹⁶ *Am. Civil Liberties Union Found. of S. Cal. v. Super. Ct. of L.A. Cty.*, 400 P.3d 432

contrast, U.S. Supreme Court Justice Sotomayor argued in *United States v. Jones* that government agencies collecting “private aspects of identity” could be “susceptible to abuse.”¹⁷ This calls into question the so-called third party doctrine of the Fourth Amendment—the longstanding precedent that individuals may be reasonably considered to waive their right to privacy and assume any information provided to third parties may eventually be accessed by the government—given the vast array of information government agencies can now access through surveillance technology. To carefully balance privacy and policing efficacy under this new paradigm, Newell (2013) recommends strictly limiting data retention for non-“hit” scans, and maintaining anonymized ALPR data subject to public disclosure laws.¹⁸

California Vehicle Code Section 2413(b) restricts the California Highway Patrol (CHP)’s retention LPR data for 60 days unless it is being used as evidence in a felony investigation. Subsection (c) restricts the distribution of this data strictly to law enforcement agencies or officers and “only for purposes of locating vehicles or persons when either are reasonably suspected of being involved in the commission of a public offense.”

In 2015, Senate Bill 34 imposed additional security and privacy requirements on the use of ALPR data.¹⁹ Unfortunately, a State Auditor report in 2020 surveying four local law enforcement agencies in California found that ALPR policies were out of compliance with SB34, retained images for far longer than needed or allowed, and had no processes in place to safeguard local compliance. For example, the State Auditor “did not find evidence that the agencies had always determined whether an entity receiving shared images had a right and a need to access the images or even that the entity was a public agency.”²⁰

In 2018, a lawsuit by the American Civil Liberties Union of Northern California revealed that Immigration and Customs Enforcement (ICE) had purchased access to private databases containing ALPR data with 5 billion individual data points for civil immigration enforcement, and had obtained ALPR data from over 80 local law enforcement agencies.²¹ However, in 2017, Senate Bill 54 greatly restricted the ability of California law enforcement agencies to share information with ICE.²²

(Cal. 2017).

¹⁷ *United States v. Jones*, 565 U.S. 400, 415 (2012) (Sotomayor, J., concurring);

¹⁸ Newell, B. C. (2013). Local law enforcement jumps on the big data bandwagon: Automated license plate recognition systems, information privacy, and access to government information. *Me. L. Rev.*, 66, 397.

¹⁹ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB34

²⁰ Howle, E.M. (2020). Automated License Plate Readers: To Better Protect Individuals’ Privacy, Law Enforcement Must Increase Its Safeguards for the Data It Collects. *Auditor of the State of California*. Retrieved from <https://www.auditor.ca.gov/reports/2019-118/index.html>

²¹ Talla, V. (2019). Documents Reveal ICE Using Driver Location Data From Local Police for Deportations. *ACLU Northern California*. Retrieved from <https://www.aclunc.org/blog/documents-reveal-ice-using-driver-location-data-local-police-deportations>

²² https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB54

Introduced in January 2021, Senate Bill 210 by State Sen. Scott Wiener (D-SF) would further limit data storage and access for ALPRs.²³

ENVIRONMENTAL IMPACTS

None.

FISCAL IMPACTS

In 2017, an amendment to Contract No. 9977²⁴ from the City Manager's Office itemized a unit cost of \$78,363 for each ALPR system. Costs for this referral may be different because this contract was for mobile ALPRs used for parking enforcement, not in fixed locations.

CONTACT

Councilmember Terry Taplin, District 2, (510) 981-7120, ttaplin@cityofberkeley.info

²³ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB210

²⁴ https://ci.berkeley.ca.us/Clerk/City_Council/2017/07_Jul/Documents/2017-07-11_Item_13_Contract_No_9977_Amendment.aspx



Susan Wengraf
Councilmember District 6

CONSENT CALENDAR
September 14, 2021

To: Honorable Mayor and Members of the City Council
From: Councilmember Wengraf & Mayor Arreguín
Subject: Resolution Expressing Conceptual Support for an East Bay Wildfire Prevention and Vegetation Management Joint Powers Agency

RECOMMENDATION

Adopt a Resolution in favor of Conceptual Support for an East Bay Wildfire Prevention and Vegetation Management Joint Powers Agency.

FINANCIAL IMPLICATIONS

None

BACKGROUND

This item is in support of the concept of using the Joint Powers Authority structure and process to address the wildfire threat posed by vegetation management in the hills of Alameda and Contra Costa counties. Today, local government agencies are responsible for preventing and fighting wildfires in urbanized areas. Counties are responsible for unincorporated areas.

However, wildfires cross jurisdictional boundaries involving multiple cities and counties. Wildfires move at hurricane speeds and force, with winds from 60 to 100 mph, forceful enough to jump huge freeways. It took only one hour for the Berkeley Oakland Tunnel Fire to move from the Berkeley Hills across the Highway 24 freeway to destroy homes in the Upper Rockridge area of Oakland. To the north, it took only four hours for the Tubbs Fire to move from the Napa Valley to Santa Rosa. To the south, the Thomas Fire moved from Ventura to Santa Barbara, jumping a 15-lane freeway. Once started, the intensity of heat and speed makes extinguishing wildfires very challenging, leaving evacuation as the only tool to protect life safety. Evacuation times are often measured in minutes, or less. Since they are impossible to stop once they get going, preventing wildfires becomes a priority.

In Alameda County alone, there are 14 separate cities. If vegetation in our area is to be well managed to reduce the threat of wildfire, the necessary expertise, workforce and financial resources must be assembled over a broad enough area to be effective. Local agencies with all their present responsibilities unfortunately lack sufficient breadth and

resources to adequately address the enormity of the problem. Coordinating vegetation management among all the East Bay local public agencies is an impossible challenge without a structure and mechanism to lead that effort. Just as we have special districts in the Bay Area to manage air quality, water quality, lead abatement and regional planning and transportation, it is time to think about creating a wildfire prevention district to manage vegetation and dramatically reduce the fuel that causes the spread of wildfires in our neighborhoods in the wildland urban interface. Local government agencies in Alameda and Contra Costa counties should begin the process of discussing the creation of a joint powers authority to accomplish this goal.

Discussions around creating an East Bay Wildfire Prevention and Vegetation Management Joint Powers Agency might include:

(1) Developing a plan to reduce the most flammable wildlands vegetation in the East Bay Hills to the maximum extent feasible and to replace it with wildfire resistant vegetation where appropriate, to protect wildlife habitat and native plants.

(2) A "Defensible Space" program to aid owners of private property with information resources to manage vegetation on their properties.

(3) A "Home Hardening" program to advise homeowners, schools and commercial property owners on how their structures can be protected from wildfires.

5) The JPA raising funds by applying for state and federal grants, preparing tax measures for voter approval and other means permitted by law.

6) Implementing the plan by retaining sufficient staff and equipment and/or by contracting with others to remove the most flammable vegetation in wildland areas and to implement the public information programs for defensible space and home hardening.

ENVIRONMENTAL SUSTAINABILITY

California's 2020 wildfires caused greenhouse gas emissions similar to 24 million passenger vehicles driven for one year, according to the EPA's Greenhouse Gas Equivalencies Calculator. That's nearly three times the emissions from California's 2018 wildfires. Emissions from wildfire undermine California's work towards greenhouse gas reduction, a situation worsening as climate change accelerates.¹

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

Attachments:

1: Resolution

¹ <https://news.bloomberglaw.com/environment-and-energy/californias-2020-wildfire-emissions-akin-to-24-million-cars>

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

**EXPRESSING CONCEPTUAL SUPPORT FOR THE FORMATION OF AN EAST BAY
WILDFIRE PREVENTION AND VEGETATION MANAGEMENT JOINT POWERS
AGENCY**

WHEREAS, historic wildfires throughout California and the Western United States in recent years demonstrate that the impacts of global climate change will continue to have potentially devastating effects throughout the region; including loss of life, loss of property, economic impacts, infrastructure damage, and public health hazards associated with air quality, among others; and

WHEREAS, reactive approaches to fire management and containment are deployed during times of crisis and overextend local and state resources; and

WHEREAS, the spread of wildfire does not respect political or jurisdictional boundaries; burn areas and air quality impacts from smoke extend throughout the region; and

WHEREAS, a large portion of the East Bay region, including the East Bay Hills from Hercules to Fremont are a designated high-risk fire hazard zone by the State Agency CALFIRE; and

WHEREAS, a more coordinated approach and investment in wildfire prevention and vegetation management may help to mitigate the number and severity of wildfire events; and

WHEREAS, regional coordination may prove both more effective and more efficient in developing and implementing best practices, as well as sharing expertise and other resources; and

WHEREAS, the East Bay contains more than 33 municipalities, numerous unincorporated communities, and fire and special districts, that may all benefit from a coordinated fire management approach; and

WHEREAS, a regional initiative has been launched to form a Joint Powers Authority (JPA) bringing together cities, counties, and jurisdictions from throughout the East Bay to pursue coordinated planning and funding for vegetation management and fire prevention; and

WHEREAS, participating in planning and development of a JPA will be beneficial for the City of Berkeley to access and leverage state and federal resources for vegetation management and pursue coordinated projects to reduce fire risk in the East Bay Hills.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Berkeley agrees to be involved and participate in presentations, meetings, and negotiations to consider, in concept, the formation of a regional Vegetation Management Joint Powers Agency to address and improve fire safety in the East Bay.

BE IT FURTHER RESOLVED that this resolution shall become effective immediately upon passage and adoption.



Fair Campaign Practices Commission

INFORMATION CALENDAR

September 14, 2021

To: Honorable Mayor and Members of the City Council

From: Fair Campaign Practices Commission

Submitted by: Brad Smith, Chairperson, Fair Campaign Practices Commission

Subject: Fair Campaign Practices Commission FY2021-2022 Work Plan

INTRODUCTION

The Fair campaign Practices Commission (FCPC) has updated its work plan, which outlines Commission objectives for the upcoming fiscal year. This work plan includes ongoing compliance review of campaign statements; ongoing review of alleged violations of BERA; receiving due process training for hearing complaints; finding ways to reduce the number of pages printed in commission packets; review of BERA's enforcement procedures; establish guidelines for approval of applications for public financing; developing guidelines to avoid preventing a candidate from receiving public funds for minor violations of BERA; review lobbying registration and reporting practices for individuals and organizations; and to work collaboratively with the City Council to develop policy related to Officeholder Accounts.

CURRENT SITUATION AND ITS EFFECTS

At the regular meeting on June 17, 2021, the Fair Campaign Practices Commission unanimously approved the FY2021-2022 Work Plan, which will be used to guide the Commission's work throughout the year.

M/S/C (Blome/Hynes) to adopt work plan removing completed items from FY2020-2021 Work Plan re public campaign financing program

Ayes: Newman, O'Donnell, Ching, Sheahan, Blome, Hynes, Humbert, Tsang, Smith;
Noes: none; Abstain: none; Absent: none.

BACKGROUND

See attached Work Plan.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

No environmental impacts or opportunities were identified as a result of this recommendation.

POSSIBLE FUTURE ACTION



Fair Campaign Practices Commission

Based on Commission research and public hearings, new initiatives and recommendations to City Council may be submitted to City Council at such time deemed necessary.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Unknown, but none expected.

CONTACT PERSON

Samuel Harvey, Commission Secretary (510) 981-6998
Brad Smith, Chairperson, (510) 981-6998

Attachment: 1: Fair Campaign Practices Commission Work Plan

Attachment 1



Fair Campaign Practices Commission

**Work Plan for FY2021-2022 (July 1, 2021- June 30, 2022)
Approved June 17, 2021**

- Ongoing compliance review of campaign statements.
- Ongoing review of alleged violations of BERA.
- Receive due process training for hearing complaints.
- Find ways to reduce the number of pages in commission packets.
- Review BERA enforcement procedures.
- Work collaboratively with the City Council to develop policy related to Officeholder Accounts.



Open Government Commission

INFORMATION CALENDAR
September 14, 2021

To: Honorable Mayor and Members of the City Council

From: Open Government Commission

Submitted by: Brad Smith, Chairperson, Open Government Commission

Subject: Open Government Commission FY2021-2022 Work Plan

INTRODUCTION

The Open Government Commission (OGC) has updated its work plan, which outlines Commission objectives for the upcoming fiscal year. This work plan includes the ongoing review of complaints concerning alleged non-compliance with the Open Government Ordinance, the Brown Act, the Public Records Act, or the Lobbyist Registration Act; proposing legislation or procedures to further ensure the City of Berkeley's compliance with the Open Government Ordinance, the Brown Act, the Public Records Act, and the Lobbyist Registration Act; advising the City Council of any action or policy that would enhance open and effective government in the City of Berkeley; reviewing, approving, and forwarding to City Council the report submitted to the Open Government Commission by the City Manager regarding compliance with the Open Government Ordinance, the Public Records Act, the Brown Act, the Lobbyist Registration Act, and any other information the City Manager deems appropriate for open and effective government in the City of Berkeley; and working collaboratively with the City Council to develop policy related to Council District (D-13) accounts.

CURRENT SITUATION AND ITS EFFECTS

At the regular meeting on June 17, 2021, the Open Government Commission unanimously approved the FY2021-2022 Work Plan, which will be used to guide the Commission's work throughout the year.

M/S/C (Hynes/Ching) to adopt work plan with amendment re making Lobbyist Registration Ordinance more effective and clarification re annual report from City Manager

Ayes: Newman, O'Donnell, Ching, Sheahan, Blome, Hynes, Humbert, Tsang, Smith
 Noes: none
 Abstain: non
 Absent: none



Open Government Commission

BACKGROUND

See attached Work Plan.

ENVIRONMENTAL SUSTAINABILITY

No environmental impacts or opportunities were identified as a result of this recommendation.

POSSIBLE FUTURE ACTION

Based on Commission research and public hearings, new initiatives and recommendations to City Council may be submitted to City Council at such time deemed necessary.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Unknown, but none expected.

CONTACT PERSON

Samuel Harvey, Commission Secretary (510) 981-6998
Brad Smith, Chairperson (510) 926-2047

Attachment: 1: Open Government Commission FY2020-2021 Work Plan



Open Government Commission

Attachment 1

**Open Government Commission Work Plan
FY2021-2022 (July 1, 2021 – June 30, 2022)
Approved June 17, 2021**

- Ongoing review of complaints concerning alleged non-compliance with the Open Government Ordinance, the Brown Act, the Public Records Act, or the Lobbyist Registration Act.
- Propose legislation or procedures to further ensure the City of Berkeley's compliance with the Open Government Ordinance, the Brown Act, the Public Records Act, and the Lobbyist Registration Act.
- Administer and make more effective the Lobbyist Registration Ordinance.
- Advise the City Council of any action or policy that would enhance open and effective government in the City of Berkeley.
- Review, approve, and forward to the City Council the annual report submitted to the Open Government Commission by the City Manager regarding compliance with the Open Government Ordinance, the Public Records Act, the Brown Act, the Lobbyist Registration Act, and any other information the City Manager deems appropriate for open and effective government in the City of Berkeley.
- Work collaboratively with the City Council to develop policy related to Council District (D-13) accounts.



BERKELEY CITY AUDITOR

INFORMATION CALENDAR

September 14, 2020

To: Honorable Mayor and Members of the City Council

From: Jenny Wong, City Auditor *JW*

Subject: City Auditor Fiscal Year 2022 Audit Plan

INTRODUCTION

The Berkeley City Charter requires the City Auditor to provide the City Council with a planned audit schedule by the beginning of each fiscal year and to notify the Council when audits are added. In deciding what to audit, our office considers suggestions from the City Manager, staff, the City Council, the Rent Stabilization Board, commissioners, and other community members. We examine risks that might prevent the City from reaching its goals, including strategic, financial, regulatory, operational, and reputational risks.

CURRENT SITUATION AND ITS EFFECTS

As required by the City Charter, we are notifying the Council of our annual audit plan. The following plan assumes being fully staffed to conduct these audits. Reductions in our budget will decrease capacity of audit services from our office.

The impacts of COVID-19 are still ongoing and uncertain. As restrictions are lifted, there are still risks that make oversight and accountability bodies like my office even more important. The City has experienced many changes to operations and services while also facing decreased revenues due to COVID-19. Berkeley received a short term injection of funding from the American Rescue Plan to make up for the lost revenue, but with long-term financial issues such as significant unfunded liabilities, it is still critical that we assess the City's financial sustainability in the long run. Now, more than ever, we need to evaluate how the City can best respond to this ongoing crisis and keep residents and employees safe with minimal disruption to operations and services.

For Fiscal Year 2022, we have identified areas we hope to address in the upcoming year:

- Police Department budget analysis (continued from FY 2021)
- Financial condition
- Rent Stabilization Board
- Homelessness
- Employee retention (resumed after being put on hold in FY 2020 due to COVID-19)
- Follow-up on prior audit recommendations
- Short-term projects

BACKGROUND

The mission of the Berkeley City Auditor is to promote transparency and accountability in Berkeley government. This is achieved through independent evaluations of City programs and activities. The FY 2021 Audit Plan reflects our office's commitment to continuous improvement by enhancing the value, products, staffing, communications, and overall impact of the Berkeley City Auditor's Office on behalf of Berkeley residents, businesses, and visitors.

ENVIRONMENTAL SUSTAINABILITY

This report is not associated with identifiable environmental effects or opportunities.

POSSIBLE FUTURE ACTION

Our future audit recommendations will address the risks that could prevent the City from providing efficient, effective, and equitable service delivery. We will be asking the Council to accept those recommendations and request that the City Manager report on their actions to implement them. We may also make recommendations requiring Council action.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Audit work leads to new or enhanced revenue, cost recovery, and increased efficiency, with economic impact well beyond the audit costs. Long-range financial benefits of our audits result in significant improvements to internal controls and service delivery.

Ensuring timely implementation of audit recommendations could result in additional savings and risk reduction, including fraud risk. Reducing fraud risk more than protects money; it builds trust in government. Maintaining a strong audit function and fiscal management will reduce future costs and enhance public trust.

CONTACT PERSON

Jenny Wong, City Auditor, 510-981-6750

Attachment:

1. Audit Plan Fiscal Year 2022

Audit Plan Fiscal Year 2022

Inside

Letter from the Auditor

Planned Engagements

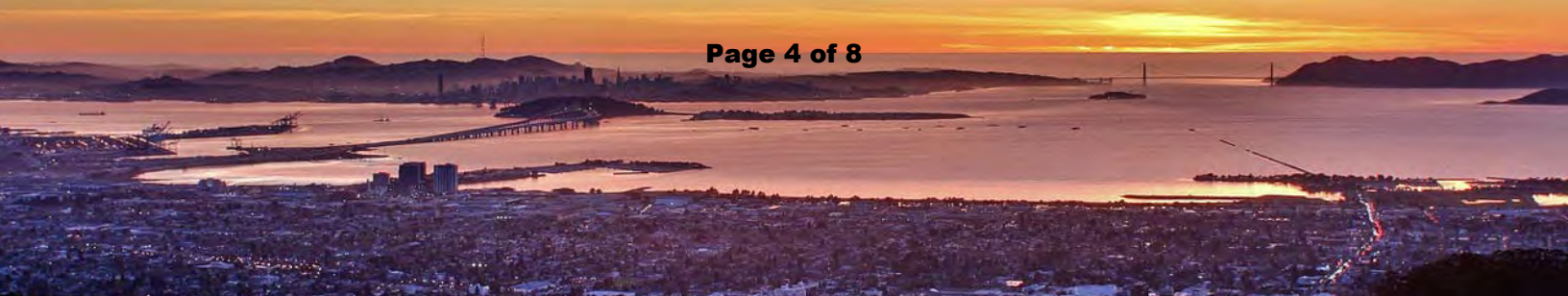
Plan Description

Audit Selection Process

Auditor's Authority



BERKELEY CITY AUDITOR



I am pleased to present the Berkeley City Auditor’s Fiscal Year 2022 Audit Plan.¹ Our office is responsible for conducting performance audits of city functions—deep dives into the workings of our various city programs with the goal of maximizing taxpayer dollars and delivering top-quality services. It is our goal to initiate all the engagements identified in the audit plan during the fiscal year. Our capacity to initiate and complete projects this fiscal year will be dependent on resource constraints.

In drafting this plan, we considered how we can add the most value to the City while also taking into consideration resource constraints of the City and my department. The impacts of COVID-19 are still ongoing and uncertain. As restrictions are lifted, there are still risks that make oversight and accountability bodies like my office even more important. The City has experienced many changes to operations and services while also facing decreased revenues due to COVID-19. Berkeley received a short term injection of funding from the American Rescue Plan to make up for the lost revenue, but with long-term financial issues such as significant unfunded liabilities, it is still critical that we assess the City’s financial sustainability in the long run.

Our office and the City face unique challenges, but we are also in a unique position to work collaboratively, provide expertise and guidance, and hold the City accountable during this time. Now, more than ever, we need to evaluate how the City can best respond to the communities most critical needs in a time of decreased revenues. By embracing flexibility, and looking at both the short-term and long-term impact of COVID-19 on the organization, our office can help the City emerge from this crisis stronger than ever.

In FY 2022, we plan to begin an analysis of the City’s financial condition and audits of employee retention, the Rent Stabilization Board, and the City’s role in addressing issues related to homelessness. We will also continue our audit of the Police Department budget focusing on overtime. In FY 2021, we paused our ongoing process of following up on departments’ implementation of recommendations from previous audits to allow the City to prioritize its response to COVID-19. We will resume the audit follow up process to ensure that the City is implementing adopted recommendations. Along with producing these reports, we may also conduct short-term projects in topic areas that will provide timely information to key decision makers on issues that are important to the public and the mission of our office.

I look forward to carrying out these audits to deliver independent, transparent, and accountable oversight, thereby safeguarding the public’s investments in the City of Berkeley. I am committed to providing ongoing information on how tax dollars are spent and how government operates, on behalf of everyone who cares about Berkeley, including residents, business owners, visitors, workers, and decision-makers.

Respectfully,

JENNY WONG
City Auditor

¹We emailed this audit plan to City Council on June 30, 2020 as required by the Berkeley Municipal Code.

Planned Engagements FY 2022

Financial condition

The Auditor's office will examine the City's financial well-being by calculating financial ratios, analyzing trends, and comparing the results to other similar cities.

Rent Stabilization Board

The Auditor's office will conduct an audit examining the Rent Stabilization Board's finances or operations.

Homelessness

The Auditor's office will examine a defined area within the topic of homelessness to shed light on the City's investment or role in addressing issues in this area.

Employee retention

The Auditor's office will continue an audit of employee retention that was deferred during FY 2020 due to the COVID-19 pandemic. The audit will examine factors that affect retention of city employees.

Follow-up

The Auditor's office will continue to track and follow-up on all audit recommendations to determine if they are properly implemented.

Short-term projects

In order to be responsive to the needs of the City and the public, we may engage in short-term projects to provide timely and relevant information and analysis to the City and community.

Ongoing engagements

We will continue our analysis of the Police Department budget that we started in FY 2022.

Plan Description

The mission of the Berkeley City Auditor is to promote transparency and accountability in Berkeley government. This is achieved through independent evaluations of city programs and activities. The Fiscal Year 2022 Audit Plan reflects the office's steadfast commitment to continuous improvement by enhancing the value, products, staffing, communications, and overall impact of the Berkeley City Auditor's Office on behalf of Berkeley residents, businesses, and visitors.

Auditing Under the City Charter

The Charter provides that the Auditor shall have the authority to conduct:

- Performance and financial audits or special studies of all phases of the City of Berkeley government in accordance with government auditing standards;
- Financial, compliance, efficiency and economy, and program results auditing; and
- Examinations of payrolls, bills, and other claims and demands made against the City.

The FY 2022 Audit Plan ensures broad audit coverage throughout the City while also addressing specific performance, financial, contractual, and system risks. Audit resources are limited, thus prohibiting one hundred percent coverage each year. This significant limiting factor is inherent in the concept of using risk assessment to help prioritize audits. According to the City Charter, the ultimate decision to perform any audit shall be at the sole discretion of the Auditor. Our approach to scheduling audits is flexible and subject to change throughout the year based on newly identified risks.

Audit Follow-up Program

Audit follow-up activities are conducted for every audit to assess whether city personnel implemented the agreed-upon audit recommendations. The Auditor's Office issues follow-up audit reports to City Council on the status of our recommendations. Our office measures the audit recommendation implementation rate as an indicator of the degree to which the City is using information provided by our audit reports to mitigate identified risks and to enhance efficiency, effectiveness, and economy of operations. Our expectation is that audit recommendations should take two years for the City to implement.

Focus on Integrity, Independence, Impact, and Inclusion

The concepts of integrity, independence, impact, and inclusion are core tenets of operations within the Berkeley City Auditor's Office. Although the Auditor operates independently from other city entities, Auditor Wong and staff meet regularly with the Mayor, City Council, city personnel, neighborhood groups, and civic leaders to solicit input regarding risks. The objective of this strategy is to improve services and stewardship of city resources.

Audit Selection Process

Developing an annual Audit Plan is an iterative process, conducted by assembling ideas from a variety of internal and external stakeholders, examining a broad range of City programs and activities, and assessing risk factors together with additional considerations. This approach results in a diverse list of departments, programs, and activities that are examined to determine whether they are operating efficiently, effectively, and in accordance with the law and other requirements.

In developing a list of potential audits, ideas come from a variety of sources:

- Input from the community, elected officials, department staff, and City management;
- Assessment of operations and controls in previous audit reports;
- Assessment of citywide risks;
- Consideration of current local events, financial conditions, capital improvement projects, and public policy issues; and
- Consideration of risks identified in other government audits that could emerge in Berkeley.

Our office identifies and prioritizes potential audits and other assessments using a risk-based approach that examines a variety of factors that may expose the City to fraud, misuse of funds, waste, liability, or reputational harm. The following risk factors are used to determine the audits included in the audit plan:

- Perception of risk from management, City Council, the community, and audit staff;
- Economic factors such as financial impact, volume of transactions, number of personnel, and revenue generated;
- Changes in organization, management, key personnel, and information systems; and
- Time since last audit.

After the plan is finalized, new information may come to light; events, initiatives, priorities, and risks within the City may change. The flexible nature of the Audit Plan as a living document provides the ability to change course when it is in the best interest of the City.

Auditor's Authority

The Berkeley City Auditor's Office provides independent oversight of City operations. Audits, conducted by the Office, provide the City Manager, City Council, and the public with objective, timely, and accurate information about City program performance. By providing this information and making recommendations for improvement, the Office helps to hold government accountable in its stewardship of public resources. Berkeley City Charter, Section 61, establishes this independence and provides for the Auditor's general authority and duties. The Charter also establishes the duty to present a planned audit schedule to City Council at the beginning of each fiscal year.

Several key components serve as the cornerstone for Berkeley's auditing framework. These elements provide the Auditor with the independence that results in the office's ability to conduct high-impact audits.

Elected Auditor — The City of Berkeley has an elected Auditor who is independent from all other elected officials and City management.

Comprehensive Access — The City Charter and Municipal Code authorize the Auditor to have unrestricted access to all officials, employees, records, and reports maintained by the City, and to all external entities, records, and personnel related to contracted business interactions with the City.

Audit Response Requirements — City Municipal Code requires that City management formally respond to all audit findings and recommendations, establishing the Auditor's ability to work in conjunction with audited departments while maintaining independence.

Recommendation Follow-up Requirements — City Municipal Code requires that City management report back to Council on the status of audit recommendations every six months until all recommendations are implemented, establishing the Auditor's ability to determine the adequacy, effectiveness, and timeliness of management's actions to correct reported issues and recommendations.

Adherence to Professional Auditing Standards — The Auditor's Office conducts all audits in accordance with Generally Accepted Government Auditing Standards produced by the United States Government Accountability Office.



BERKELEY CITY AUDITOR

2180 Milvia Street, 3rd Floor, Berkeley, California 94704

510-981-6750

www.cityofberkeley.info/auditor

Upcoming Worksessions – <i>start time is 6:00 p.m. unless otherwise noted</i>	
Scheduled Dates	
Sept. 21	1. Housing Element
Oct. 19	1. Update: Zero Waste Rates & Priorities 2. Berkeley Police Department Hiring Practices 3. Crime Report
Dec. 7	1. Review and Update on City's COVID-19 Response 2. WETA / Ferry Service at the Marina 3. Presentation by Bay Restoration Authority

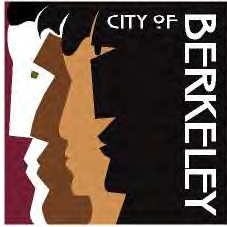
Unscheduled Workshops
1. Cannabis Health Considerations 2. StopWaste Presentation on SB 1383 (September 14 after ceremonial items) 3. Alameda County LAFCO Presentation

Unscheduled Presentations (City Manager)
1. Civic Arts Grantmaking Process & Capital Grant Program

	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> From: Councilmember Harrison Recommendation: 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. 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> From: City Manager 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. 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> From: Councilmember Harrison (Author), Councilmember Bartlett (Co-Sponsor), Councilmember Taplin (Co-Sponsor) Recommendation: 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. <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> 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			

8/25/2021



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: *Dee* 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

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.

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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 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

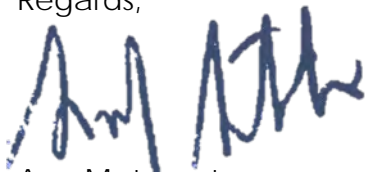
Dear Mr. Knaus, Ms. Miller, Ms. Hurst, Ms. Preston, Ms. Heaton, Ms. King, Ms. Coleman, Ms. Blacet-Hyden, Mr. McCormick, Mr. Anderson, and colleagues,

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
Number: 2021-58

June 4, 2021

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, at 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