



Fair Campaign Practices Commission
Open Government Commission

CONCURRENT MEETING OF THE FAIR CAMPAIGN PRACTICES COMMISSION AND THE OPEN GOVERNMENT COMMISSION

MEETING AGENDA

May 21, 2020

7:00 p.m.

Pursuant to Executive Order N-29-20 issued by the Governor on March 17, 2020, this meeting will be held telephonically. Members of the public interested in attending will be able to observe and address the meeting using the following dial-in information:

Call-in Number: +1 (213) 279-1690

Access Code: 567301053

Secretary: Samuel Harvey, Deputy City Attorney

The Commission may act on any item on this agenda

1. Call to Order 7:00 p.m.
2. Roll Call.
3. Public Comment. *Comments on subjects not on the agenda that are within the Commissions' purview are heard at the beginning of meeting. Speakers may comment on agenda items when the Commission hears those items.*
4. Approval of minutes for the April 23, 2020 concurrent regular meeting

Fair Campaign Practices Commission Agenda

5. Reports.
 - a. Report from Chair.
 - b. Report from Staff.
6. Regulations defining a "minor violation" for staff approval of public financing applications; discussion and possible action.
7. Reducing paper usage for agenda packets; discussion and possible action.
8. 2020-2021 Work Plan; discussion and possible action.

Open Government Commission Agenda

9. Reports.
 - a. Reports from Chair.
 - b. Reports from Staff.
10. Lobbying registration and reporting processes for companies, firms and organizations; discussion and possible action.

11. Councilmember office budget relinquishments and grants to organizations; discussion and possible action.
12. 2020-2021 Work Plan; discussion and possible action.
13. Adjournment.

Communications

None

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

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information. **SB 343 Disclaimer:** Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the City Attorney's Office at 2180 Milvia St., 4th Fl., Berkeley, CA.



Fair Campaign Practices Commission
Open Government Commission

DRAFT MINUTES

April 23, 2020

CONCURRENT REGULAR MEETING OF THE FAIR CAMPAIGN PRACTICES COMMISSION AND THE OPEN GOVERNMENT COMMISSION

Pursuant to Executive Order N-29-20 issued by the Governor on March 17, 2020, this meeting was held telephonically.

Secretary: Samuel Harvey, Deputy City Attorney

Members Present: Brad Smith (Chair), Jedidiah Tsang (Vice Chair), Jessica Blome, Janis Ching, Mark McLean, Dean Metzger, Patrick O'Donnell, Patrick Sheahan

Also Present: Samuel Harvey, Staff Secretary / Deputy City Attorney
Mark Numainville, City Clerk

1. **Call to Order**

Chair Called the meeting to order at 7:00 p.m.

2. **Roll Call**

Roll call taken.

3. **Public Comment (items not on agenda)**

No speakers.

4. **Approval of minutes for the February 20, 2020 concurrent regular meeting**

- a. Public comment: No speakers.
- b. Commission discussion and action

Motion to approve minutes (M/S/C: O'Donnell/Metzger; Ayes: Metzger, O'Donnell, Ching, Blome, McLean, Tsang, Smith; Noes: none; Abstain: Sheahan; Absent: none.)

Fair Campaign Practices Commission Agenda

5. **Approval of minutes for March 24, 2020 special meeting**

- a. Public comment: No speakers.
- b. Commission discussion and action

Motion to approve minutes (M/S/C: O'Donnell/Ching; Ayes: Metzger, O'Donnell, Ching, Blome, McLean, Tsang, Smith; Noes: none; Abstain: Sheahan; Absent: none.)

6. **FCPC Reports**

- a. Report from Chair.
- b. Report from Staff.

7. **Negotiated stipulation with Lacey for City Council 2018; discussion and possible action**

- a. Public comment: No speakers.
- b. Commission discussion and action

Motion to approve stipulation (M/S/C: Metzger/McLean; Ayes: Metzger, O'Donnell, Ching, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: none; Recused for political conflict pursuant to BMC § 2.12.196: Sheahan.)

8. **Amendments to Election Reform Act to authorize staff to approve public financing certification applications; discussion and possible action**

- a. Public comment: No speakers.
- b. Commission discussion and action.

Motion to approve amendments with changes (M/S/C: McLean/O'Donnell; Ayes: Metzger, O'Donnell, Ching, Blome, McLean, Sheahan, Tsang, Smith; Noes: none; Abstain: none; Absent: none.)

9. **City Clerk presentation: 2020 Census**

- a. Public comment: No speakers.
- b. Commission discussion

10. **2020-2021 Work Plan**

- a. Public comment: No speakers.
- b. Commission discussion

Open Government Commission Agenda

11. **OGC Reports**

- a. Report from Chair.
- b. Report from Staff.

12. **Lobbying registration and reporting processes for companies, firms and organizations**

- a. Public comment: No speakers.
- b. Commission discussion and action.

Motion to direct staff to return at next meeting with a recommendation for amending registration and reporting requirements for non-profit organizations. (M/S/C: Metzger/Ching; Ayes: Metzger, O'Donnell, Ching, Blome, McLean, Sheahan, Tsang, Smith; Noes: none; Abstain: none; Absent: none.)

13. **Officeholder accounts, D-13 accounts and nonprofit donations**

- a. Public comment: No speakers.
- b. Commission discussion and action.

Motion to direct staff to develop a proposal recommending Council change City policy to remove councilmember names from donations to non-profit organizations from D-13 accounts. (M/S/C: Ching/Metzger; Ayes: Metzger, O'Donnell, Ching, Blome, McLean, Sheahan, Tsang, Smith; Noes: none; Abstain: none; Absent: none.)

14. **OGC Work Plan**

- a. Public comment: No speakers.
- b. Commission discussion and action.

Motion to direct Chair to return at next meeting with a draft Work Plan for approval. (M/S/C: O'Donnell/Smith; Ayes: Metzger, O'Donnell, Ching, Blome, McLean, Sheahan, Tsang, Smith; Noes: none; Abstain: none; Absent: none.)

15. **Adjournment**

Motion to adjourn (M/S/C: O'Donnell/ Ching; Ayes: Smith, Tsang, Blome, Ching, McLean, Metzger, O'Donnell, Saver; Noes: none; Absent: none.)

The meeting adjourned at 10:45 p.m.



Fair Campaign Practices Commission

May 14, 2020

To: Fair Campaign Practices Commission

From: Sam Harvey, Secretary

Subject: Regulations defining a “minor violation” for staff approval of public financing program applications

At its April 23, 2020 meeting, the Commission approved amendments to the Berkeley Election Reform Act (“BERA”) to allow staff to certify public financing applications without Commission action, with subsequent reporting to the Commission. The BERA amendments must be approved by the City Council before they become effective.

The Commission amended BMC § 2.12.500.A.10 as follows:

The ~~Commission~~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 ~~may~~shall adopt regulations setting forth guidelines for what constitutes a minor violation under this provision.

Staff recommends that the Commission discuss and provide guidance regarding the definition of a “minor violation” so that staff may return at a future meeting with proposed language for a regulation.

To aid this discussion, staff has attached a copy of BMC § 2.12.555 and FCPC Regulation R2.12.555. Under the City’s public financing laws, a person who commits a “substantial violation” of BERA is ineligible to receive public funds for a period of four years. (BMC § 2.12.555.) Regulation R2.12.555 was adopted by the Commission to define a “substantial violation.”

As of the date of this report, the BERA amendments had not been considered by Council. If Council approves the BERA amendments, it will likely not occur until later

this year. There is therefore time for the Commission to deliberate on this issue and adopt a regulation at a future meeting.

Attachments:

1. BMC § 2.12.555 and FCPC Regulation R2.12.555

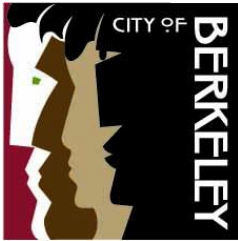
2.12.555 Violation--Persons ineligible for public funds--Time limit.

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)

R2.12.555 Substantial Violation

A violation is deemed to be substantial if the seriousness of the offense is severe and public harm is significant. Severity and significance will be determined by assessing the following factors:

- (1.) the dollar amount of the unreported or misreported violations;
- (2.) the presence or lack of intent to deceive the voting public;
- (3.) whether the violation appears deliberate, negligent, or inadvertent;
- (4.) whether the Respondent demonstrated good faith in consulting with Commission staff during any investigation or made good faith efforts to correct any deficiencies, violations, or errors;
- (5.) whether the violation was isolated or was part of a pattern of violations of this chapter by the candidate, either within the same election cycle or in past election cycles;
- (6.) the effect of the violation upon the election or upon the administration of the Fair Elections Act.



Fair Campaign Practices Commission

INFORMATION CALENDAR
XXXX XX, 2020

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 FY2020-2021 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 May 21, 2020, the Fair Campaign Practices Commission unanimously approved the FY2020-2021 Work Plan, which will be used to guide the Commission's work throughout the year.

M/S/C () to accept work plan as submitted and to prepare and submit an Information Report to City Council.

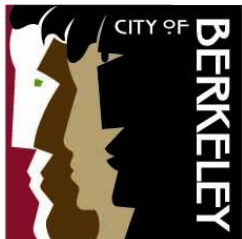
Ayes:
Noes:
Absent:

BACKGROUND

See attached Work Plan.

ENVIRONMENTAL SUSTAINABILITY

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



Fair Campaign Practices Commission

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, City Attorney's Office (510) 981-6998
Brad Smith, Chairperson, (510) 926-2047

Attachment: 1: Fair Campaign Practices Commission Work Plan



Fair Campaign Practices Commission

Attachment 1

**Work Plan
Approved May 21, 2020**

- 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.
- Establish guidelines for approval of applications for public financing
- Develop guidelines to avoid preventing a candidate from receiving public funds for minor violations of the Berkeley Fair Elections Act.
- Review lobbying registration and reporting processes for individuals and organizations.
- Work collaboratively with the City Council to develop policy related to Officeholder Accounts.



May 14, 2020

To: Open Government Commission

From: Sam Harvey, Secretary

Subject: Lobbyist registration and reporting for employees of companies, non-profits and other entities

At its April 23, 2020 meeting, the Commission discussed the processes for registration and reporting by nonprofits and other entities who retain in-house employees who qualify as local governmental lobbyists under the City’s Lobbying Ordinance. The Commission considered the written comments received by entities regulated by the lobbying ordinance. The Commission directed staff to review the lobbying ordinance and provide a recommendation for procedures which the Commission could approve in order to simplify the registration and reporting processes for non-profit organizations and other entities.

The Lobbying Ordinance gives the Commission authority “to establish procedures to permit the registration and filing of local governmental lobbyist disclosures by a business, firm, or organization on behalf of the individual local governmental lobbyists employed by those businesses, firms, or organizations.” (BMC § 2.09.150.)

Presently, each lobbyist is responsible for submitting a registration and regular quarterly or annual reports. A number of local nonprofit organizations have inquired about ways in which the process can be streamlined to require only one individual to submit registrations and reports, and whether alternative registration and reporting forms can be developed to allow a single form to be filed by each entity.

There are two requirements in the lobbying ordinance which make streamlining the process challenging:

1. The lobbying ordinance places registration and reporting requirements on the individual lobbyist, not the lobbyist’s employer. This means that registration and reporting must be completed for each lobbyist. It also means that the information required to complete each lobbying report (e.g., client identity, matters lobbied,

City staff contacted, positions lobbied for) must be compiled for each lobbyist. Therefore, regardless of the disclosure process, the individual lobbyist's responsibility to track their lobbying activities remains the same.

2. The lobbying ordinance requires that all registrations and reports be "accompanied by a declaration by the local governmental lobbyist that the contents thereof are true and correct under penalty of perjury." (BMC § 2.09.120.) Therefore, each lobbyist's signature is required on each registration and lobbying report.

Given these requirements, the Commission is limited in the types of procedures it can create for nonprofits and other entities. While the Commission can consolidate the paperwork that an organization will need to submit on behalf of its lobbyists, that paperwork will need to provide detailed reporting of each lobbyist's lobbying activity. The information provided on any consolidated forms would need to be the same as the information currently provided on the individual lobbyist forms. Moreover, each lobbyist will need to sign a declaration under penalty of perjury for each registration and report. Staff therefore believes there is limited benefit to creating a new system of forms for nonprofits and other organizations at this time.

Staff proposes a two-step solution:

1. Staff confirms that an individual staff member for each organization may be responsible for compiling, completing and submitting all registrations and reports for all lobbyists employed by an entity. Staff will work with organizations to answer questions and streamline those organizations' processes for completing all necessary registrations and reports. However, those registrations and reports will still need to be signed by the individual lobbyists.
2. Staff will develop amendments to the Lobbying Ordinance to address the issues raised by the nonprofit entities and submit those proposed amendments to the Commission at a later date. Staff anticipates the amendments provided to the Commission may also address other "clean up" issues staff may have identified in implementing the lobbying ordinance.

Attachments:

1. BMC §§ 2.09.120 and 2.09.150
2. Lobbying registration and reporting forms

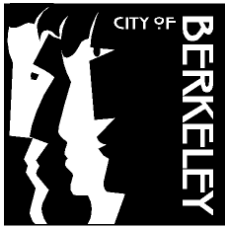
Berkeley Municipal Code

2.09.120 Filing under penalty of perjury.

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

2.09.150 Registration and filing of disclosures by organizations.

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



Open Government Commission
 2180 Milvia Street
 Berkeley, CA 94704
 (510) 981-6900
www.cityofberkeley.info | FCPC@cityofberkeley.info

ITEM 10 - Attachment 2

Date Filing Received
 Official Use Only

Fee Paid (\$500)

LOBBYIST REGISTRATION FORM

(Berkeley Municipal Code Chapter 2.09 – Lobbyist Registration and Regulations)

No person shall act as local governmental lobbyist before registering as a local governmental lobbyist with the Open Government Commission, through the office of the City Clerk. **Lobbyists are further required to file a Quarterly/Annual Disclosure of Lobbying Activities no later than 30 days after the end of the reporting period.** BMC 2.09.060

PART 1. IDENTIFY THE LOBBYIST			
LAST NAME	FIRST NAME	M.I.	
NAME OF LOBBYING FIRM OR EMPLOYER	LOBBYING FIRM OR EMPLOYER BUSINESS ADDRESS		
	CITY	STATE	ZIP
WORK PHONE	WORK EMAIL		

PART 2. TYPE OF REGISTRATION (Please Check all that Apply)	
<input type="checkbox"/> Initial Lobbyist Registration <input type="checkbox"/> Annual or Renewal Lobbyist Registration <input type="checkbox"/> Amendment to Lobbyist Registration <input type="checkbox"/> Termination of Lobbying Activities	<input type="checkbox"/> 501(c)(3) or 501(c)(4) – <i>Must Attach Determination Letter</i> <input type="checkbox"/> Lobbying Firm with Four or Fewer Employees ■ \$500 fee required, except qualified non-profits.

PART 3. LOBBYIST'S CLIENTS	
The name, business address, and business telephone number of each client for whom the local governmental lobbyist attempts or receives compensation to influence any proposed or pending governmental action of the City. BMC 2.09.060 B.3. Attach additional information, if needed.	
1. NAME	PHONE NUMBER
ADDRESS	

CLEAR FORM

ITEM 10 -Attachment 2

2. NAME	PHONE NUMBER
ADDRESS	
3. NAME	PHONE NUMBER
ADDRESS	
4. NAME	PHONE NUMBER
ADDRESS	
5. NAME	PHONE NUMBER
ADDRESS	
6. NAME	PHONE NUMBER
ADDRESS	
7. NAME	PHONE NUMBER
ADDRESS	

PART 4. FILING UNDER PENALTY OF PERJURY

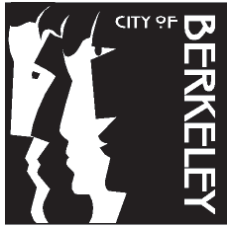
I have reviewed and understand Chapter 2.09 of the Berkeley Municipal Code regarding Lobbyist Registration and Regulations. I have exercised reasonable diligence in the course of reviewing this Registration Form for completeness and accuracy. I declare under penalty of perjury under the laws of the State of California that the contents of this Registration Form, including all attachments, are true, correct, and complete, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

PRINT NAME

DATE

SIGNATURE

ITEM 10 -Attachment 2



City Clerk Department
2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900
www.cityofberkeley.info
Elections@cityofberkeley.info

Date Initial Filing Received
Official Use Only

QUARTERLY/ANNUAL DISCLOSURE OF LOBBYING ACTIVITIES

For each calendar quarter in which a local governmental lobbyist was required to be registered, they shall file a quarterly report with the City Clerk, unless the local governmental lobbyist is a sole proprietorship or works for a lobbying firm with four or fewer employees, in which case they shall file annually. **The reports shall be due no later than thirty (30) days after the end of the reporting period.** BMC 2.09.140

FULL NAME	
NAME OF LOBBYIST FIRM OR EMPLOYER	
LOBBYIST FIRM/EMPLOYER ADDRESS	
WORK PHONE	WORK EMAIL

REPORTING PERIOD
<input type="radio"/> ANNUAL <input type="radio"/> QUARTERLY <input type="radio"/> AMENDMENT <input type="radio"/> NO ACTIVITY TO REPORT

I am including the following disclosure schedules for each client/employer (check all that apply) _____ # of pages.

- Schedule A: Governmental Action Disclosure
- Schedule B: Employment
- Schedule C: Compensated Services
- Schedule D: Contribution Solicitations

VERIFICATION

I have been authorized by the Lobbying Firm identified above to make this verification. I have exercised reasonable diligence in the course of reviewing this Disclosure Report for completeness and accuracy. I declare under penalty of perjury under the laws of the State of California that the contents of this Disclosure Report, including all attached schedules, are true, correct, and complete, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Signature: _____

Date: _____

ITEM 10 -Attachment 2

**CITY OF BERKELEY
 LOBBYIST DISCLOSURE (BMC 2.09.140)
 SCHEDULE A: GOVERNMENTAL ACTION**

Name of Lobbyist: _____

Any discretionary administrative or legislative actions of the City, other than an action which is ministerial in nature that the lobbyist sought to influence. The report shall contain any direct or indirect oral, written, or electronic communication with an appointed or elected City official or City employee. Please provide a brief narrative (no longer than three sentences) of the position advocated by the local governmental lobbyist on behalf of the identified client. If more space is needed, include additional schedules.

Reporting Period (Insert Dates)	
_____	_____
from	through
Page _____ of _____	

CLIENT/EMPLOYER NAME	CLIENT/EMPLOYER ADDRESS (INCLUDE CITY, STATE AND ZIP)	ITEM OF GOVERNMENTAL ACTION	POSITION ADVOCATED	NAME AND TITLE OF CITY OFFICIAL/CITY EMPLOYEE LOBBIED
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				

Clear Form

**CITY OF BERKELEY
LOBBYIST DISCLOSURE (BMC 2.09.140)
SCHEDULE B: EMPLOYMENT**

Name of Lobbyist: _____

If any local governmental lobbyist, or a registered client at the behest of a local governmental lobbyist, employs or requests, recommends or causes a client of the local governmental lobbyist to employ, and such client does employ, any City employee, or elected or appointed City official, in any capacity whatsoever, or a member of the immediate family of one of these individuals, the local governmental lobbyist shall disclose the following:

NAME OF PERSON EMPLOYED OR HIRED: _____
Description of Services Actually Performed:

TOTAL PAYMENTS made during the reporting period (select one):

Less than \$250
 Between \$250 and \$1000
 Greater than \$1000 but less than \$10,000
 Greater than \$10,000

NAME OF PERSON EMPLOYED OR HIRED: _____
Description of Services Actually Performed:

TOTAL PAYMENTS made during the reporting period (select one):

Less than \$250
 Between \$250 and \$1000
 Greater than \$1000 but less than \$10,000
 Greater than \$10,000

NAME OF PERSON EMPLOYED OR HIRED: _____
Description of Services Actually Performed:

TOTAL PAYMENTS made during the reporting period (select one):

Less than \$250
 Between \$250 and \$1000
 Greater than \$1000 but less than \$10,000
 Greater than \$10,000

CITY OF BERKELEY
LOBBYIST DISCLOSURE (BMC 2.09.140)
SCHEDULE C: COMPENSATED SERVICES

Name of Lobbyist: _____

If any elected City officeholder or candidate for elected City office employs or hires a local governmental lobbyist to provide compensated services to the officeholder or candidate, the local governmental lobbyist shall disclose the following:

NAME OF PERSON EMPLOYED OR HIRED: _____
Description of Services Actually Performed:

TOTAL PAYMENTS made during the reporting period (select one):

Less than \$250
 Between \$250 and \$1000
 Greater than \$1000 but less than \$10,000
 Greater than \$10,000

NAME OF PERSON EMPLOYED OR HIRED: _____
Description of Services Actually Performed:

TOTAL PAYMENTS made during the reporting period (select one):

Less than \$250
 Between \$250 and \$1000
 Greater than \$1000 but less than \$10,000
 Greater than \$10,000

NAME OF PERSON EMPLOYED OR HIRED: _____
Description of Services Actually Performed:

TOTAL PAYMENTS made during the reporting period (select one):

Less than \$250
 Between \$250 and \$1000
 Greater than \$1000 but less than \$10,000
 Greater than \$10,000

CITY OF BERKELEY
LOBBYIST DISCLOSURE (BMC 2.09.140)
SCHEDULE D: CONTRIBUTION SOLICITATIONS

Name of Lobbyist: _____

If a local governmental lobbyist solicits any person to make a contribution to an elected City officeholder, candidate for City office or to any committee or campaign fund controlled by such officeholder or candidate, the local governmental lobbyist shall disclose the names of the persons whom the local governmental lobbyist solicited, and the officeholder or candidate for whose benefit each solicitation was made.

1. Name of Officeholder or Candidate: _____

Names of Persons Solicited:

Name: _____ Name: _____
Name: _____ Name: _____
Name: _____ Name: _____
Name: _____ Name: _____
Name: _____ Name: _____

2. Name of Officeholder or Candidate: _____

Names of Persons Solicited:

Name: _____ Name: _____
Name: _____ Name: _____
Name: _____ Name: _____
Name: _____ Name: _____
Name: _____ Name: _____

3. Name of Officeholder or Candidate: _____

Names of Persons Solicited:

Name: _____ Name: _____
Name: _____ Name: _____
Name: _____ Name: _____
Name: _____ Name: _____

4. Name of Officeholder or Candidate: _____

Names of Persons Solicited:

Name: _____ Name: _____
Name: _____ Name: _____
Name: _____ Name: _____



May 14, 2020

To: Open Government Commission

From: Brad Smith, Chair

Subject: Relinquishments and grants from Councilmembers' office budgets

Currently, Councilmembers may relinquish funds from their office budgets (commonly referred to as "D-13 accounts") to make grants to organizations. The City's Councilmember Office Budget Relinquishment and Grant Policy provides a number of purposes for which relinquishments and grants of funds from Councilmembers' office budgets may be "pre-approved" through a resolution of the Council. These include grants to the following recipients:

- City entities
- Berkeley Unified School District and other public agencies operating in the City
- Entities with which the City is co-sponsoring a public event
- Entities to which the City already contributes funds for municipal purposes (e.g., affordable housing or social services nonprofits)

Councilmembers may also recommend relinquishments and grants to entities which do not meet any of the above criteria though a resolution approved by a majority vote of the Council, provided that the grant serves an "appropriate municipal purpose."

At its April 23, 2020 meeting, the Open Government Commission expressed concern about the process by which grants can be made from funds relinquished from Councilmember's budgets. Namely, some commissioners expressed concern with the manner in which grants emanating from an individual Councilmember's budget can enable a Councilmember to use public monies to raise their profile in the eyes of organizations and the public. Additionally, some commissioners believe this process can unfairly benefit incumbent Councilmembers compared to potential candidates who may wish to challenge those incumbents.

At its April 23, 2020 meeting, the Commission recommended that staff provide guidance on how a proposal could be submitted to Council which would prohibit direct donations

from individual Councilmembers, in essence, de-coupling individual Councilmember office accounts from the process of making donations of City funds to local organizations. The Commission has the authority to make recommendations to “advise the City Council as to any . . . action or policy that it deems advisable to enhance open and effective government in Berkeley.” (BMC § 2.06.190.A.2.)

The attached resolution would prohibit the making of grants from relinquishments of Councilmember office budget funds and instead require that all such grants be made from a separate fund. The proposed policy would allow the City Council to continue to approve any grants currently allowed under the City’s policies, but would disallow relinquishment of funds from Councilmembers’ office budgets to make those grants. Instead, the Commission recommends that the Council establish a freestanding fund from which grants would be made to local organizations. Monies for the fund would come from the City’s General Fund. The Council would approve grants of City funds to organizations from that fund.

Attachments:

1. FY 2019 Councilmember office budget summaries
2. City Council Expenditure and Reimbursement Policies (Resolution No. 67,992-N.S.), including Exhibit A: Councilmember Office Budget Relinquishment and Grant Policy
3. OGC recommended changes to Councilmember Office Budget Relinquishment and Grant Policy (Report and Resolution)

FY 2019 Council Office Budget Summaries
Includes Postings through pay period ending 04/20/2019 (paydate 04/26/2019)
Includes non-personnel expenditures thru 6/30/2019

Expenditure Projections Through 6/30/19

	Adopted Budget	Adjusted Budget	Year-to-Date Expenditures (2)	YTD Available Balance	Personnel Costs Per Pay Period	FY 2019 Pay Periods/ months Remaining	Estimated Remaining Payroll	Year End Expend. (estimate)	Projected Year-End Balance
Mayor's Office									
Personnel									
Salaries	\$ 413,053	\$ 423,704	\$ 348,058	\$ 75,646	\$ 13,580	5	\$ 67,902	\$ 415,960	\$ 7,744
Fringe Benefits	\$ 167,036	\$ 171,453	\$ 135,206	\$ 36,247			\$ -		
Other									
Sub-Total Personnel	\$ 580,089	\$ 595,157	\$ 483,264	\$ 111,893					
Non-Personnel									
Other Budget Adjustments	\$ 39,934	\$ 39,934	\$ 24,145	\$ 15,789					
Toshiba PO#116393-BUA 10-213		\$ (3,550)		\$ (3,550)					
FY 2018 Unencumbered Carryover		\$ (5,791)		\$ (5,791)					
		\$ 171		\$ 171					
Subtotal Non-Personnel (1)	\$ 39,934	\$ 30,764	\$ 24,145	\$ 6,619					
Totals	\$ 620,023	\$ 625,921	\$ 507,409	\$ 118,512					\$ 14,364

**Includes the following donations:

AGENCY	AMOUNT	DATE	RESOLUTION#	CHECK DATE	CHECK#
Berkeley Art Center	\$ 500	7/10/2018	68,513-N-S.	8/16/2018	228193
CARECEN	\$ 250	7/10/2018	68,571-N-S.	8/16/2018	228220
Together We Can Make It Happen	\$ 250	7/10/2018	68,572-N-S.	8/16/2018	228434
Berkeley Holiday Fund	\$ 500	10/2/2018	68,620-N-S.	10/24/2018	231429
Interfaith Movement for Human Integrity	\$ 250	11/27/2018	68,686-N-S.	3/6/2019	304863
Rotary Club of Berkeley	\$ 500	12/11/2018	68,720-N-S.	1/24/2019	302895
Berkeley Public Library Foundation	\$ 500	12/11/2018	68,723-N-S.	1/24/2019	302649
Berkeley Youth Alternative	\$ 100	2/19/2019	68,763-N-S.	3/6/2019	304773
Friends of Ohlone Park	\$ 250	2/19/2019	68,765-N-S.	3/6/2019	304768
The Suitcase Clinic (ASUC)	\$ 100	3/26/2019	68,801-N-S.	4/25/2019	307075
Healthy Black Families	\$ 100	3/26/2019	68,798-N-S.	4/18/2019	306886
Jewish Community Center	\$ 250	3/26/2019	68,800-N-S.	4/18/2019	306899
TOTAL	\$ 3,550				

FY 2019

Council Office Budget Summaries

Includes Postings through pay period ending 04/20/2019 (paydate 04/26/2019)

Includes non-personnel expenditures thru 6/30/2019

**Expenditure Projections
Through 6/30/19**

	Adopted Budget	Adjusted Budget	Year-to-Date Expenditures (2)	YTD Available Balance	Personnel Costs Per Pay Period	FY 2019 Pay Periods Remaining	Estimated Remaining Payroll	Year End Expend. (3)	Projected Year-End Balance
District 1 - Kesarwani									
Personnel									
Salaries	\$ 68,542	\$ 41,182	21,782 \$	19,400 \$	\$ 2,661	5	\$ 13,305	\$ 35,087	\$ 6,095
Fringe Benefits	\$ 33,172	\$ 19,937	8,998 \$	10,932 \$					
Other									
Sub-Total Personnel	\$ 101,714	\$ 61,119	\$ 30,781	\$ 30,332					
Non-Personnel									
** Other Budget Adjustments	\$ 9,640	\$ 5,623	1,634 \$	3,990 \$					
FY 2018 Unencumbered Carryover	\$ -	\$ (250)	\$ -	(250) \$					
Non-Personnel	\$ 9,640	\$ 5,373	\$ 1,634	\$ 3,740					\$ 3,740
Totals	\$ 111,354	\$ 66,492	\$ 32,414	\$ 34,072					\$ 9,835

**Includes the following donations:

AGENCY	AMOUNT	DATE	RESOLUTION#	CHECK DATE	CHECK#
Friends of Ohlone Park	\$ 250	2/19/2019	68,765-N-S.	3/6/2019	304768

TOTAL
\$ 250

FY 2019

Council Office Budget Summaries

*Includes Postings through pay period ending 04/20/2019 (paydate 04/26/2019)
Includes non-personnel expenditures thru 6/30/2019*

**Expenditure Projections
Through 6/30/19**

	Adopted Budget	Adjusted Budget	Year-to-Date Expenditures (2)	YTD Available Balance	Personnel Costs Per Pay Period	FY 2019 Pay Periods Remaining	Estimated Remaining Payroll	Year End Expend. (3)	Projected Year-End Balance
District 2 - Davila									
Personnel									
Salaries	\$ 68,542	\$ 70,598	\$ 44,028	\$ 26,571	\$ 2,280	5	\$ 11,400	\$ 55,428	\$ 15,171
Fringe Benefits	\$ 33,172	\$ 34,167	\$ 28,422	\$ 5,745					
Other									
Sub-Total Personnel	\$ 101,714	\$ 104,765	\$ 72,449	\$ 32,316					
Non-Personnel									
** Other Budget Adjustments	\$ 9,640	\$ 9,640	\$ 11,121	\$ (1,481)					
FY18 Encumbrance roll-over in error	\$ (3,880)	\$ (3,880)		\$ (3,880)					
FY 2018 Unencumbered Carryover	\$ -	\$ 231	\$ -	\$ 10,000					
Non-Personnel	\$ 9,640	\$ 15,991	\$ 11,121	\$ 4,870					
Totals	\$ 111,354	\$ 120,756	\$ 83,570	\$ 37,186					

**Includes the following donations:

AGENCY	AMOUNT	DATE	RESOLUTION#	CHECK DATE	CHECK#
Building Opportunities for Self Sufficiency	\$ 100	7/10/2018	68,509-N-S.	8/16/2018	228215
Black Repertory Group	\$ 200	7/10/2018	68,512-N-S.	8/16/2018	228201
CARECEN	\$ 250	7/10/2018	68,571-N-S.	8/16/2018	228220
Together We Can Make It Happen	\$ 250	7/10/2018	68,572-N-S.	8/16/2018	228434
BDPNN	\$ 250	9/25/2018	68,614-N-S.	9/25/2018	230384
Berkeley Holiday Fund	\$ 100	10/2/2018	68,620-N-S.	10/24/2018	231429
Interfaith Movement for Human Integrity	\$ 150	11/27/2018	68,686-N-S.	3/6/2019	304863
Options Recovery Services	\$ 100	11/27/2018	68,684-N-S.	3/6/2019	304976
Rotary Club of Berkeley	\$ 200	12/11/2018	68,720-N-S.	1/24/2019	302895
African American Tobacco Control Leadership Council (AATCLC)	\$ 150	12/11/2018	68,722-N-S.	4/10/2019	306723

FY 2019

Council Office Budget Summaries

*Includes Postings through pay period ending 04/20/2019 (paydate 04/26/2019)
Includes non-personnel expenditures thru 6/30/2019*

**Expenditure Projections
Through 6/30/19**

	Adopted Budget	Adjusted Budget	Year-to-Date Expenditures (2)	YTD Available Balance	Personnel Costs Per Pay Period	FY 2019 Estimated Remaining Payroll	Year End Expend. (3)	Projected Year-End Balance
District 3 - Bartlett								
Personnel								
Salaries	\$ 68,542	\$ 70,598	\$ 50,676	\$ 19,922	\$ 4,199	\$ 20,993	\$ 71,669	\$ (1,071)
Fringe Benefits	\$ 33,172	\$ 34,167	\$ 16,140	\$ 18,027				
Other								
Sub-Total Personnel	\$ 101,714	\$ 104,765	\$ 66,816	\$ 37,949				
Non-Personnel								
** Other Budget Adjustments	\$ 9,640	\$ 9,640	\$ 3,745	\$ 5,895				
FY 2018 Unencumbered Carryover	\$ -	\$ (7,250)	\$ -	\$ (7,250)				
Non-Personnel	\$ 9,640	\$ 8,422	\$ 3,745	\$ 4,677				
Totals	\$ 111,354	\$ 113,187	\$ 70,561	\$ 42,626				\$ 3,607

mrosete:
increase in personnel expenditure due to hiring of 6 additional hourly Legislative Assistants - NTE 06/30/2019

**Includes the following donations:

AGENCY	AMOUNT	DATE	RESOLUTION#	CHECK DATE	CHECK#
Building Opportunities for Self Sufficiency	\$ 200	7/10/2018	68,509-N-S.	8/16/2018	228215
Women's Daytime Drop-In Center	\$ 200	7/10/2018	68,510-N-S.	8/16/2018	228457
Black Repertory Group	\$ 250	7/10/2018	68,512-N-S.	8/16/2018	228201
Berkeley Art Center	\$ 250	7/10/2018	68,513-N-S.	8/16/2018	228193
Together We Can Make It Happen	\$ 250	7/10/2018	68,572-N-S.	8/16/2018	228434
BDPNN	\$ 250	9/25/2018	68,614-N-S.	9/25/2018	230384
African American Tobacco Control Leadership Council (AATCLC)	\$ 250	12/11/2018	68,722-N-S.	4/10/2019	306723
Berkeley Public Library Foundation	\$ 250	12/11/2018	68,723-N-S.	1/24/2019	302649
Berkeley Youth Alternative	\$ 250	2/19/2019	68,763-N-S.	3/6/2019	304773
Friends of Ohlone Park	\$ 100	2/19/2019	68,765-N-S.	3/6/2019	304768
The Persian Center	\$ 100	3/12/2019	68,786-N-S.	3/28/2019	306009
Camp Kesem	\$ 100	3/12/2019	68,787-N-S.	3/28/2019	306182
The Suitcase Clinic (ASUC)	\$ 200	3/26/2019	68,801-N-S.	4/25/2019	307075

FY 2019

Council Office Budget Summaries

*Includes Postings through pay period ending 04/20/2019 (paydate 04/26/2019)
Includes non-personnel expenditures thru 6/30/2019*

**Expenditure Projections
Through 6/30/19**

	Adopted Budget	Adjusted Budget	Year-to-Date Expenditures (2)	YTD Available Balance	Personnel Costs Per Pay Period	FY 2019 Pay Periods Remaining	Estimated Remaining Payroll	Year End Expend. (3)	Projected Year-End Balance
District 4 - Harrison									
Personnel									
Salaries	\$ 68,542	\$ 70,598	\$ 65,212	\$ 5,386	\$ 3,039	5	\$ 15,195	\$ 80,407	\$ (9,809)
Fringe Benefits	\$ 33,172	\$ 34,167	\$ 29,887	\$ 4,280					
Other									
Sub-Total Personnel	\$ 101,714	\$ 104,765	\$ 95,099	\$ 9,666					
Non-Personnel									
** Other Budget Adjustments	\$ 9,640	\$ 9,640	\$ 3,209	\$ 6,431					
FY 2018 Unencumbered Carryover		\$ (3,500)		\$ (3,500)					
Non-Personnel	\$ 9,640	\$ 16,140	\$ -	\$ 10,000					
Totals	\$ 111,354	\$ 120,905	\$ 98,308	\$ 22,597					\$ 12,931
									\$ 3,122

**Includes the following donations:

AGENCY	AMOUNT	DATE	RESOLUTION#	CHECK DATE	CHECK#
Building Opportunities for Self Sufficiency	\$ 100	7/10/2018	68,509-N-S.	8/16/2018	228215
Women's Daytime Drop-In Center	\$ 250	7/10/2018	68,510-N-S.	8/16/2018	228457
Berkeley Art Center	\$ 250	7/10/2018	68,513-N-S.	8/16/2018	228193
CARECEN	\$ 250	7/10/2018	68,571-N-S.	8/16/2018	228220
Together We Can Make It Happen	\$ 250	7/10/2018	68,572-N-S.	8/16/2018	228434
BDPNN	\$ 250	9/25/2018	68,614-N-S.	9/25/2018	230384
Berkeley Holiday Fund	\$ 100	10/2/2018	68,620-N-S.	10/24/2018	231429
Interfaith Movement for Human Integrity	\$ 150	11/27/2018	68,686-N-S.	3/6/2019	304863
Rotary Club of Berkeley	\$ 250	12/11/2018	68,720-N-S.	1/24/2019	302895
African American Tobacco Control Leadership Council (AATCLC)	\$ 100	12/11/2018	68,722-N-S.	4/10/2019	306723
Berkeley Public Library Foundation	\$ 250	12/11/2018	68,723-N-S.	1/24/2019	302649

FY 2019

Council Office Budget Summaries

*Includes Postings through pay period ending 04/20/2019 (paydate 04/26/2019)
Includes non-personnel expenditures thru 6/30/2019*

**Expenditure Projections
Through 6/30/19**

	Adopted Budget	Adjusted Budget	Year-to-Date Expenditures (2)	YTD Available Balance	Personnel Costs Per Pay Period	FY 2019 Pay Periods Remaining	Estimated Remaining Payroll	Year End Expend. (3)	Projected Year-End Balance
District 5 - Hahn									
Personnel									
Salaries	\$ 104,818	\$ 106,874	\$ 89,162	\$ 17,712	\$ 4,302	5	\$ 21,509	\$ 110,670	\$ (3,796)
Fringe Benefits	\$ 33,172	\$ 34,167	\$ 40,010	\$ (5,843)					
Other									
Sub-Total Personnel	\$ 137,990	\$ 141,041	\$ 129,171	\$ 11,870					
Non-Personnel									
** Other Budget Adjustments	\$ 9,640	\$ 9,640	\$ 8,484	\$ 1,156					
FY18 Encumbrance roll-over in error		\$ (3,585)		\$ (3,585)					
FY 2018 Unencumbered Carryover	\$ -	\$ 371		\$ 371					
Non-Personnel	\$ 9,640	\$ 12,788	\$ 8,484	\$ 6,362					
Totals	\$ 147,630	\$ 153,829	\$ 137,656	\$ 16,174					\$ 4,304

imrosete:
increase in personnel
expenditure due to staffing
changes

**Includes the following donations:

AGENCY	AMOUNT	DATE	RESOLUTION#	CHECK DATE	CHECK#
Building Opportunities for Self Sufficiency	\$ 200	7/10/2018	68,509-N-S.	8/16/2018	228215
Women's Daytime Drop-In Center	\$ 200	7/10/2018	68,510-N-S.	8/16/2018	228457
ReScape California	\$ 85	7/10/2018	68,511-N-S.	8/16/2018	228388
Black Repertory Group	\$ 200	7/10/2018	68,512-N-S.	8/16/2018	228201
Berkeley Art Center	\$ 300	7/10/2018	68,513-N-S.	8/16/2018	228193
Together We Can Make It Happen	\$ 250	7/10/2018	68,572-N-S.	8/16/2018	228434
BDPNN	\$ 100	9/25/2018	68,614-N-S.	9/25/2018	230384
Berkeley Holiday Fund	\$ 200	10/2/2018	68,620-N-S.	10/24/2018	231429
Options Recovery Services	\$ 200	11/27/2018	68,684-N-S.	3/6/2019	304976
Rotary Club of Berkeley	\$ 200	12/11/2018	68,720-N-S.	1/24/2019	302895
African American Tobacco Control Leadership Council (AATCLC)	\$ 200	12/11/2018	68,722-N-S.	4/10/2019	306723

FY 2019

Council Office Budget Summaries

Includes Postings through pay period ending 04/20/2019 (paydate 04/26/2019)
Includes non-personnel expenditures thru 6/30/2019

**Expenditure Projections
Through 6/30/19**

	Adopted Budget	Adjusted Budget	Year-to-Date Expenditures (2)	YTD Available Balance	Personnel Costs Per Pay Period	FY 2019 Pay Periods Remaining	Estimated Remaining Payroll	Year End Expend. (3)	Projected Year-End Balance
District 6 - Wengraf									
Personnel									
Salaries	\$ 68,542	\$ 70,598	\$ 55,115	\$ 15,483	\$ 2,611	5	\$ 13,054	\$ 68,169	\$ 2,429
Fringe Benefits	\$ 33,172	\$ 34,167	\$ 22,465	\$ 11,702			\$ -		
Other									
Sub-Total Personnel	\$ 101,714	\$ 104,765	\$ 77,581	\$ 27,184					
Non-Personnel									
** Other Budget Adjustments	\$ 9,640	\$ 9,640	\$ 2,473	\$ 7,167					
FY 2018 Unencumbered Carryover	\$ -	\$ (4,330)		\$ (4,330)					
Non-Personnel	\$ 9,640	\$ 15,310	\$ 2,473	\$ 12,837					
Totals	\$ 111,354	\$ 120,075	\$ 80,053	\$ 40,022					\$ 15,266

**Includes the following donations:

AGENCY	AMOUNT	DATE	RESOLUTION#	CHECK DATE	CHECK#
Building Opportunities for Self Sufficiency	\$ 100	7/10/2018	68,509-N-S.	8/16/2018	228215
Women's Daytime Drop-In Center	\$ 250	7/10/2018	68,510-N-S.	8/16/2018	228457
ReScape California	\$ 80	7/10/2018	68,511-N-S.	8/16/2018	228388
Berkeley Art Center	\$ 200	7/10/2018	68,513-N-S.	8/16/2018	228193
Together We Can Make It Happen	\$ 200	7/10/2018	68,572-N-S.	8/16/2018	228434
BDPNN	\$ 250	9/25/2018	68,614-N-S.	9/25/2018	230384
Berkeley Holiday Fund	\$ 250	10/2/2018	68,620-N-S.	10/24/2018	231429
Interfaith Movement for Human Integrity	\$ 150	11/27/2018	68,686-N-S.	3/6/2019	304863
Options Recovery Services	\$ 250	11/27/2018	68,684-N-S.	3/6/2019	304976
Rotary Club of Berkeley	\$ 500	12/11/2018	68,720-N-S.	1/24/2019	302895
African American Tobacco Control Leadership Council (AATCLC)	\$ 100	12/11/2018	68,722-N-S.	4/10/2019	306723
Berkeley Public Library Foundation	\$ 500	12/11/2018	68,723-N-S.	1/24/2019	302649

FY 2019

Council Office Budget Summaries

*Includes Postings through pay period ending 04/20/2019 (paydate 04/26/2019)
Includes non-personnel expenditures thru 6/30/2019*

**Expenditure Projections
Through 6/30/19**

	Adopted Budget	Adjusted Budget	Year-to-Date Expenditures (2)	YTD Available Balance	Personnel Costs Per Pay Period	FY 2019 Pay Periods Remaining	Estimated Remaining Payroll	Year End Expend. (3)	Projected Year-End Balance
District 7 - Robinson									
Personnel									
Salaries	\$ 68,542	\$ 41,182	\$ 16,036	\$ 25,146	\$ 1,920	5	\$ 9,600	\$ 25,636	\$ 15,546
Fringe Benefits	\$ 33,172	\$ 19,931	\$ 9,048	\$ 10,883			\$ -		
Other									
Sub-Total Personnel	\$ 101,714	\$ 61,113	\$ 25,084	\$ 36,029					
Non-Personnel									
** Other Budget Adjustments	\$ 9,640	\$ 5,623	\$ 4,046	\$ 1,578					
FY 2018 Unencumbered Carryover		\$ (2,200)		\$ (2,200)					
Non-Personnel (1)	\$ 9,640	\$ 3,423	\$ 4,046	\$ (622)					\$ (622)
Totals	\$ 111,354	\$ 64,536	\$ 29,130	\$ 35,406					\$ 14,924

**includes the following donations:

AGENCY	AMOUNT	DATE	RESOLUTION#	CHECK DATE	CHECK#
Rotary Club of Berkeley	\$ 150	12/11/2018	68,720-N.S.	1/24/2019	302895
African American Tobacco Control	\$ 150	12/11/2018	68,722-N.S.	4/10/2019	306723
Leadership Council (AATCLC)	\$ 150	12/11/2018	68,723-N.S.	1/24/2019	302649
Berkeley Public Library Foundation	\$ 150	2/19/2019	68,763-N.S.	3/6/2019	304773
Berkeley Youth Alternative	\$ 150	2/19/2019	68,765-N.S.	3/6/2019	304768
Friends of Ohlone Park	\$ 100	3/12/2019	68,786-N.S.	3/28/2019	306009
The Persian Center	\$ 150	3/12/2019	68,787-N.S.	3/28/2019	306182
Camp Kesem	\$ 250	3/26/2019	68,801-N.S.	4/25/2019	307075
The Suitcase Clinic (ASUC)	\$ 100	3/26/2019	68,798-N.S.	4/18/2019	306886
Healthy Black Families	\$ 100	3/26/2019	68,799-N.S.	4/18/2019	306918
Lifelong Medical Care	\$ 100	3/26/2019	68,800-N.S.	4/18/2019	306899
Jewish Community Center	\$ 100	4/2/2019	68,807-N.S.	4/18/2019	307050
Women's Daytime Drop-In Center	\$ 100	4/2/2019	68,807-N.S.	4/18/2019	307050

FY 2019

Council Office Budget Summaries

*Includes Postings through pay period ending 04/20/2019 (paydate 04/26/2019)
Includes non-personnel expenditures thru 6/30/2019*

**Expenditure Projections
Through 6/30/19**

	Adopted Budget	Adjusted Budget	Year-to-Date Expenditures (2)	YTD Available Balance	Personnel Costs Per Pay Period	FY 2019 Pay Periods Remaining	Estimated Remaining Payroll	Year End Expend. (3)	Projected Year-End Balance
District 8 - Droste									
<i>Personnel</i>									
Salaries	\$ 68,542	\$ 70,598	\$ 57,799	\$ 12,799	\$ 2,664	5	\$ 13,322	\$ 71,121	\$ (523)
Fringe Benefits	\$ 33,172	\$ 34,167	\$ 34,760	\$ (593)					
Other									
Sub-Total Personnel	\$ 101,714	\$ 104,765	\$ 92,559	\$ 12,206					
<i>Non-Personnel</i>									
** Other Budget Adjustments	\$ 9,640	\$ 9,640	\$ 888	\$ 8,752					
FY 2018 Unencumbered Carryover	\$ -	\$ (1,585)	\$ -	\$ (1,585)					
<i>Non-Personnel</i>	\$ 9,640	\$ 18,055	\$ 888	\$ 17,167					\$ 17,167
Totals	\$ 111,354	\$ 122,820	\$ 93,448	\$ 29,372					\$ 16,643

**Includes the following donations:

AGENCY	AMOUNT	DATE	RESOLUTION#	CHECK DATE	CHECK#
ReScape California	\$ 85	7/10/2018	68,511-N.S.	8/16/2018	228388
Berkeley Art Center	\$ 100	7/10/2018	68,513-N.S.	8/16/2018	228193
Interfaith Movement for Human Integrity	\$ 150	11/27/2018	68,686-N.S.	3/6/2019	304863
Rotary Club of Berkeley	\$ 500	12/11/2018	68,720-N.S.	1/24/2019	302895
Berkeley Public Library Foundation	\$ 500	12/11/2018	68,723-N.S.	1/24/2019	302649
Community Partners (A to Z Families for safe Streets)	\$ 250	4/23/2019	68,828-N.S.		
TOTAL	\$ 1,585				

RESOLUTION NO. 67,992–N.S.

CITY COUNCIL EXPENDITURE AND REIMBURSEMENT POLICIES

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

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

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

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

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

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

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

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

CITY EXPENDITURES AND EXPENSE REIMBURSEMENT FOR MAYOR AND COUNCIL DEPARTMENTS

I. City Expenditures for Mayor and Council

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

II. Reimbursement of Actual and Necessary Expense of Office

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

A. Authorized Activities.

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

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

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

B. Unauthorized Expenses

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

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

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

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

C. Particular Types of Authorized Expenditures Defined

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

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

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

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

4. **Automobile.** Automobile mileage is reimbursed at Internal Revenue Service rates presently in effect. These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable. The Internal Revenue Service rates will not be paid for rental vehicles; only receipted fuel expenses will be reimbursed.
5. **Car Rental.** Rental rates that are equal or less than those published by the California Department of General Services (DGS) Statewide Travel Program available through the League of California Cities shall be considered the most economical and reasonable for purposes of reimbursement under this policy. If DGS rates are not available, reimbursement for car rental must not exceed 110% of either the state DGS rates or the Federal GSA rates, whichever is greater. Any exceptions to these rates must be approved at a public Council meeting before the expense is incurred.
6. **Taxis/Ride Shares/Shuttles.** Taxis, ride shares, or shuttles fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.
7. **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 Numainville, 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 (e.g., the Berkeley Public Library, the Berkeley Animal Shelter)	Any purpose already being undertaken, because it already serves a public purpose. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.
BUSD and other public agencies operating in Berkeley	Any purpose already being undertaken, because it already serves a public purpose, assuming the activity is in Berkeley. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.
Entities with which the City is co-sponsoring a public event in Berkeley (e.g., Earth Day, Solano Stroll).	City co-sponsorship suggests but is not conclusive of public purpose; public purpose would need to be stated, and all such events should be open to the public at no cost. Alternatively, a list of ongoing events that have been determined to serve a public purpose could be developed.
Entities in Berkeley to which the City already contributes funds for municipal purposes (e.g., affordable housing or social service nonprofits)	To advance the same public purposes for which the entities are funded. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.

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



Open Government Commission

ACTION CALENDAR
XXXXX XX, 2020

To: Honorable Mayor and Members of the City Council

From: Open Government Commission

Submitted by: Brad Smith, Chair, Open Government Commission

Subject: **Recommended prohibition of grants to organizations through relinquishment of Councilmembers' office budget funds**

RECOMMENDATION

Pursuant to its authority under BMC § 2.06.190.A.2 to “advise the City Council as to any . . . action or policy that it deems advisable to enhance open and effective government in Berkeley,” the Open Government Commission recommends that the City Council eliminate the practice of making grants to organizations through relinquishment of funds from Councilmembers' office budgets. The Commission recommends that Council create a separate “Community Fund” from which such grants may be made at the approval of Council

SUMMARY

Councilmembers may currently make grants to organizations through relinquishment of funds from their office budgets. City policy provides that such grants must be approved through resolution of the City Council. For certain enumerated recipients and purposes, such grants may be pre-approved through Council resolution. Additional grants are permissible provided the grant serves a “municipal purpose” and is approved by Council resolution.

The Open Government Commission has determined that allowing Councilmembers to direct grants to organizations from their office budgets is problematic because it can allow a Councilmember to use public funds to elevate their position in the eyes of a local organization and the community.

The Commission recommends that Council eliminate the practice of allowing grants to organizations through the relinquishment of Councilmember office budget funds and instead create a single separate “Community Fund” through which such grants may be made. The Community Fund would receive money from the City's general fund. The Commission's proposal would not change the types of recipients which are eligible for

City grants. Council would be responsible for approving all grants from the Community Fund.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The proposed changes to the City's Councilmember Office Budget Relinquishment and Grant Policy were approved by the Open Government Commission at its regular meeting of May 21, 2020.

Action: M/S/C (___ / ___)

Vote: Ayes: ; Noes: none; Abstain: none; Absent:

The proposed changes may be adopted by Council resolution.

BACKGROUND

Currently, Councilmembers may relinquish funds from their office budgets (commonly referred to as "D-13 accounts") to make grants to organizations. The City's Councilmember Office Budget Relinquishment and Grant Policy provides a number of purposes for which relinquishments and grants of funds from Councilmembers' office budgets may be "pre-approved" through a resolution of the Council. These include grants to the following recipients:

- City entities
- Berkeley Unified School District and other public agencies operating in the City
- Entities with which the City is co-sponsoring a public event
- Entities to which the City already contributes funds for municipal purposes (e.g., affordable housing or social services nonprofits)

Councilmembers may also recommend relinquishments and grants to entities which do not meet any of the above criteria through a resolution approved by majority vote of the Council, provided that the grant meets an "appropriate municipal purpose."

The Commission has become concerned about the process by which grants can be made from funds relinquished from Councilmember's budgets. Namely, commissioners have expressed concern about the manner in which grants emanating from an individual Councilmember's budget can enable a Councilmember to use public monies to elevate their profile in the eyes of organizations and the community. Additionally, this process can unfairly benefit incumbent Councilmembers compared to potential candidates who may wish to challenge those incumbents.

At its May 21, 2020 meeting, the Commission approved a recommendation to be submitted to Council which would prohibit grants from Councilmembers' office budgets and instead require that such grants come from a separate fund.

The attached resolution would prohibit the making of grants from relinquished Councilmember office budget funds and instead require that all such grants be made from a separate fund. The proposed policy would allow the City Council to continue to approve all grants currently allowed under the City's policies, but would disallow relinquishment of funds from Councilmembers' office budgets to make those grants. To accomplish this, the Commission recommends that the Council establish a freestanding "Community Fund" from which grants would be made to local organizations. Monies for the Community Fund would come from the City's general fund. The Council would approve grants of City funds to organizations from this fund.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

This proposed change would eliminate the risk that Councilmembers may use disbursement of City money to elevate their profiles in the community.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

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

CONTACT PERSON

Brad Smith Chair, Fair Campaign Practices Commission. 981-6998

Attachments:

1: Proposed Resolution.

RESOLUTION NO. XX,XXX-N.S.

COUNCILMEMBER OFFICE BUDGET RELINQUISHMENT AND GRANT POLICY

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

WHEREAS, on May 30, 2017, the City Council adopted Resolution No. 67,992-N.S., which incorporated the Councilmember Office Budget Relinquishment and Grant Policy into the policy for City Expenditures and Expense Reimbursement for Mayor and Council Departments; and

WHEREAS, under the Councilmember Office Budget Relinquishment and Grant Policy, Councilmembers may relinquish funds from their office budgets to fund grants to recipients provided the grants serve "an appropriate municipal purpose;" and

WHEREAS, based upon the recommendation of the Open Government Commission, the Council has determined that grants of City funds to organizations should be distributed from a central "Community Fund" rather than from the office budgets of individual Councilmembers.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that there shall be established a Community Fund, to be funded by the City's General Fund, from which all grants previously permitted under the Councilmember Office Budget Relinquishment and Grant Policy shall be made; and

BE IT FURTHER RESOLVED that the Office Budget Relinquishment and Grant Policy adopted by Resolution No. 67,992-N.S. is hereby rescinded; and

BE IT FURTHER RESOLVED that the policy for City Expenditures and Expense Reimbursement for Mayor and Council Departments is hereby amended 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 Council member office budgets is enumerated in Exhibit A. Relinquishment of Council office budget funds for the purposes enumerated in Exhibit A is prohibited.~~

B. Unauthorized Expenses

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

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

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

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

C. Particular Types of Authorized Expenditures Defined

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

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

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1. The purpose of the expenditure(s);
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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.

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

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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.

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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.

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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 XXXX XX, 2020 by the following vote:

Ayes:

Noes:

Absent:

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

Exhibit A

City Community Grants Policy

Introduction - Limitations on Expenditures of Public Funds

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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, 745-46.)

If the courts find that there is a valid purpose, they next examine whether the government's actions are reasonably related to effectuating that 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

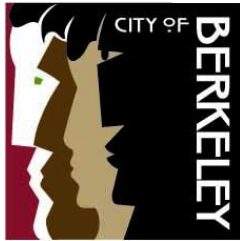
Grants for the following purposes may be made from the City's "Community Fund." Such grants shall be approved by a resolution with a majority vote of the Council. Grants for the following recipients and purposes shall not be made from relinquishments from Councilmembers' office budgets.

Table 1.

<u>Recipient</u>	<u>Purpose</u>
<u>The City (e.g., the Berkeley Public Library, the Berkeley Animal Shelter)</u>	<u>Any purpose already being undertaken, because it already serves a public purpose.</u>
<u>BUSD and other public agencies operating in Berkeley</u>	<u>Any purpose already being undertaken, because it already serves a public purpose, assuming the activity is in Berkeley.</u>
<u>Entities with which the City is co-sponsoring a public event in Berkeley (e.g., Earth Day, Solano Stroll).</u>	<u>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.</u>
<u>Entities in Berkeley to which the City already contributes funds for municipal purposes (e.g., affordable housing or social service nonprofits)</u>	<u>To advance the same public purposes for which the entities are funded.</u>

Additionally, grants that do not meet the above criteria, but that serve an appropriate municipal purpose, may be approved by resolution with a majority vote of the City Council. Such grants shall be made from the City’s “Community Fund” and shall not be made from relinquishments from Councilmembers’ office budgets.

The prohibition on relinquishments of funds from Councilmember office budgets does not preclude any use of Councilmember office funds or resources for the purpose of attendance at fundraising events in capacity as Mayor or Councilmember.



Open Government Commission

INFORMATION CALENDAR
XXXX XX, 2020

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 FY2020-2021 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 May 21, 2020, the Open Government Commission unanimously approved the FY2020-2021 Work Plan, which will be used to guide the Commission's work throughout the year.

M/S/C () to accept work plan as submitted and to prepare and submit an Information Report to City Council.

Ayes:
Noes:
Absent:

BACKGROUND

See attached Work Plan.



Open Government Commission

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, City Attorney's Office (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 FY2020-2021 Work Plan
Approved May 21, 2020**

- 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.
- 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 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.