



Office of the City Manager

CONSENT CALENDAR  
May 30, 2017

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Zach Cowan, City Attorney  
Subject: Amending the Council Expense Reimbursement Policy

RECOMMENDATION

Adopt a Resolution amending the policy for City Expenditures and Expense Reimbursement for Mayor and Council to include the Councilmember Office Budget Relinquishment and Grant Policy and rescinding Resolution No. 66,295–N.S.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On September 10, 2013, the City Council approved Resolution No. 66,295–N.S., adopting City Council expenditure and reimbursement policies.

Based on the experience of the last several years, the City Auditor and City Attorney propose certain revisions to the existing resolution to clarify and modernize some of the reimbursement provisions relating to travel expenses.

BACKGROUND

Assembly Bill 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. Section 53232.2(c) (attached) requires that if this policy does not establish a reasonable rate for certain expenses, the agency must use the Internal Revenue Service rate. 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 on September 10, 2013, revised that policy through the adoption of Resolution No. 66,295–N.S. Assembly Bill 1234 also added, in Government Code Section 53232.3(d) (attached), a requirement that members of a legislative body shall provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

RATIONALE FOR RECOMMENDATION

Amendments to the expenditure policy must be officially adopted by Council in order to be effective and enforceable. The current amendments adopt more usable reimbursement rates for travel and lodging as recommended by the Auditor.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Zach Cowan, City Attorney, 981-6950

Attachments:

1: Resolution

Exhibit A: City Council Expenditure and Reimbursement Policies

2: Government Code sections 53232.2 and 53232.3

RESOLUTION NO. -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 Enhanced Local Government Airfare Program offered through the League of California Cities, [www.dgs.ca.gov/travel](http://www.dgs.ca.gov/travel)<sup>1</sup>, ~~the California State Association of Counties and the State of California~~ 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 travel must not exceed 110% of either the state DGS rates or the Federal the rates published by the U.S. General Services Administration (GSA) rates, [www.gsa.gov](http://www.gsa.gov)<sup>2</sup>, whichever is greater. rates available through the League program as published by the California Department of General Services. Any exceptions to these rates must be approved at a public Council meeting before the expense is incurred.

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

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

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 rates published by the conference or activity sponsor, provided that lodging at the group rate is available to the Council member at the time of bookings. If lodging at the conference-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. ~~reimbursement will be based on either the published conference rate or government rates as published by the Federal general Services Agency, whichever is greater. Where no conference rate is published, the reimbursement will be based on the government rate or the median rate listed on priceline.com or similar service, whichever is greater.~~
7. **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 A~~airport parking ~~may not must~~ be used for travel exceeding 24-hours.
10. **Other Travel Related Expenses.** ~~Reasonable B~~baggage ~~handling~~ fees ~~given the duration of the travel of up to \$1 per bag and gratuities of up to 15 percent~~ 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 ~~s~~Statement of ~~e~~Expense must be completed, signed and submitted to the City Auditor for review and forward~~ed~~ing to the Finance Department for payment. The ~~s~~Statement of ~~e~~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 ~~s~~Statement of ~~e~~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:

Noes:

Absent:

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

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

## **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.

<b>Recipient</b>	<b>Purpose</b>
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.

West's Annotated California Codes  
Government Code (Refs & Annos)  
Title 5. Local Agencies (Refs & Annos)  
Division 2. Cities, Counties, and Other Agencies (Refs & Annos)  
Part 1. Powers and Duties Common to Cities, Counties, and Other Agencies (Refs & Annos)  
Chapter 2. Officers and Employees (Refs & Annos)  
Article 2.3. Compensation (Refs & Annos)

West's Ann.Cal.Gov.Code § 53232.2

§ 53232.2. Local agencies; reimbursement of members of legislative body for expenses incurred in performance of official duties; written policy; reimbursement rates; costs incurred at own expense

Effective: January 1, 2007

[Currentness](#)

(a) When reimbursement is otherwise authorized by statute, a local agency may reimburse members of a legislative body for actual and necessary expenses incurred in the performance of official duties, including, but not limited to, activities described in Article 2.4 (commencing with [Section 53234](#)).

(b) If a local agency reimburses members of a legislative body for actual and necessary expenses incurred in the performance of official duties, then the governing body shall adopt a written policy, in a public meeting, specifying the types of occurrences that qualify a member of the legislative body to receive reimbursement of expenses relating to travel, meals, lodging, and other actual and necessary expenses.

(c) The policy described in subdivision (b) may also specify the reasonable reimbursement rates for travel, meals, and lodging, and other actual and necessary expenses. If it does not, the local agency shall use the Internal Revenue Service rates for reimbursement of travel, meals, lodging, and other actual and necessary expenses as established in Publication 463, or any successor publication.

(d) If the lodging is in connection with a conference or organized educational activity conducted in compliance with [subdivision \(c\) of Section 54952.2](#), including, but not limited to, ethics training required by Article 2.4 (commencing with [Section 53234](#)), lodging costs shall not exceed the maximum group rate published by the conference or activity sponsor, provided that lodging at the group rate is available to the member of a legislative body at the time of booking. If the group rate is not available, the member of a legislative body shall use comparable lodging that is consistent with the requirements of subdivisions (c) and (e).

(e) Members of the legislative body shall use government and group rates offered by a provider of transportation or lodging services for travel and lodging when available.

(f) All expenses that do not fall within the adopted travel reimbursement policy or the Internal Revenue Service reimbursable rates as provided in subdivision (c), shall be approved by the governing body, in a public meeting before the expense is incurred, except as provided in subdivision (d).

(g) If a member of a legislative body chooses to incur additional costs that are above the rates established pursuant to this section and those costs have not been approved pursuant to subdivision (f), then the member of a legislative body may do so at his or her own expense.

(h) This section shall not supersede any other laws establishing reimbursement rates for local agencies.

**Credits**

(Added by [Stats.2005, c. 700 \(A.B.1234\)](#), § 3. Amended by [Stats.2006, c. 643 \(S.B.1196\)](#), § 10.)

[Notes of Decisions \(1\)](#)

West's Ann. Cal. Gov. Code § 53232.2, CA GOVT § 53232.2  
Current with urgency legislation through Ch. 4 of 2017 Reg.Sess

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West's Annotated California Codes  
Government Code (Refs & Annos)  
Title 5. Local Agencies (Refs & Annos)  
Division 2. Cities, Counties, and Other Agencies (Refs & Annos)  
Part 1. Powers and Duties Common to Cities, Counties, and Other Agencies (Refs & Annos)  
Chapter 2. Officers and Employees (Refs & Annos)  
Article 2.3. Compensation (Refs & Annos)

West's Ann.Cal.Gov.Code § 53232.3

§ 53232.3. Expense report forms

Effective: January 1, 2006

[Currentness](#)

(a) If a local agency reimburses members of a legislative body for actual and necessary expenses incurred in the performance of official duties, then a local agency shall provide expense report forms to be filed by the members of the legislative body for reimbursement for actual and necessary expenses incurred on behalf of the local agency in the performance of official duties. Reimbursable expenses shall include, but not be limited to, meals, lodging, and travel.

(b) Expense reports shall document that expenses meet the existing policy, adopted pursuant to [Section 53232.2](#), for expenditure of public resources.

(c) Members of a legislative body shall submit expense reports within a reasonable time after incurring the expense, as determined by the legislative body, and the reports shall be accompanied by the receipts documenting each expense.

(d) Members of a legislative body shall provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

(e) All documents related to reimbursable agency expenditures are public records subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with [Section 6250](#)) of Division 7 of Title 1).

**Credits**

(Added by [Stats.2005, c. 700 \(A.B.1234\)](#), § 3.)

West's Ann. Cal. Gov. Code § 53232.3, CA GOVT § 53232.3

Current with urgency legislation through Ch. 4 of 2017 Reg.Sess

