



Open Government Commission

ACTION CALENDAR
July 24, 2018

To: Honorable Mayor and Members of the City Council
 From: Open Government Commission
 Submitted by: Emma Soichet, ad hoc Commission Chairperson, OGC
 Subject: Lobbyists Registration and Regulation Ordinance; Amendments to Existing Revolving Door Ordinance

RECOMMENDATION

Adopt first reading of an ordinance requiring the registration of lobbyists and regulating lobbying activity in the City of Berkeley, and an amendment to the existing Revolving Door Ordinance.

FISCAL IMPACTS OF RECOMMENDATION

Will require staff time to registrar and enforce the ordinance. Registration fees and penalties may offset some costs.

CURRENT SITUATION AND ITS EFFECTS

Lobbying occurs in the City of Berkeley and is believed to have influenced policy decisions in the City. Because the City has no policy in place to collect data on local lobbyist activity or to regulate this activity, however, residents are largely in the dark about what lobbying has occurred and how it may have affected policy-making.

BACKGROUND

Process

On May 30, 2017, City Council referred to the Open Government Commission (OGC) two, complementary ordinances: an ordinance to amend the City's existing revolving-door restrictions and an ordinance to add a lobbyist registration program. (Attachment 1.)

The OGC formed subcommittee to address this package of ordinances, which met on Sept. 7, 2017, and unanimously approved revisions to Council's drafts. The OGC reviewed these revisions at its September 21, 2017, and November 16, 2017, meetings. The OGC then directed the subcommittee to resolve further questions that arose at the OGC meetings. The subcommittee met again in early December 2017, and submitted a revised version to OGC.

At its January 18, 2018 meeting, the OGC voted unanimously to forward the ordinances (with some further changes) to Council with the recommendation to adopt the ordinances. (M/S/C: Soichet/Callahan; Ayes: Smith, Callahan, McLean, O'Donnell, Soichet, Sridharan, Tsui; Noes: None; Abstain: None; Absent: Harper (excused), Metzger (excused).)

At its June 21, 2018 meeting, the OGC voted to *approve the report and ordinances with the following revisions:*

(1) *add the following text (in bold/underline) as a revision to Section 2.09.080.B:*

The Open Government Commission shall, **through the Office of the Clerk**, make local governmental lobbyist training sessions, other than the initial training session, available on its website.

(2) *capitalize the phrase "City Council" throughout the ordinances;*

(3) *proofread the ordinances; and to direct Acting Chair Soichet to work with staff to finalize*

Vote: (M/S/C: Smith/Saver) Ayes: Soichet, McLean, O'Donnell, Saver, Smith; Noes: None; Abstain: None; Absent: Metzger (excused), Harper, Tsui (excused)).

Attachment 2 is a copy of the Revolving Door Ordinance amendments adopted by the OGC. Attachment 3 is a copy of the Lobbyist Registration and Regulation Ordinance adopted by the OGC. Attachment 4 is a comparison of the versions of the lobbyist ordinance referred by Council and adopted by the OGC, which shows in tracked changes the changes adopted by the OGC.

Ordinance Provisions

Revolving Door Ordinance. The OGC agreed with the amendments included in the draft ordinance referred by Council, and simply changed the date for a safe-harbor provision. These amendments to the existing ordinance would increase the amount of time during which former City employees are prohibited from lobbying the City—from the current 12 months to 24 months.

Lobby Registration and Regulation Ordinance. The lobbyist registration ordinance approved by the OGC closely mirrored the draft ordinance referred to it by Council.

The focus of the OGC's changes was to the enforcement provisions of the ordinance. The OGC sought to harmonize the proposed ordinance with existing procedures that it uses when it sits as the Fair Campaign Practices Commission in reviewing and acting on complaints of Berkeley Election Reform Act (BERA) violations. It also added a private right of action for city residents to mirror this right under BERA, and changed the penalties provisions.

In addition, the OGC added amendments to BMC 2.060.190 (the BMC provision setting forth the OGC's duties and authority) to authorize the OGC to take the actions set forth in the ordinance.

ENVIRONMENTAL SUSTAINABILITY

No environmental issues are known

RATIONALE FOR RECOMMENDATION

Matters of City policy should be debated transparently with participation of all residents. Providing community members information about lobbyist activity supports this ideal of open government accountable to all.

ALTERNATIVE ACTIONS CONSIDERED

None

CITY MANAGER

The City Manager takes no position on the content of this report. However, significant staffing and administrative workload impacts would occur if the lobbyist registration ordinance were to be adopted as written.

The proposed ordinance requires registration, training, quarterly filings, review, investigation, and enforcement for the mandated lobbyist filings and activities covered by the ordinance.

To properly implement, administer, and enforce the provisions of the lobbyist registration ordinance, staff estimates that 1-2 new FTEs would need to be hired, likely in the Deputy Attorney class and Office Specialist Class. At times, contract investigators may need to be hired for investigation of violations.

The City Manager would welcome the opportunity to provide Council with a detailed analysis of the administrative impacts and estimated costs of the ordinance, as well as technical improvements that will make the ordinance clearer, more enforceable, and harmonized with other city regulations.

CONTACT PERSON

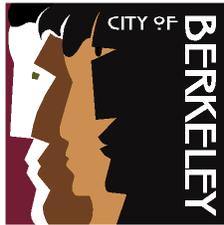
Emma Soichet, Open Government Commissioner and ad hoc Subcommittee Chair
Open Government Commission Secretary, Office of the City Attorney, 981-6950

Attachments:

- 1: May 30, 2017 Council referral
- 2: Proposed Revolving Door Ordinance adopted by OGC
- 3: Lobbyist Registration and Regulation Ordinance adopted by OGC
- 4: Comparison of lobbyist ordinance as referred by Council and as adopted by OGC

Lobbyists Registration and Regulation Ordinance;
Amendments to Existing Revolving Door Ordinance

ACTION CALENDAR
July 24, 2018



Office of the Mayor

ACTION CALENDAR
May 30, 2017

To: Members of the City Council

From: Mayor Jesse Arreguín, Councilmembers Kate Harrison and Cheryl Davila

Subject: Amending BMC Sections 2.07.020, 2.07.030, 2.07.040, and 2.07.050:
Modifying Revolving Door Restrictions and Adding BMC Chapter 2.09:
Lobbyist Registration and Regulation

RECOMMENDATION:

Refer the following proposed ordinances to the Open Government Commission for their review and recommendation.

1. Amendments to BMC Chapter 2.07, Revolving Door Restrictions, to extend the time requirement between the termination of City office or employment and lobbying from 12 months to 32 years, and ending service on a commission and lobbying from 12 months to 2 years.

2. An ordinance adding Chapter 2.09: Lobbyist Registration and Regulation, to the Berkeley Municipal Code.

BACKGROUND

Revolving Door Restrictions

On October 28, 2014, the City Council considered a referral to the Fair Campaign Practices and Open Government Commission that included a Revolving Door Policy prohibiting former City staff, for a specified period of time after they left employment with the City, from lobbying current staff on matters relating to City business. The matter was referred to the Agenda Committee for future scheduling and a Council Ad-Hoc Committee on a More Open Government (Councilmembers Arreguin, Capitelli, Wengraf, and Droste) first convened on May 11, 2015 to discuss this matter and other Good Government policies.

On March 29, 2016, the City Council considered a proposal by the Council Ad-Hoc Committee to adopt the first reading of a Revolving Door ordinance, which was referred to the City Attorney for amendments suggested by the dais. The first reading of the revised ordinance moved forward without modification, and the second reading was approved by Council on June 14, 2016.

Subsequent to that approval, other cities began to discover a need to extend restriction periods due to how difficult it can be to enforce such a policy in a timely manner. In Portland, Oregon, the City Auditor recommended that they increase their restriction from 12 months to 2 years, and in Seattle, voters overwhelmingly passed a local measure requiring a three-year cooling off period. Both San Jose, CA and Santa Monica, CA currently have a two-year prohibition on lobbying by former staff and city officials. The proposed ordinance extends the cooling off period to two years.

However, given lack of notice to city officials and employees who recently left City service, those officials who left city employment before January 1, 2017 would be grandfathered in under the existing one-year lobbying prohibition, and not subject to the proposed increase to two years.

Any violation, once discovered, would require investigation and a possible written legal opinion. A longer restricted time would ensure that any violation could be adjudicated and further opportunity to violate the provisions unviable for a substantial period of time.

Lobbyist Registration and Regulations

Berkeley currently does not require paid lobbyists to register with the City or report on who they are representing and the nature of their contacts with city officials. Many California cities including Oakland and San Francisco require lobbyist registration.

The proposed Lobbyist Registration and Regulations Ordinance would add a new Chapter 2.09 to the Berkeley Municipal Code to require annual registration and filing quarterly reports with the City Clerk on lobbying contacts with city staff and officials.

FINANCIAL IMPLICATIONS

Staff time

ENVIRONMENTAL SUSTAINABILITY

No impact

CONTACT PERSON

Jesse Arreguín, Mayor 510-981-7100

Attachments:

1. Proposed modifications to BMC Chapter 2.07 Revolving Door Restrictions
2. Proposed addition of BMC Chapter 2.09: Lobbyist Registration and Regulations

ORDINANCE NO.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 2.07 TO EXTEND
PROHIBITION ON LOBBYING AFTER LEAVING CITY EMPLOYMENT OR
COMMISSION SERVICE

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

Section 1. That Berkeley Municipal Code Section 2.07.020 is amended to read as follows:

Section 2.07.020 Definitions

For purposes of this Chapter, the terms below shall have the following meaning:

- A. "City official" shall mean the Mayor and City Councilmembers.
- B. "Commission" shall mean any body created by the City Council or City Charter whose members are required to file statements of economic interest pursuant to the Fair Political Practices Act.
- C. "Employee" shall have the same meaning as set out in Title 20 of the Code of Federal Regulations § 404.1007(b).
- D. "Lobby" ~~means to influence or attempt to influence the outcome of any legislative or administrative action of the City on behalf of an employer or any other party from whom a former City official or employee receives compensation. For purposes of this subdivision:~~
 - 1. ~~"Influencing" means contacting, either directly or indirectly, for the purpose of promoting, supporting, modifying, opposing, causing the delay or abandonment of conduct, or otherwise intentionally affecting the official actions by any means, including, but not limited to providing, preparing, processing, or submitting information, incentives, statistics, studies or analyses.~~
 - 2. ~~"Legislative or administrative action" means the drafting, introduction, consideration, modification, enactment or defeat of any City resolution or ordinance, or amendment thereto, any other formal action taken by the City Council or a board or commission, and any formal action taken by a City employee.~~ shall mean any activity which requires registration as a lobbyist pursuant to Chapter 2.09 of this Code.
- E. "Nonprofit organization" shall mean an entity that would qualify as such under the Federal Internal Revenue Code.
- F. "Transitional services" shall mean services involving technical or specialized knowledge required to complete a project or to provide temporary consulting services to the City.
- G. "Work" shall mean any activity for which compensation is received from any source, including compensation received as an independent contractor. Work includes the supervision or direction of others performing work, except as provided in Section 2.07.050. Work for the City also includes any action of any sort whatsoever taken in one's official capacity. Service by a City official or designated employee on any type of board, committee or similar body as a representative of the City is deemed to be work for the City.

Section 2. That Berkeley Municipal Code Section 2.07.030 is hereby amended to read as follows:

2.7.30 Prohibitions.

For ~~twelve (12)~~thirty-six twenty-four (24) 36 months immediately following the termination of City office or employment, no former City official or employee shall:

A. Lobby the City Council or any board, commission or City staff on any issue or matter that was within that official's or employee's area of responsibility at the City of Berkeley during the ~~12 (twelve)~~thirty-six twenty-four (24) 36 months prior to his or her termination of service.

B. Represent anyone else for compensation, before the City Council, or any City commission or board, or any staff of the City.

The increase in the prohibitive period from twelve (12) months to twenty-four (24) months shall not apply to former City officials or employees who left city employment before January 1, 2017.

Section 3. That Berkeley Municipal Code Section 2.07.040 is hereby amended to read as follows:

2.07.040 Prohibition for Former Commission Members.

A former member of a commission shall not lobby the commission on which the former member served, for a period of ~~twelve (12) months~~twenty-four (24) months immediately following the termination of service on that commission. No other provisions of this Chapter shall apply to persons serving on a commission who are not otherwise City officials or designated employees.

Section 4. That Berkeley Municipal Code Section 2.07.050 is amended to read as follows:

2.07.050 Exceptions.

The prohibition on lobbying in Section 2.07.030 shall not apply to former City officials or employees who are: employees or volunteers of a nonprofit organization, as defined in Section 2.07.020.E, so long as they are acting in that capacity; employees or elected officials of other government entities so long as they are acting in that capacity; or independent contractors of the City where it has been determined that it is in the best interest of the City to retain the former City official or employee to provide transitional services. Such determination shall be made by the person or body authorized to enter into such a contract. In such event, the City shall contract directly with the former City official or employee. The rate of compensation for such

services shall not exceed the former City official's or employee's rate of pay, including benefits, at the time City service terminated.

Section 5. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

ORDINANCE NO. -N.S.

ADDING CHAPTER 2.09 TO THE BERKELEY MUNICIPAL CODE TO REQUIRE THE
REGISTRATION AND REGULATION OF LOCAL GOVERNMENT LOBBYISTS

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

Section 1. Title

This Ordinance shall be known as the “Berkeley Lobbyist Registration Act”

Section 2. That a new Chapter 2.09 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 2.09

LOBBYIST REGISTRATION AND REGULATIONS

Sections:

Article 1. General Provisions

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

Article 2. Definitions and Interpretation of This Act

- 2.09.040 Words and phrases.**
- 2.09.050 Definitions.**

Article 3. Registration of Lobbyists

- 2.09.060 Registration with the Open Government Commission.**
- 2.09.070 Cessation of employment.**
- 2.09.080 Lobbyist training.**
- 2.09.090 Exceptions.**
- 2.09.100 Noncompliance—Order to show cause.**
- 2.09.110 Availability of information.**
- 2.09.120 Filing under penalty of perjury.**
- 2.09.130 Records.**

Article 4. Disclosure of Lobbying Activities and Audits

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

Article 5. Prohibitions

- 2.09.170 No unregistered employment or activity.
- 2.09.180 Personal obligation of city officials prohibited.
- 2.09.190 Deception prohibited.
- 2.09.200 Improper influence prohibited.
- 2.09.210 False appearances prohibited.
- 2.09.220 Prohibited representations.
- 2.09.230 Restrictions on payments and expenses benefiting local public officials.
- 2.09.240 Restriction on campaign consultants lobbying current and former clients.

Article 6. Enforcement

- 2.09.250 Procedures and action.
- 2.09.260 Civil penalties.
- 2.09.270 Criminal violation.
- 2.09.280 Joint and several liability.
- 2.09.290 Effective date.

Article 1. General Provisions

- 2.09.010 Title.

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

- 2.9.20 Findings.

- A. Democracy in our representative form of government requires that the public have an opportunity to know as much as possible what lobbying efforts are taking place that may affect decisions being made by our elected officials, city staff, boards, and commissions.
- B. To the extent possible, it is the government's responsibility to balance their responsibility to ensure the health, safety, and general welfare of the public at large in a fiscally and environmental sustainable manner.

2.09.030 Purpose.

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

Article 2. Definitions and Interpretation of This Act

2.09.040 Words and phrases.

Words and phrases used in this Act shall have the same meanings and be interpreted in the same manner as words and phrases used in the Political Reform Act of 1974, California Government Code 81000 – 91014, hereafter the Political Reform Act, as amended and the regulations issued pursuant thereto, unless otherwise expressly provided or unless the context otherwise requires.

2.9.50 Definitions.

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

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

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

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

D. "Committee" shall be defined as set forth in the California Political Reform Act, et seq.

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

F. "Contribution" shall have the same meaning as set forth in the California Political

Reform Act, et seq.

G. "Controlled committee" shall have the same meaning as set forth in the California Political Reform Act, et seq., but shall not include any state committees.

H. "Designated employees" mean city employees who are designated employees within the meaning of the Political Reform Act of 1974, as amended, and who are required by the Political Reform Act or a city conflict of interest code to file financial interest disclosure statements.

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

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

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

L. "Influencing" means contacting, either directly or indirectly, for the purpose of promoting, supporting, modifying, opposing, causing the delay or abandonment of conduct, or otherwise intentionally affecting the official actions by any means, including, but not limited to providing, preparing, processing, or submitting information, incentives, statistics, studies or analyses.

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

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

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

P. "Public event" shall mean an event or gathering that any member of the public may attend, has been publicly announced and publicized in advance, and for which there is

no admission cost or fee.

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

R.

S. "State committee" shall mean a committee formed to support or oppose candidates for state office or state ballot measures.

Article 3. - Registration of Lobbyists

2.9.60 Registration with the Open Government Commission.

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

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

a. His or her name, business address, ~~residency address~~, e-mail address, business telephone number.

b. The name, business address, and business telephone number of each client for whom the lobbyist is performing lobbyist services.

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

d. Each agency that the lobbyist has attempted, ~~or will attempt, or may attempt~~ to influence on behalf of any client.

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

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

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

F. Failure to pay the annual fee shall constitute a termination of a lobbyist's registration with the Open Government Commission. The Open Government Commission is also authorized to establish additional processes for the termination of a lobbyist's registration.

G. The Clerk shall waive all registration fees for any full-time employee of a tax-

exempt organization presenting proof of the organization's tax-exempt status under 26 U.S.C. Section 501(c)(3) or 501(c)(4).

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

2.09.070 Cessation of employment.

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

2.9.80 Lobbyist training.

A. Each lobbyist must complete a lobbyist training session offered by the Open Government Commission through the Office of the Clerk on the occasion the lobbyist's initial registration. Thereafter, lobbyists shall engage in additional training sessions as required by the Open Government Commission, at their discretion.

B. The Open Government Commission shall make lobbyist training sessions, other than the initial training session, available on its website.

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

2.9.90 Exceptions.

The provisions of this Act shall not apply:

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

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

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

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

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

implementation or interpretation of an existing employment agreement.

F. To persons whose only activity is to (1) submit a bid on a competitively bid contract, (2) respond to a request for proposal or qualifications, or (3) negotiate the terms of a written contract if selected pursuant to such bid or request for proposal or qualifications. This exception shall not apply to persons who attempt to influence the award or terms of a contract with any elected official or member of any city board or commission.

2.9.100 Noncompliance—Order to show cause.

A. Upon the request of any resident of the City, or if the Open Government Commission determines it necessary, the Open Government Commission shall issue an order to show cause to any unregistered person.

B. Such order shall specify a time and place where such person shall appear to provide evidence satisfactory to the Open Government Commission that he or she has complied with the registration requirement or is exempt from registration.

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

2.09.110 Availability of information.

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

2.09.120 Filing under penalty of perjury.

All information required by this Act shall be filed with the City Clerk on forms prescribed by the Open Government Commission, and accompanied by a declaration by the local governmental lobbyist that the contents thereof are true and correct under penalty of perjury.

2.09.130 Records.

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

Article 4. Disclosure of Lobbying Activities and Audits

2.9.140 Quarterly disclosure.

For each calendar quarter in which a local governmental lobbyist was required to be registered, he or she shall file a quarterly report with the City Clerk. The reports shall be due no later than thirty (30) days after the end of the calendar quarter. The report shall contain the following information:

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

B. For each item of governmental action sought to be influenced, (1) the name of each city officer with whom the lobbyist communicated, (2) the name and title of any city board member or commissioner with whom the lobbyist communicated, and (3) the identity of any city employee with whom the lobbyist communicated identified only by the office or department in which the employee works and his or her job title.

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

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

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

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

- a. in a mass mailing sent to members of the public
- b. in response to a specific request for a recommendation
- c. to a gathering which members of the public may attend, or
- d. in a newspaper, on radio or television, or in any other mass media.

A lobbyist does not "solicit" solely because his or her name is printed with other names on stationary or a letterhead used to request contributions. If a lobbyist

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

2.09.150 Registration and filing of disclosures by organizations.

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

2.09.160 Audits

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

Article 5. Prohibitions

2.9.170 No unregistered employment or activity.

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

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

2.09.180 Personal obligation of city officials prohibited.

Local governmental lobbyists, clients, contractors, and persons doing business with the city shall abstain from carrying out any act with the express purpose and intent of placing any city officer or designated employee under personal obligation to such lobbyist, client, contractor or person.

2.09.190 Deception prohibited.

No local governmental lobbyist, client, contractor or person doing business with the city shall deceive or attempt to deceive a city or designated employee as to any material fact pertinent to any pending or proposed governmental action.

2.09.200 Improper influence prohibited.

No local governmental lobbyist shall cause or influence the introduction of any ordinance, resolution, appeal, application, petition, nomination or amendment thereto for the purpose of thereafter being employed as a lobbyist to secure its granting, denial, confirmation, rejection, passage or defeat.

2.09.210 False appearances prohibited.

No local governmental lobbyist, client, contractor, or person doing business with the city shall attempt in any way to create a fictitious appearance of public favor or disfavor of any governmental action or to cause any communication to be sent to a city designated employee in the name of any fictitious person or in the name of any real person, except with the consent of such real person.

2.09.220 Prohibited representations.

No local governmental lobbyist, client, contractor, or person doing business with the city shall represent, either directly or indirectly, orally or in writing that such person can control or obtain the vote or action of any city official, designated employee, board member, or commission member.

2.9.230 Restrictions on payments and expenses benefiting local public officials.

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

B. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from any lobbyist for the individual's personal benefit or for the personal benefit of a member of the immediate family of one of these individuals. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from a third-party if the officer knows or has reason to know that the third-party is providing the payment or expense on behalf of a lobbyist.

C. The payments and expenses specified in subsections (A) and (B) include gifts, honoraria and any other form of compensation but do not include:

- a) gifts of food or refreshment worth \$25 or less per occasion, if the lobbyist is a 501(c)(3) nonprofit organization, the gift of food or refreshment is offered in connection with a public event held by the 501(c)(3) nonprofit organization, and the same gift of food or refreshment is made available to all attendees of the public event
- b) payments or expenses that, within thirty (30) days after receipt, are returned unused or are reimbursed
- c) gifts of food-, beverage, or occasional lodging whose cumulative value shall not exceed \$240 during any calendar year or refreshment worth \$25 or less per occasion, if said gift is provided in the home of an individual lobbyist or

~~individual lobbyist's registered client when the individual or member of the individual's family is present~~

- d) a pass or ticket to a fundraising event for a campaign committee or candidate, or for an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code
- e) informational material and
- f) salaries, consulting fees or other payments for services rendered or bargained for.
- g) campaign contributions not exceeding the limit imposed by the city of Berkeley

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

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

2.9.240 Restriction on campaign consultants lobbying current and former clients.

A. No campaign consultant, individual who has an ownership interest in the campaign consultant, or an employee of the campaign consultant shall communicate with any officer of the city who is a current or former client of the campaign consultant on behalf of another person or entity (other than the city) in exchange for economic consideration for the purpose of influencing local legislative or administrative action.

B. This prohibition shall not apply to:

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

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

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

- a) "Current client" shall mean a person for whom the campaign consultant has been contracted to provide campaign consulting services. If such person is a committee as defined by Section 82013 of the California Government Code, the current client shall be any individual who controls such committee; any candidate that such committee was primarily formed to support; and any proponent or opponent of a ballot measure that the committee is primarily formed to support or oppose.

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

c) "Former client" shall mean a person for whom the campaign consultant has terminated all campaign consulting services within the past ~~36~~24 months.

Article 6. Enforcement

2.9.250 Procedures and action.

A. Any person who violates this Act is subject to civil enforcement proceedings before the Open Government Commission pursuant to the Commission's General Complaint Procedures. No complaint alleging a violation of any provision of this Act shall be filed with the Open Government Commission more than four years after the date the violation occurred.

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

2.9.260 Civil penalties.

A. Civil penalties shall be imposed by resolution of the Open Government Commission.

B. Except as otherwise specified in this Act, the Open Government Commission may impose penalties of up to one thousand dollars (\$1,000) for each complaint sustained.

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

2.9.270 Criminal violation.

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

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

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

2.9.280 Joint and several liability.

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

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

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

2.09.290 Effective date.

The effective date of this Act shall be (Date to be determined).

2.09.300 Severability.

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

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

Chapter 2.07 REVOLVING DOOR RESTRICTIONS

Sections:

- 2.07.010 Purpose.
- 2.07.020 Definitions.
- 2.07.030 Prohibitions.
- 2.07.040 Prohibition for Former Commission Members.
- 2.07.00 Exceptions.
- 2.07.00 Applicability.
- 2.07.00 Waiver.
- 2.07.00 Enforcement.
- 2.07.00 Penalties.

2.07.010 Purpose.

The purposes of this Chapter are:

- A. To assure the independence, impartiality and integrity of City officials and employees in making governmental actions and decisions.
- B. To prevent such former officials and employees from using their positions with the City for personal gain.
- C. To prevent private for-profit business entities from obtaining a perceived unfair advantage in dealing with the City by hiring former officials and employees.

2.07.020 Definitions.

For purposes of this Chapter, the terms below shall have the following meaning:

- A. "City official" shall mean the Mayor and City Councilmembers.
- B. "Commission" shall mean any body created by the City Council or City Charter whose members are required to file statements of economic interest pursuant to the Fair Political Practices Act.
- C. "Employee" shall have the same meaning as set out in Title 20 of the Code of Federal Regulations § 404.1007(b).
- D. "Lobby" shall mean any activity which requires registration as a lobbyist pursuant to Chapter 2.09 of this Code. ~~means to influence or attempt to influence the outcome of any legislative or administrative action of the City on behalf of an employer or any other party from whom a former City official or employee receives compensation. For purposes of this subdivision:~~

1. ~~"Influencing" means contacting, either directly or indirectly, for the purpose of promoting, supporting, modifying, opposing, causing the delay or abandonment of conduct, or otherwise intentionally affecting the official actions by any means, including, but not limited to providing, preparing, processing, or submitting information, incentives, statistics, studies or analyses.~~

2. ~~"Legislative or administrative action" means the drafting, introduction, consideration, modification, enactment or defeat of any City resolution or ordinance, or amendment thereto, any other formal action taken by the City Council or a board or commission, and any formal action taken by a City employee.~~

E. "Nonprofit organization" shall mean an entity that would qualify as such under the Federal Internal Revenue Code.

F. "Transitional services" shall mean services involving technical or specialized knowledge required to complete a project or to provide temporary consulting services to the City.

G. "Work" shall mean any activity for which compensation is received from any source, including compensation received as an independent contractor. Work includes the supervision or direction of others performing work, except as provided in Section 2.07.050. Work for the City also includes any action of any sort whatsoever taken in one's official capacity. Service by a City official or designated employee on any type of board, committee or similar body as a representative of the City is deemed to be work for the City.

2.07.030 Prohibitions.

For ~~twelve (12)~~ twenty-four (24) months immediately following the termination of City office or employment, no former City official or employee shall:

A. Lobby the City Council or any board, commission or City staff on any issue or matter that was within that official's or employee's area of responsibility at the City of Berkeley during the twenty-four (24) ~~12 (twelve)~~ months prior to his or her termination of service.

B. Represent anyone else for compensation, before the City Council, or any City commission or board, or any staff of the City.

[A prohibition period of twelve \(12\) months shall apply to former city officials or employees who left city employment before January 1, 2018.](#)

2.07.040 Prohibition for Former Commission Members.

a) A former member of a commission shall not lobby the commission on which the former member served, for a period of Twenty-four ~~twelve~~ (24) ~~(12)~~ months immediately following the termination of service on that commission. No other provisions of this Chapter shall apply to persons serving on a commission who are not otherwise City officials or designated employees.

2.07.050 Exceptions.

The prohibition on lobbying in Section 2.07.030 shall not apply to former City officials or employees who are: employees or volunteers of a nonprofit organization, as defined in Section 2.07.020.E, so long as they are acting in that capacity; employees or elected officials of other government entities so long as they are acting in that capacity; or independent contractors of the City where it has been determined that it is in the best interest of the City to retain the former City official or employee to provide transitional services. Such determination shall be made by the person or body authorized to enter into such a contract. In such event, the City shall contract directly with the former City official or employee. The rate of compensation for such services shall not exceed the former City official's or employee's rate of pay, including benefits, at the time City service terminated.

2.07.060 Applicability.

- A. The provisions of this Chapter shall not apply to prevent a former City official or employee from testifying as a percipient witness in any legal proceeding.
- B. The provisions of this Chapter shall not apply to prevent a former City official or employee from working as a supervisor of a person or persons performing work that would be prohibited by this Chapter if performed by that former employee, so long as the supervisor is screened from any personal participation in the work and receives no part of the fee therefrom.
- C. This Chapter shall not apply to former City officials or employees who had contracted to perform work prohibited by Section 2.07.030 prior to March 29, 2016, or to such work performed prior to that date. However such former City officials or employees shall take reasonable steps to cease performing such work, and shall cease it no later than September 29, 2016.

2.07.070 Waiver.

The City Council may waive the prohibitions of Section 2.07.030, upon full disclosure of the facts surrounding the proposed activity, if the Council finds that such waiver is in the best interest of the City and that such waiver is not inconsistent with the purposes of this Chapter.

2.07.080 Enforcement.

- A. The City Attorney may conduct inquiries or investigate complaints of violations of this Chapter. The City Attorney may seek judicial or injunctive relief in the courts to enjoin violations of or to compel compliance with the provisions of this Chapter.
- B. A City official, employee or person who is subject to the provisions of this Chapter may request a formal written opinion from the City Attorney and may reasonably rely on such advice in order to comply with the requirements of this Chapter. Before such opinion is rendered, such official or employee shall fully cooperate with the City Attorney in disclosing facts and information in order to prepare the formal opinion.

- C. Any person may file a complaint with the City Clerk alleging a violation of this Chapter.
- D. The City Attorney may put persons on notice of a potential violation of this Chapter, whether or not a complaint is filed with the City Clerk.
- E. Any resident of the City may bring a private action for injunctive relief and penalties to prevent or remedy a violation of this Chapter. No action may be brought under this Section unless and until the prospective plaintiff has given the City and the prospective defendant at least 30 days written notice of the alleged violation and the City has failed to initiate proceedings under this Chapter within that period, or after initiation, has failed to diligently prosecute. In any action prosecuted under this subdivision a prevailing plaintiff may recover reasonable attorneys' fees.

2.07.090 Penalties.

Violations of this Chapter may result in civil penalties of up to Five Thousand Dollars (\$5,000) for each violation. The City of Berkeley shall be entitled to recover from any former City official or employee the monetary value of any compensation or thing of value provided to such person in violation of the provisions of this Chapter.

ORDINANCE NO. -N.S.

ADDING CHAPTER 2.09 TO THE BERKELEY MUNICIPAL CODE TO REQUIRE THE REGISTRATION AND REGULATION OF LOCAL GOVERNMENT LOBBYISTS

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

Section 1. Title

This Ordinance shall be known as the "Berkeley Lobbyist Registration Act"

Section 2. That a new Chapter 2.09 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 2.09

LOBBYIST REGISTRATION AND REGULATIONS

Sections:

Article 1. General Provisions

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

Article 2. Definitions and Interpretation of This Act

- 2.09.040 Words and phrases.
- 2.09.050 Definitions.

Article 3. Registration of Lobbyists

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

Article 4. Disclosure of Lobbying Activities and Audits

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

Article 5. Prohibitions

- 2.09.170 No unregistered employment or activity.
- 2.09.180 Personal obligation of City officials prohibited.
- 2.09.190 Deception prohibited.
- 2.09.200 False appearances prohibited.

- 2.09.210 Prohibited representations.
- 2.09.220 Restrictions on payments and expenses benefiting local public officials.
- 2.09.230 Restriction on campaign consultants lobbying current and former clients.

Article 6. Enforcement

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

Article 1. General Provisions

2.09.010 Title.

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

2.09.020 Findings.

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

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

2.09.030 Purpose.

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

Article 2. Definitions and Interpretation of This Act

2.09.040 Words and phrases.

Words and phrases used in this Act shall have the same meanings and be interpreted in the same manner as words and phrases used in the Political Reform Act of 1974,

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

2.09.050 Definitions.

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

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

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

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

D. "Committee" shall be defined as set forth in the California Political Reform Act, et seq.

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

F. "Contribution" shall have the same meaning as set forth in the California Political Reform Act, et seq.

G. "Controlled committee" shall have the same meaning as set forth in the California Political Reform Act, et seq., but shall not include any state committees.

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

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

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

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

L. "Influence" or "influencing" means contacting, either directly or indirectly, for the purpose of promoting, supporting, modifying, opposing, causing the delay or abandonment of conduct, or otherwise intentionally affecting the official actions by any means, including, but not limited to providing, preparing, processing, or submitting information, incentives, statistics, studies or analyses.

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

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

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

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

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

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

S. "State committee" shall mean a committee formed to support or oppose candidates for state office or state ballot measures.

Article 3. - Registration of Lobbyists

2.09.060 Registration with the Open Government Commission.

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

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

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

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

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

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

F. Failure to pay the annual fee shall constitute a termination of a local governmental lobbyist's registration with the Open Government Commission. The Open Government Commission is also authorized to establish additional processes for the termination of a local governmental lobbyist's registration.

G. The Clerk shall waive all registration fees for any full-time employee of a tax-exempt organization presenting proof of the organization's tax-exempt status under 26 U.S.C. Section 501(c)(3) or 501(c)(4).

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

2.09.070 Cessation of employment.

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

2.09.080 Lobbyist training.

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

B. The Open Government Commission shall make local governmental lobbyist training sessions, other than the initial training session, available on its website.

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

2.09.090 Exceptions.

The provisions of this Act shall not apply:

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

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

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

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

E. To designated representatives of a recognized employee organization whose activities are limited to communicating with City officials or their representatives regarding (1) wages, hours and other terms and conditions of employment pursuant to the procedures

set forth in Government Code Sections 3500—3510, or (2) the administration, implementation or interpretation of an existing employment agreement.

F. To persons whose only activity is to (1) submit a bid on a competitively bid contract, (2) respond to a request for proposal or qualifications, or (3) negotiate the terms of a written contract if selected pursuant to such bid or request for proposal or qualifications. This exception shall not apply to persons who attempt to influence the award or terms of a contract with any elected official or member of any City board or commission.

2.09.100 Failure to Register.

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

2.09.110 Availability of information.

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

2.09.120 Filing under penalty of perjury.

All information required by this Act shall be filed with the City Clerk on forms prescribed by the Open Government Commission, and accompanied by a declaration by the local governmental lobbyist that the contents thereof are true and correct under penalty of perjury.

2.09.130 Records.

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

Article 4. Disclosure of Lobbying Activities and Audits

2.09.140 Quarterly disclosure.

For each calendar quarter in which a local governmental lobbyist was required to be registered, he or she shall file a quarterly report with the City Clerk. The reports shall be due no later than thirty (30) days after the end of the calendar quarter. The report shall contain the following information:

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

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

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

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

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

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

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

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

2.09.150 Registration and filing of disclosures by organizations.

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

2.09.160 Audits

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

Article 5. Prohibitions

2.09.170 No unregistered employment or activity.

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

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

2.09.180 Personal obligation of City officials prohibited.

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

2.09.190 Deception prohibited.

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

2.09.200 False appearances prohibited.

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

2.09.210 Prohibited representations.

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

2.09.220 Restrictions on payments and expenses benefiting local public officials.

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

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

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

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

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

D. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from a third-

party if the officer knows or has reason to know that the third-party is providing the payment or expense on behalf of a lobbyist.

2.09.230 Restriction on campaign consultants lobbying current and former clients.

A. No campaign consultant, individual who has an ownership interest in the campaign consultant, or employee of the campaign consultant shall lobby any officer of the city who is a current or former client of the campaign consultant.

B. This prohibition shall not apply to:

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

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

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

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

1. "Current client" shall mean a person for whom the campaign consultant has been contracted to provide campaign consulting services. If such person is a committee as defined by Section 82013 of the California Government Code, the current client shall be any individual who controls such committee; any candidate that such committee was primarily formed to support; and any proponent or opponent of a ballot measure that the committee is primarily formed to support or oppose.

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

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

Article 6. Enforcement

2.09.240 Rules and regulations.

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

2.09.250 Complaint, investigative procedures, and probable cause.

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

B. After receiving a complaint or information regarding a possible violation of this chapter, the Open Government Commission shall decide whether to (1) direct the secretary to

investigate, to the extent the secretary has not done so; (2) dismiss the complaint; or (3) find probable cause that a violation of this chapter has occurred.

2.09.260 Notice and hearing on violations.

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

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

2.09.270 Violations – commission action.

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

2.09.280 Civil actions.

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

2.09.290 Civil penalties.

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

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

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

2.09.300 Criminal violation.

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

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

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

2.09.310 Joint and several liability.

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

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

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

2.09.320 Effective date.

The effective date of this Act shall be July 1, 2018.

2.09.330 Severability.

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

Section 3. That Berkeley Municipal Code section 2.06.140 is amended as follows:

2.06.190 Open Government Commission--Duties.

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

1. The Open Government Commission shall:

- a. hear complaints by any person concerning alleged non-compliance with this Ordinance, the Brown Act, the Public Records Act, or the Lobbyist Registration Act, by the City or any of its legislative bodies, officers or employees;
- b. consider ways to informally resolve those complaints and make recommendations to the Council regarding such complaints;
- c. seek advice from the City Attorney concerning those complaints; ~~and~~
- d. advise the City Council of its opinion, conclusion or recommendation as to any complaint; ~~and~~
- e. take any action authorized by the Lobbyist Registration Act under Chapter 2.09.

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

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

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

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

1. The number of Public Records Act requests received by the City;
2. The average length of time taken to respond to those requests;
3. The approximate number of pages produced in response to those requests;
4. The number and resolution of all written complaints received by the City concerning its compliance with the Public Records Act with respect to such requests;

5. The number and resolution of all complaints received by the City concerning its compliance with the Brown Act; and

6. Any other information the City Manager deems appropriate that relates to the City's compliance with this Ordinance, the Brown Act, the Public Records Act, the Lobbyist Registration Act, or open and effective government in Berkeley.

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

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

_____ ORDINANCE NO. -N.S.

ADDING CHAPTER 2.09 TO THE BERKELEY MUNICIPAL CODE TO
REQUIRE THE REGISTRATION AND REGULATION OF LOCAL
GOVERNMENT LOBBYISTS

BE IT ORDAINED by the Council of the City of Berkeley as follows: ~~Section 1. Title~~

Section 1. Title

This Ordinance shall be known as the "Berkeley Lobbyist Registration Act"

Section 2. That a new Chapter 2.09 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 2.09

LOBBYIST REGISTRATION AND REGULATIONS

Sections:

Article 1. General Provisions

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

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

- 2.09.040 Words and phrases.
- 2.09.050 ~~Definitions~~Definitions.

Article 3. Registration of Lobbyists

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

Article 4. Disclosure of Lobbying Activities and Audits

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

Article 5. Prohibitions

- 2.09.170 No unregistered employment or activity.
- 2.09.180 Personal obligation of ~~city officials~~City officials prohibited.
- 2.09.190 Deception prohibited.
- 2.09.200 ~~Improper influence prohibited.~~
- ~~2.09.210~~—False appearances prohibited.
- 2.09.~~220~~210 Prohibited representations.

2.09.~~230~~220 Restrictions on payments and expenses ~~benefiting~~benefiting local public ~~officials~~officials.

2.09.~~240~~230 Restriction on campaign consultants lobbying current and former clients.

Article 6. Enforcement

2.09.240 Rules and regulations.

2.09.250 ~~Procedures and action~~Complaint, investigative procedures, and probable cause.

2.09.260 Notice and hearing on violations.

2.09.270 Violations – commission action.

2.09.280 Civil actions.

2.09.290 Civil penalties.

2.09.~~270~~300 Criminal violation.

2.09.~~280~~310 Joint and several ~~liability~~liabilities.

2.09.~~290~~ — ~~Effective~~320 Effective date.

2.09.330 Severability.

Article 1. General Provisions

2.09.010 Title.

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

2.09.020 Findings.

A.

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

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

2.09.030 Purpose.

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

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

2.09.040 Words and phrases.

Words and phrases used in this Act shall have the same meanings and be interpreted in the same manner as words and phrases used in the Political Reform Act of 1974, California Government Code 81000 — 91014, hereafter the Political Reform Act, as amended and the regulations issued pursuant thereto, unless otherwise expressly provided or unless the context otherwise requires.

Definitions.

2.09.050 Definitions.

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

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

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

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

"D. "Committee" shall be defined as set forth in the California Political Reform Act, et seq.

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

~~"F. "Contribution"~~ shall have the same meaning as set forth in the California Political

Reform Act, et seq.

"G. "Controlled committee" shall have the same meaning as set forth in the California Political Reform Act, et seq., but shall not include any state committees.

~~"Designated employees" mean city employees who are designated employees within the meaning of the Political Reform Act of 1974, as amended, and who are required by the Political Reform Act or a city conflict of interest code to file financial interest disclosure statements.~~

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

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

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

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

~~"Influencing"~~ "Influence" or "influencing" means contacting, either directly or indirectly, for the purpose of promoting, supporting, modifying, opposing, causing the delay or abandonment of conduct, or otherwise intentionally affecting the official actions by any means, including, but not limited to providing, preparing, processing, or submitting information, incentives, statistics, studies or analyses.

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

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

O. "Person doing business with the ~~city~~City" means any person whose ~~financial~~financial interests are materially ~~affected~~affected by governmental action as ~~defined~~defined by

Section 2.09.050(~~L~~K). It includes persons currently doing business with the ~~city~~City, planning to do business with the ~~city~~City, or having done business with the ~~city~~City within two years. For purposes of this Act a person's ~~financial~~financial interests shall not be found to be materially ~~affected~~affected by the issuance of any license or permit which does not require the exercise of discretion by ~~city officers~~City officers or employees.

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

~~no admission cost or fee.~~

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

~~R.~~

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

~~S.~~ "State committee" shall mean a committee formed to support or oppose candidates for state office or state ballot measures.

Article 3. - Registration of Lobbyists

2.09.060 Registration with the Open Government Commission.

A.

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

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

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

~~C. Each agency that the lobbyist has attempted or will attempt to influence on behalf of any client.~~

C.

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

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

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

F. Failure to pay the annual fee shall constitute a termination of a local governmental lobbyist's registration with the Open Government Commission. The Open Government Commission is also authorized to establish additional processes for the termination of a local governmental lobbyist's registration.

G. The Clerk shall waive all registration fees for any full-time employee of a tax-exempt organization presenting proof of the organization's tax-exempt status under 26 U.S.C. Section 501(c)(3) or 501(c)(4).

~~exempt organization presenting proof of the organization's tax-exempt status under 26 U.S.C. Section 501(c)(3) or 501(c)(4).~~

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

2.09.070 Cessation of employment.

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

2.09.080 Lobbyist training.

A.

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

B. The Open Government Commission shall make local governmental lobbyist training sessions, other than the initial training session, available on its website.

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

2.09.090 Exceptions.

The provisions of this Act shall not apply:

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

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

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

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

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

E. To designated representatives of a recognized employee organization whose activities are limited to communicating with ~~city officials~~City officials or their representatives regarding

E. (1) wages, hours and other terms and conditions of employment pursuant to the procedures set forth in Government Code Sections 3500—3510, or (2) the administration,

E. implementation or interpretation of an existing employment agreement.

F. To persons whose only activity is to (1) submit a bid on a competitively bid contract, (2) respond to a request for proposal or ~~qualifications~~qualifications, or (3) negotiate the terms of a written contract if selected pursuant to such bid or request for proposal or ~~qualifications~~qualifications. This exception shall not apply to persons who attempt to ~~influence~~influence the award or terms of a contract with any elected ~~official~~official or member of any ~~city~~City board or commission.

~~Noncompliance—Order to show cause.~~

~~Upon the request of any resident of the City, or if the Open Government Commission determines it necessary, the Open Government Commission shall issue an order to show cause to any unregistered person.~~

~~Such order shall specify a time and place where such person shall appear to provide evidence satisfactory to the Open Government Commission that he or she has complied with the registration requirement or is exempt from registration.~~

2.09.100 Failure to Register.

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

2.09.110 Availability of information.

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

2.09.120 Filing under penalty of perjury.

All information required by this Act shall be ~~filed~~filed with the City Clerk on forms prescribed by the Open Government Commission, and accompanied by a declaration by the local governmental lobbyist that the contents thereof are true and correct under penalty of perjury.

2.09.130 Records.

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

Article 4. Disclosure of Lobbying Activities and Audits

2.09.140 Quarterly disclosure.

For each calendar quarter in which a local governmental lobbyist was required to be registered, he or she shall ~~file~~file a quarterly report with the City Clerk. The reports shall be due no later than thirty (30) days after the end of the calendar quarter. The report shall contain the following information:

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

B. For each item of governmental action sought to be ~~influenced~~, ~~(1) influenced~~, the name and title of each ~~city officer~~City employee, or elected or appointed City official with whom the lobbyist communicated, ~~(2) the name and title of any city board member or commissioner with whom the lobbyist communicated, and (3) the identity of any city employee with whom the lobbyist communicated identified only by the office or department in which the employee works and his or her job title.~~

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

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

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

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

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

A lobbyist does not "solicit" solely because his or her name is printed with other names on stationary or a letterhead used to request contributions. If a lobbyist

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

2.09.150 Registration and filing of disclosures by organizations.

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

2.09.160 Audits

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

Article 5. Prohibitions

2.09.170 No unregistered employment or activity.

A.

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

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

2.09.180 Personal obligation of ~~city officials~~City officials prohibited.

Local governmental lobbyists, ~~or clients, contractors, and persons doing business with the city~~ shall abstain from carrying out any act with the express purpose and intent of placing any ~~city officer~~City official or ~~designated~~City employee under personal obligation to such ~~local governmental~~ lobbyist, client, contractor or person.

2.09.190 Deception prohibited.

No local governmental lobbyist, ~~or client, contractor or person doing business with the city~~ shall deceive or attempt to deceive a ~~city or designated~~City employee, ~~or elected or appointed~~ City official as to any material fact pertinent to any pending or proposed governmental action.

2.09.200 ~~Improper influence~~ False appearances prohibited.

No local governmental lobbyist ~~shall cause or influence the introduction of any ordinance, resolution, appeal, application, petition, nomination or amendment thereto for the purpose of thereafter being employed as a lobbyist to secure its granting, denial, confirmation, rejection, passage or defeat.~~

~~2.09.210~~ False appearances prohibited.

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

~~2.09.220~~ 210 Prohibited representations.

No local governmental lobbyist, or ~~client, contractor, or person doing business with the city~~ shall represent, either directly or indirectly, orally or in writing that such person can control or obtain the vote or action of any city official, designated City employee, board member, or commission member ~~elected or appointed City official.~~

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

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

~~No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from any lobbyist for the individual's personal benefit or for the personal benefit of a member of the immediate family of one of these individuals. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from a third party if the officer knows or has reason to know that the third party is providing the payment or expense on behalf of a lobbyist.~~

such payments or expenses exceeds \$240 during any calendar year. The payments and expenses specified specified in subsections (A) and (B) include gifts, honoraria and any other form of compensation but do not include:

1. gifts of food or refreshment worth \$25 or less per occasion, if the lobbyist is a 501 (c)(3) nonprofit organization, the gift of food or refreshment is offered in connection with a public event held by the 501 (c)(3) nonprofit organization, and the same gift of food or refreshment is made available to all attendees of the public event;
 2. payments or expenses that, within thirty (30) days after receipt, are returned unused or are reimbursed;
~~gifts of food, beverage, or occasional lodging whose cumulative value shall not exceed \$240 during any calendar year~~
 3. gifts of food or beverage worth \$25 or less per occasion, if said gift is provided in the home of an individual lobbyist or individual lobbyist's registered client when the individual or member of the individual's family is present;
 4. a pass or ticket to a fundraising event for a campaign committee or candidate, or for an organization exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code;
 5. informational material;
 6. campaign contributions not to exceed the limit imposed by the Berkeley Election Reform Act or state law, as applicable; and
- salaries, consulting fees or other payments for services rendered or bargained for.
- ~~7. campaign contributions not exceeding the limit imposed by the city of Berkeley~~
 - 7.
 7. No other exception to, or exclusion from, the ~~definition~~definition of gift or honoraria contained in the Political Reform Act of 1974 as amended, and the regulations issued pursuant thereto, shall apply to this section.

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

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

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

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

2.09.230 Restriction on campaign consultants lobbying current and former clients.

A. No campaign consultant, individual who has an ownership interest in the campaign consultant, or ~~an~~ employee of the campaign consultant shall ~~communicate with~~ lobby any officer of the city who is a current or former client of the campaign consultant ~~on behalf of another person or entity (other than the city) in exchange for economic consideration for the purpose of influencing local legislative or administrative action.~~

B. This prohibition shall not apply to:

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

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

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

"1. "Current client" shall mean a person for whom the campaign consultant has been contracted to provide campaign consulting services. If such person is a committee as defined by Section 82013 of the California Government Code, the current client shall be any individual who controls such committee; any candidate that such committee was primarily formed to support; and any proponent or opponent of a ballot measure that the committee is primarily formed to support or oppose.

“

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

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

Article 6. Enforcement

2.09.240 Rules and action regulations.

~~Any person who violates this Act is subject to civil enforcement proceedings before the~~ The Open Government Commission pursuant to may adopt, amend, and rescind rules, procedures, and regulations to carry out the purposes of this Chapter, and to govern the Commission's General Commission's procedures to enforce this Chapter.

2.09.250 Complaint Procedures. No complaint alleging, investigative procedures, and probable cause.

~~A. Any person who believes that a violation of any provision portion of this Act shall be filed chapter has occurred may file a complaint with the Open Government Commission more than four years after the date the . The Open Government Commission may initiate an investigation of a possible violation occurred of this chapter based on information brought before the commission, including information presented by staff.~~

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

2.09.260 Notice and hearing on violations.

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

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

2.09.270 Violations – commission action.

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

2.09.280 Civil actions.

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

2.09.290 Civil penalties.

~~Civil penalties shall be imposed by resolution of the Open Government Commission.~~

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

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

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

2.09.300 Criminal violation.

A.

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

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

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

2.09.310 Joint and several liability.

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

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

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

2.09.290 — ~~Effective~~ **320 Effective** date.

The ~~effective~~ effective date of this Act shall be ~~(Date to be determined)~~ July 1, 2018.

2.09.300 — **330 Severability**.

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

~~Section 3.~~ Section 3. That Berkeley Municipal Code section 2.06.140 is amended as follows:

2.06.190 Open Government Commission--Duties.

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

1. The Open Government Commission shall:

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

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

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

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

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

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

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

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

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

1. The number of Public Records Act requests received by the City;

2. The average length of time taken to respond to those requests;

3. The approximate number of pages produced in response to those requests;

4. The number and resolution of all written complaints received by the City concerning its compliance with the Public Records Act with respect to such requests;

5. The number and resolution of all complaints received by the City concerning its compliance with the Brown Act; and

6. Any other information the City Manager deems appropriate that relates to the City's compliance with this Ordinance, the Brown Act, the Public Records Act, the Lobbyist Registration Act, or open and effective government in Berkeley.

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

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

