

Open Government Commission

AGENDA FOR OPEN GOVERNMENT COMMISSION

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

North Berkeley Senior Center
1901 Hearst Avenue
Classroom C (Upstairs)

Regular Meeting
November 16, 2017
8:00 p.m.

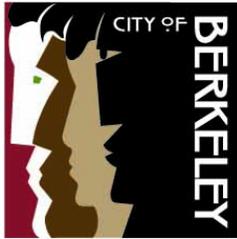
Secretary: Jessica Mar, Deputy City Attorney

The Commission may act on any item on this agenda

1. Call to Order 8:00 p.m.
2. Roll Call.
3. Public Comment. *Comments on subjects not on the agenda that are within the Commission's purview are heard at the beginning of meeting. Speakers may comment on agenda items when the Commission hears those items.*
4. Reports.
 - a. Report from Chair.
 - b. Report from Staff.
5. Approval of minutes for the October 19, 2017 regular meeting.
6. Commission 2018 regular meeting schedule; discussion and possible action.
7. Staff report regarding information request regarding proposal to impose deadline for posting draft commission minutes; discussion and possible action.
8. Report from Lobbyist Registration and Revolving Door Subcommittee; discussion and possible action.
9. Adjournment.

Communications: None

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



Open Government Commission

DRAFT MINUTES

North Berkeley Senior Center
1901 Hearst Avenue
Classroom C (Upstairs)

Regular Meeting
October 19, 2017
8:00 p.m.

Members Present: Brad Smith, Dean Metzger, Anna Callahan, Greg Harper, Mark McLean, Patrick O'Donnell, Emma Soichet, Hamsini Sridharan, Brian Tsui

Members Absent: None

Also Present: Jessica Mar, Secretary/Deputy City Attorney

1. **Call to Order**

Chair called the meeting to order at 8:07 p.m.

2. **Roll Call**

Roll call taken.

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

No public comment on matters not on agenda. 7 members of the public in attendance.

4. **Reports**

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

5. **Approval of minutes for the September 21, 2017 regular meeting**

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

Motion to approve minutes (M/S/C: O'Donnell/Sridharan; Ayes: Smith, Metzger, Callahan, Harper, McLean, O'Donnell, Sridharan, Tsui; Noes: None; Abstain: Soichet; Absent: None)

6. Staff report regarding alleged complaint of violation of Berkeley Open Government Ordinance by Kelly Hammargren; discussion and possible action.

Public Comment: one speaker.
Commission discussion and action.

Motion to accept the staff report finding no violation of the Berkeley Open Government Ordinance (M/S/C: Callahan/Sridharan; Ayes: Smith, Callahan, Harper,

McLean, O'Donnell, Soichet, Sridharan, Tsui; Noes: Metzger; Abstain: None;
Absent: None)

Motion to request the Secretary to request additional information from other commissions and the City Clerk's Office regarding how many days after a meeting has happened that it would be reasonable to post draft minutes on a commission's website, and to request that if it is more than five business days to request additional explanation (M/S/C: Callahan/Sridharan; Ayes: Smith, Metzger, Callahan, Harper, McLean, O'Donnell, Soichet, Sridharan, Tsui; Noes: None; Abstain: None; Absent: None)

7. Adjournment.

Motion to adjourn (M/S/C: O'Donnell/Soichet; Ayes: Smith, Metzger, Callahan, Harper, McLean, O'Donnell, Soichet, Sridharan, Tsui; Noes: None; Abstain: None; Absent: None)

The meeting adjourned at 8:59 p.m.

2018 Commission Meeting Dates

Please complete this form and email it to the
[Commission Inbox](#) by: **Friday, January 5, 2018**

Name of Commission: Open Government Commission

Commission Secretary: Jessica Mar

Please Note the Commission Meeting Dates for 2018 Below

Please fill in meeting date below. If no meeting for the month is scheduled please note as "No Meeting."

"Example"

Month	Meeting Day and Date	Time
January 2018	Tuesday 1/09/18	7:00 pm

Month	Meeting Day and Date	Time
July 2018	No Meeting	

2018 Meeting Dates

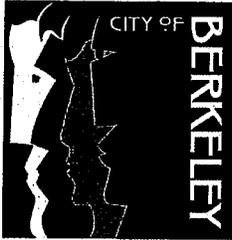
Month	Meeting Day and Date	Time
January 2018	Thurs., Jan. 18	7:30/8pm
February 2018	Thurs., Feb. 15	7:30/8pm
March 2018	Thurs., Mar. 15	7:30/8pm
April 2018	Thurs., Apr. 19	7:30/8pm
May 2018	Thurs., May 17	7:30/8pm
June 2018	Thurs., Jun. 21	7:30/8pm

Month	Meeting Day and Date	Time
July 2018	Thurs., Jul. 19	7:30/8pm
August 2018	Thurs., Aug. 15	7:30/8pm
September 2018	Thurs., Sep. 20	7:30/8pm
October 2018	Thurs., Oct. 18	7:30/8pm
November 2018	Thurs., Nov. 15	7:30/8pm
December 2018	Thurs., Dec. 20	7:30/8pm

Please Return via Email to:

The Commission Inbox-City Clerk Department

Email: commission@cityofberkeley.info Please contact Leslie Rome at (510) 981-6914 with questions.



Open Government Commission

To: Open Government Commission

From: Jessica Mar, Commission Secretary *JM 11/18/17*

Date: November 16, 2017

Re: Response to OGC Information Request Regarding Proposal to Impose Deadline for Posting Draft Minutes

At the October 19, 2017 meeting, the Commission made the following motion:

Motion to request the Secretary to request additional information from other commissions and the City Clerk's Office regarding how many days after a meeting has happened that it would be reasonable to post draft minutes on a commission's website, and to request that if it is more than five business days to request additional explanation (M/S/C: Callahan/Sridharan; Ayes: Smith, Metzger, Callahan, Harper, McLean, O'Donnell, Soichet, Sridharan, Tsui; Noes: None; Abstain: None; Absent: None)

This report is in response to that request.

The Commission Secretary reached out to the City Clerk's Office and other City commissions and received the following responses. In order to solicit candid feedback, respondents were told that their feedback would be anonymized when provided to the OGC. This report is based on feedback from the City Clerk's Office and from secretaries for fifteen City commissions.

Several themes spanned multiple comments. If the Commission moves forward with this issue, the Secretary recommends that the Commission or a subcommittee of the Commission consider the following issues before making a recommendation regarding imposition of a deadline for posting of draft minutes:

1. The City has over thirty-five Boards and Commission. These commissions cover a broad range of topics, fulfill a diverse array of obligations, and are bound by different procedures and requirements.
 - a. For example, pursuant to City Council Resolution, some commissions meet on their own schedule, some commissions have a maximum cap of ten or six meetings per year, and others meet as needed to fulfill their legal requirements. The 2017 Commission Meeting Frequency Schedule

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is included in this packet for the item regarding the Commission's 2018 meeting agenda.

- i. When discussing this issue at its last meeting, the OGC focused, in part, on the Loan Administration Board. The LAB is one of only three City commissions that meets as needed to fulfill legal obligations, and does not appear to be representative of the vast majority of City commissions.
 - b. Some commissions, such as the Board of Library Trustees, Planning Commission, Zoning Adjustments Board, Landmarks Preservation Commission, Fair Campaign Practices Commission, Police Review Commission and Housing Advisory Commission, serve an adjudicative capacity for the City, while others are advisory.
 - i. Responses from the City commissions reflect these differences. Before making a recommendation regarding imposing a deadline for posting of draft minutes, the OGC may want to consider the various obligations that these commissions already have regarding preparing notices of decision or written findings or reports.
2. Draft minutes are included in the agenda packets for the next meeting for the commission's review and approval, which, if they are meeting monthly, is published approximately fifteen business days after the meeting occurred.
3. Serving as a commission secretary is an extra task in addition to other primary responsibilities for the City. City staff who serve as commission secretaries have other primary job duties for the City, examples of these other duties include: processing permits, responding to Public Records Act Requests, handling litigation for the City, processing City revenue and expenditure contracts, running health and safety City programs and services, investigating unsafe conditions or allegations of misconduct, providing services to the public and elected officials, preparing City Council items, running programs, authoring reports, or documenting compliance necessary for the City to maintain or receive federal, state, or county funds or outside grants.
4. Estimates for the amount of time to prepare draft minutes ranged from one hour to six hours. Respondents noted that additional time is required to post on the website. This range likely reflects the diversity in types of commissions and the differences in volume and complexity of their work.

The responses below represent feedback from the City Clerk's Office and from fifteen City commissions. Responses have been edited slightly to anonymize responses and for clarity.

- ❖ I don't think I would be in favor of posting "draft minutes" from the commission within five days of the commission meeting. It can take about an hour to write up the minutes and post them on the website. On occasion, the website is down, which can lead to additional time.
- ❖ Per the Commissioners Manual, only "action minutes" are required. Other than approving the minutes and the agenda for each meeting, the commission takes action on one or two items per meeting, usually administrative in nature (e.g.,

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election of officers, adopting the annual meeting calendar, requesting an additional meeting, forming a subcommittee).

- ❖ When the commission takes a more substantive action to send a report or communication to council, this normally takes 2 or 3 or more meetings of discussion before action is taken. As a result, the minutes for each meeting are typically very sparse (e.g., commissioners in attendance, approval of minutes, and approval of agenda). Making these minutes available to the public within five days of the meeting appears to serve no purpose, but would definitely take time away from an extremely busy schedule.
- ❖ The draft minutes for each commission meeting already get published when the agenda for the next monthly meeting of the commission gets published, which is one week prior to the next meeting. Thus, there is only a 3 week gap after a meeting and when its draft minutes get published. Publishing the draft minutes within five days of the meeting, and then doing it again two weeks later in the regular agenda packet for the next meeting represents extra effort for virtually no benefit.
- ❖ The only benefit that I can discern is that there is interest among the public to see the results of actions taken at commission meetings. While this may be the case for the quasi-judicial commissions, at an empirical level, I have received this type of inquiry from the public or other commissioners approximately once or less per year. I normally provide this information over the phone or by email.
- ❖ The City Council does not publish draft minutes five days after the meeting. I don't see the value of creating a more stringent standard for those commissions that are advisory in nature.
- ❖ I think five business days is a reasonable time. I would favor a recommendation, as opposed to a requirement, for the five business day rule. Occasionally other, more pressing matters arise that would necessitate delaying the minutes.
- ❖ Based on the premise of a "reasonable" time frame also being reliable I would tentatively say two weeks is the minimum turnaround time to post the draft minutes. Our practice has been to include the draft minutes in the agenda for the next meeting approximately three weeks after the meeting. The reasons for this are largely the same reasons that committing to a five day turnaround would not be reasonable or reliable.
- ❖ Our staff for the Commission are also responsible for many other time sensitive tasks including permit processing and direct customer service for the public, agencies, and elected officials. Preparation of the agenda and meeting documents takes priority over other tasks for a week and a half prior to Commission meetings. That means that other important tasks which tend to fall behind prior to the meeting date need to be caught up immediately after. Additionally, switch back and forth between tasks more often than necessary is inefficient. Thus, we focus on the minutes and the next agenda concurrently as the two are closely related. In order to provide accurate minutes we cross reference both sets of staff notes for the meeting and sometimes review the draft minutes with the Commission chair, which all takes time, particularly if someone is sick, on vacation, or otherwise unavailable, which sometimes happens. A recommended due date for draft minutes would presumably leave some leeway for such occurrences, but a requirement for posting within five days might

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sometimes be violated or alternately lead to posting of abbreviated or inaccurate draft agendas.

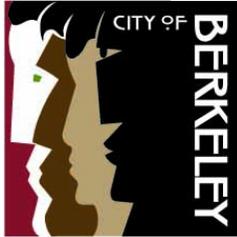
- ❖ We wait to post the minutes after the draft minutes have been reviewed and adopted. This is to give the opportunity for the Secretary to say to the commissioners: 'This is what I understood, is there anywhere in here where this is not an accurate representation of what happened? Are these names, dates, etc. correct?' or, 'I realized I couldn't tell what was said at X point. Can the membership review notes and help me clarify?'
- ❖ I feel it would be misleading to the public to post minutes that could, ultimately, be revised in substantive manner. Once someone checks the draft minutes (if they were posted), why would they go back and check after review? They won't realize the internal process, and that in a month, the document could change. So, they are likely never to read the final minutes.
- ❖ We always aim to have perfect minutes, and it is rare that there is any significant disagreement over the content, but still- to be human and a review by commission the following month facilitates better information reaching the public.
- ❖ I can understand why there is concern that the public should have minutes prior to the next meeting, so if the content triggers a concern they can get in there for the following meeting. However, commissions don't work at the 'final product' end of the municipal legislation process. There is plenty of time, almost always, for people to come to a meeting about something they've seen on the final minutes and for them to provide input before the process is completed.
- ❖ We are not in support of adding this new administrative task/layer for the following reasons: 1) Draft minutes may not reflect what actually happened at the meeting, as draft minutes they must be vetted and voted on by the full commission. There have been times when it takes more than one meeting to approve the minute; 2) A recommendation rather than a requirement in an ordinance is more practical because there may be situations where it is logistically difficult or impossible to adhere to a requirement (secretary out sick, Ektron down, for example); 3) secretaries have responsibilities to staff local City programs and commission staffing competes with programmatic priorities for staff time. 5 days seems reasonable however for the above-stated reasons our preference is to not post draft minutes
- ❖ We typically draft Action Minutes for [administrative] hearings a day or two after the hearing, as we need that info when we issue Notices of Decision (which are typically done five days after the hearing). While it would be one more thing for us to do (post draft minutes and later final minutes), we could do it within five business days.
- ❖ I post the minutes within 24 hours of the following month's meeting, when the draft minutes are reviewed and passed by the commission.
- ❖ Five business days seems reasonable; however, there should be a grace period or leeway for extenuating circumstances. There should not be a penalty or a complaint if draft minutes are posted one or two days after the recommended date.
- ❖ A few thoughts for your consideration: I do not currently post draft minutes as a separate document. Approved minutes are posted after they are approved at the next meeting by the Commission. I do post the draft minutes as a part of the

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agenda packet. The agenda packet is posted at least 72 hours in advance of the next meeting (per Brown Act requirements) so the Commissioners can review the draft minutes before they vote to approve them.

- ❖ It could be confusing/problematic to post draft minutes as a separate document before those draft minutes have been reviewed/edited for accuracy and approved by the commission.
- ❖ This change would increase Secretaries' work load. With this change: secretaries would post the draft minutes within 5 days, then post the draft minutes as part of the agenda packet, then remove those draft minutes, then post the approved minutes.
- ❖ Please keep in mind the already considerable number of requirements Secretaries must follow to ensure compliance with the Brown Act. The Brown Act is 94 pages. One alternative suggestion could be to require that the approved minutes be posted within 5 business days after Commission approval.
- ❖ If more requirements are to be added, I think it makes more sense to focus on the front end (i.e. getting the agenda out earlier), so the public has more notice before the meeting happens. I don't think it is as productive to focus on the posting of minutes after the action has already been taken.
- ❖ If you do decide to focus on the front end, consider that Secretaries don't always have control over when we receive the final agenda items/supplemental documentation from the Commissioners.
- ❖ It is often a struggle to get the agenda posted 72 hrs. before the meeting. I start the process at least 2 weeks out with the goal of posting the agenda packet 7 days before the meeting (7 days is recommended City policy/best practice) but it is not always possible due to all the back and forth/late submittals/edit requests from Commissioners.
- ❖ This would be an onerous burden for secretaries, especially secretaries for quasi-judicial commissions. There is no legal requirement and it takes a significant amount of time to create the minutes.



Open Government Commission

DATE: November 16, 2017

TO: OPEN GOVERNMENT COMMISSION

FROM: Emmanuelle Soichet

SUBJECT: Proposed changes to draft ordinance regarding lobbyist registration and revolving door prohibition, and changes to Open Government Commission authorization (BMC 2.06.190)

Before the Commission are finalized drafts of three proposed ordinances that would (1) amend the City's existing revolving-door restrictions, (2) add a lobbyist registration and regulation program, and (3) amend the Commission's authorization to enforce the lobbyist program.

These drafts reflect the most recent thoughts and work of a Commission subcommittee tasked to review the ordinances. The subcommittee recommends that the Commission approve the proposed ordinances in their current draft and recommend to Council that it adopt the proposed ordinances.

Procedural Background

On May 30, 2017, City Council referred to the Commission two, complementary ordinances: an ordinance to amend the City's revolving-door restrictions and an ordinance to add a lobbyist registration and regulation program. At its May and June meetings, the OGC formed a four-person subcommittee to address the ordinances.

The subcommittee met on Sept. 7, 2017, and unanimously decided to recommend that the Commission adopt the proposed ordinances with several minor changes. It also moved to recommend the Commission advise council to amend the authorization provisions contained in Berkeley Municipal Code (BMC) section 2.06.190 to account for the Commission's expanded role under the proposed ordinances.

The subcommittee was then asked to review and report back to the full Commission on several more proposed changes to the ordinances that were raised at the Commission's September 21, 2017, meeting. On October 23, 2017, the subcommittee discussed these proposed changes and made further revisions to the ordinances. The

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attachments to this memo reflect the changes unanimously approved by the subcommittee.

Revolving Door Ordinance

The current draft of the proposed changes to the Revolving Door Ordinance are reflected in **Attachment 1**. Chapter 2.07 of the Berkeley Municipal Code currently prohibits former City employees from lobbying Council, a City Commission or Board, or City staff for 12 months. The ordinance referred to the Commission by Council in May proposed to increase this lobbying restriction to 24 months.

The current version in **Attachment 1** does not change Council's proposed amendments. It does, however, add a provision prohibiting lobbying by campaign consultants for 24 months (proposed 2.07.050). This was originally part of the lobbyist ordinance, but the subcommittee believed it was more appropriately placed in the Revolving Door Ordinance. To account for this addition, the proposed ordinance updates the "definitions" section of Chapter 2.07.

Lobbyist Registration and Regulation Ordinance

The current draft of the proposed lobbyist ordinance is **Attachment 2**. The proposed changes to the version referred by Council are in tracked changes.

The draft makes the following substantive changes:

- Removes seemingly extraneous provisions and requirements;
- Clarifies the information to be reported by lobbyists on a quarterly basis regarding their activities;
- Removes a proposed limitation on gifts & honoraria from lobbyists; and
- Changes the enforcement provisions, borrowing some but not all enforcement provisions from BERA (e.g., BMC 2.12.230 and 2.12.445, but not provisions about individual ability to bring lawsuits).

The subcommittee also added definitions of undefined terms (and changed other definitions) for clarity and consistency, and edited references to defined terms for consistency.

Even after these changes, the subcommittee had some concerns about provisions included in Council's referral and in the current draft. These relate specifically to the broad impact of three provisions:

- Proposed 2.09.140 (F), which would disclose the names of people solicited by lobbyists, even if the solicitation was fruitless or the person solicited was unwillingly solicited;

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- Proposed 2.09.190 (“Deception Prohibited”) and 2.09.200 (“Prohibited Representations”), which together seem to prohibit activity and speech beyond the scope of lobbyist regulation.

Commission Authorization Provision

The changes to the OGC authorization provision in BMC 2.06.190 are reflected in **Attachment 3**. (They could be incorporated within the lobbyist ordinance.) The changes would expand the Commission’s duties to include enforcement of the lobbyist ordinance.

Otherwise, the subcommittee reviewed and rejected proposed changes to BMC 2.06.190 floated at the September 2017 that would have also altered the Commission’s authority regarding enforcement of the Brown Act, the Public Records Act, and the Open Government Ordinance. It did not consider whether to include enforcement of the Revolving Door Ordinance to the Commission’s duties. (The ordinance is currently enforced by the City Attorney, through complaints submitted to the City Clerk, or by individual lawsuits.)

Attachments

1. Revised Revolving Door Ordinance
2. Revised Lobbyist Registration and Regulation Ordinance
3. Revised OGC authorization, BMC 2.06.190

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.
- 2.07.050 Restriction on campaign consultants lobbying current and former clients.
- 2.07.060 Exceptions.
- 2.07.070 Applicability.
- 2.07.080 Waiver.
- 2.07.090 Enforcement.
- 2.07.100 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. "Campaign consultant" shall have the same meaning as set out in Chapter 2.09 of this Code.
- B. "Campaign consulting services" shall have the same meaning as set out in Chapter 2.09 of this Code.
- C. "City official" shall mean the Mayor and City Councilmembers.
- ~~B~~D. "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.
- ~~E~~G. "Employee" shall have the same meaning as set out in Title 20 of the Code of Federal Regulations § 404.1007(b).

~~FD.~~ "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.~~

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

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

~~IG.~~ "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.

The increase in the prohibition 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, 2018.

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 ~~Twenty-four~~ ~~twelve~~ (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.

2.07.050 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 lobby any officer of the city who is a current or former client of the campaign consultant.

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.

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

2.07.0650 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.

2.07.0760 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.

2.07.0870 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.

2.07.0980 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.

2.07.1090 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 Noncompliance—Order to show cause.~~

- 2.09.1040 Availability of information.
- 2.09.120110 Filing under penalty of perjury.
- 2.09.1230 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~~City officials prohibited.
- 2.09.190 Deception prohibited.

- ~~2.09.200~~ ~~Improper influence prohibited.~~
- ~~2.09.210~~ ~~False appearances prohibited.~~
- 2.09.2020 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

- ~~2.09.210~~ ~~Rules and regulations.~~
- ~~2.09.220~~ ~~Complaint and investigative procedures.~~
- ~~2.09.230~~ ~~Notice and hearing on violations.~~
- ~~2.09.240~~ ~~Violations – commission action.~~ ~~2.09.2450~~ ~~Procedures and action.~~
- 2.09.2560 Civil penalties.
- 2.09.2670 Criminal violation.
- 2.09.2780 Joint and several liabilities.
- 2.09.2890 Effective date.

Article 1. General Provisions

2.09.010 Title.

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

2.09.020 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~~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.

2.09.050 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. "City official" means the Mayor and City Councilmembers.

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

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

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

~~H~~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.

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

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

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

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

~~M~~L. "Influence" or "~~i~~nfluencing" 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.

~~N~~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 cityCity; 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, City officer official or City designated~~ employee, for the purpose of influencing any proposed or pending governmental action of the cityCity. 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.

~~O~~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.

~~P~~Q. "Person doing business with the cityCity" means any person whose financial interests are materially affected by governmental action as defined by Section 2.09.050(~~L~~M). It includes persons currently doing business with the cityCity, planning to do business with the cityCity, or having done business with the cityCity 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 cityCity officers or employees.

QP. "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.

RQ. "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.

SR. "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.

T. "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:

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

b. The name, business address, and business telephone number of each client for whom the local governmental lobbyist attempts or is-receives compensation to influence any proposed or pending governmental action of the City performing lobbyist services.

c. The name, business address, and business telephone number of the local governmental 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 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 ~~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).

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 ~~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 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 cityCity 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 cityCity 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 cityCity 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 cityCity board or commission.

~~**2.09.100 — 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.~~

2.09.1040 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 cityCity, and shall be open to public inspection.

2.09.1120 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.

2.09.1230 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 ~~C~~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, (1) the name of each ~~cityCity officer-official~~ with whom the lobbyist communicated, (2) the name and title of any ~~cityCity~~ board member or commissioner with whom the lobbyist communicated, and (3) the identity of any ~~cityCity~~ employee with whom the lobbyist communicated, ~~only~~ 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 ~~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 official or officeholder, officer of the City,~~ candidate for elected ~~cityCity~~ 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 ~~cityCity~~ officeholder or candidate for elected ~~cityCity~~ 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~~City officeholder, candidate for ~~city~~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 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 cityCity officials prohibited.

Local governmental lobbyists, clients, contractors, and persons doing business with the cityCity shall abstain from carrying out any act with the express purpose and intent of placing any cityCity officer-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, client, contractor or person doing business with the cityCity shall deceive or attempt to deceive a cityCity official or designated-City 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.~~

2.09.2020 Prohibited representations.

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

~~**2.09.230 — 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. 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.~~

~~B. 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;~~

~~f. campaign contributions not to exceed the limit imposed by the City of Berkeley and;~~

~~g. 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.~~

~~C. 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.~~

Article 6. Enforcement

2.09.210 Rules and regulations.

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

2.09.250220 Procedures and action Complaint and investigative procedures.

~~A. Any person who violates this Act is subject to civil enforcement proceedings before the Open Government Commission.. 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. Any person who believes that a violation of any portion of this chapter has occurred may file a complaint with the Open Government Ceommission. If the commission~~

determines that there is reasonable cause to believe that a violation of this chapter has occurred, it shall make an investigation. If the commission has reason to believe that a violation of this chapter has occurred or is about to occur, it may institute action at law or equity to enforce and compel compliance with the provision of this chapter.

2.09.230 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.

2.09.240 Violations – commission action.

~~C.~~ 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, or (4) take other action as specified in 2.06.190(A)(1)(d).

2.09.2560 Civil penalties.

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

~~BA.~~ 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~~ violationsustained.

~~BC.~~ 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.

2.09.2670 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.

2.09.2780 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.

2.09.2890 Effective date.

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

2.09.29300 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.

Section 1. That Berkeley Municipal Code Section 2.06.190 is amended to read 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.