



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  
**September 21, 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 July 20, 2017 regular meeting.
6. Staff Report regarding Presenting Agenda Items to Council.
7. Report from Lobbyist Registration and Revolving Door Subcommittee; discussion and possible action.
8. 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., 4<sup>th</sup> Floor, Berkeley, CA.



Open Government Commission

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

Regular Meeting  
**July 20, 2017**

Members Present: Brad Smith, Dean Metzger, Greg Harper, Daniel Saver (temporary appointment), Emma Soichet, Hamsini Sridharan, Brian Tsui

Members Absent: Mark McLean (excused), Patrick O'Donnell

Also Present: Jessica Mar, Secretary/Deputy City Attorney

1. **Call to Order**

Chair called the meeting to order at 8:00 p.m.

2. **Roll Call**

Roll call taken.

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

1 public comment on matters not on agenda. 10 members of the public in attendance.

4. **Reports.**

- a. No report from Chair.
- b. No report from Staff.

5. **Approval of minutes for the May 18, 2017 regular meeting.**

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

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

6. Revised 2016 Annual Report; discussion and possible action.

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

*Motion to accept Annual Report and forward the accepted Annual Report to the City Council.* (M/S/C: Metzger/Harper; Ayes: Smith, Metzger, Harper, Saver, Soichet, Sridharan, Tsui; Noes: None; Abstain: None; Absent: McLean (excused), O'Donnell).

7. Recommendation regarding reordering of Council agenda items; discussion and possible action.
  - a. Public Comment: no speakers.
  - b. Commission discussion and action.

*Motion to direct Chair to work with staff to finalize report and send to Council. (M/S/C: Soichet/Metzger; Ayes: Smith, Metzger, Harper, Saver, Soichet, Sridharan, Tsui; Noes: None; Abstain: None; Absent: McLean (excused), O'Donnell).*

8. Referral from Council regarding amending the Revolving Door Ordinance in Berkeley Municipal Code 2.07.020, 2.07.030, 2.07.040, and 2.07.050, modifying revolving door restrictions and adding Berkeley Municipal Code 2.09: Lobbyist Registration and Regulation; discussion and possible action.
  - a. Public Comment: 1 speaker.
  - b. Commission discussion and action.

*Motion to include the amendments to Berkeley Municipal Code 2.07 regarding the Revolving Door Ordinance within the purview of the ad hoc subcommittee created on May 18, 2017 to consider the issue of the Lobbyist Registration and Regulation proposed to be added as Berkeley Municipal Code 2.09. (M/S/C: Sridharan/Saver; Ayes: Smith, Metzger, Harper, Saver, Soichet, Sridharan, Tsui; Noes: None; Abstain: None; Absent: McLean (excused), O'Donnell).*

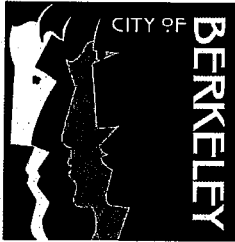
*Motion to add Commissioner Harper to the ad hoc subcommittee comprised of Vice Chair Metzger and Commissioners Callahan and Soichet (M/S/C: Soichet/Saver; Ayes: Smith, Metzger, Harper, Saver, Soichet, Sridharan, Tsui; Noes: None; Abstain: None; Absent: McLean (excused), O'Donnell).*

9. Report from Subcommittee regarding adding Chapter 2.09 to the Berkeley Municipal Code, Lobbyist Registration and Regulations; discussion and possible action.
  - a. Public Comment: no speakers.
  - b. No report from the Subcommittee.

10. Adjournment.

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

The meeting adjourned at 9:03 p.m.



Open Government Commission

**DATE:** September 21, 2017  
**TO:** OPEN GOVERNMENT COMMISSION  
**FROM:** JESSICA MAR, OGC Secretary JM 9/17  
**SUBJECT:** Presenting Agenda Items to Council

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At its May 30, 2017 meeting, the Berkeley City Council formally referred proposed amendments to modify the existing Revolving Door Restrictions in Berkeley Municipal Code ("BMC") sections 2.07.020, 2.07.030, 2.07.040, and 2.07.050 and language to add a Lobbyist Registration and Regulation ordinance as BMC Chapter 2.09 to the Open Government Commission and the OGC has moved to create an ad hoc subcommittee on this item.

Staff has been asked to provide the relevant section on coordination with Council from the Berkeley Commissioners' Manual to the Commission, to assist the Commission in preparing any reports for Council. The section on presenting agenda items to Council provides information on the process of preparing reports that may be helpful to the Commission in responding to this referral:

A commission transmits its findings, responses to referrals and other communications to the Council through the Council agenda. Upon the direction of a commission, the secretary submits a completed commission report for the Council agenda to the agenda process no later than three weeks following commission action. The members of the commission are responsible for providing the content of the report to the secretary. The report will be placed on an upcoming Council agenda based on City Manager timelines and Council Rules of Procedure for scheduling matters on the agenda. All reports are due 33 days prior to the meeting date. The commission is responsible for drafting the text of the report and providing the final text to the secretary. The secretary of the commission is responsible for formatting and submitting the commission report as approved by the commission and upon final review by the commission Chair or his/her designee. The Chair of the commission should be listed on the report on the "Submitted by:" line in the heading. The City Manager may ask the commission for additional information and/or clarification before placing the report on the agenda.

OGC

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Berkeley Commissioners' Manual (2012 Edition), Chapter III, Section A.3, p. 29.

Please note, that in order to be placed on the Council's agenda, the Commission must approve the report for submission to Council, and a completed Commission report must be provided to the secretary for formatting and submission in the City's online system. Under the City's timelines for scheduling matters on the agenda, all reports are due 33 days prior to the meeting date.

Attachments

1. Berkeley Commissioners' Manual (2012 Edition), Chapter III, Section A  
"Coordination with Council," pp. 28- 31.

## **CHAPTER III. COORDINATION WITH COUNCIL, STAFF AND OTHERS**

### **A. COORDINATION WITH COUNCIL**

#### **1) Relationship to Council**

All commissions, even those which are quasi-judicial, administrative or advisory to the City Manager also advise the City Council. As the only authorized legislative body of the City, the Council is responsible for accepting, rejecting or modifying commission recommendations. The Council relies on the various commissions to increase the variety of viewpoints and talents brought to bear on City problems. By concentrating on specific areas, commission members expand their expertise and conduct detailed analyses that the Council itself may not have the time to pursue. It is expected that commissions will adopt positions of advocacy within their specific spheres of interest. However, the Council's role is to take into consideration the many varied and sometimes conflicting public needs and render its judgment of what will best serve the public good. The Council must weigh the effect of any given recommendation, not only on the particular area of interest, but on all other City goals and programs.

Just as the commissions advise the City Council concerning policy but do not create policy, so too do the commissions advise the City Council concerning various programs run by the City but do not themselves operate programs. The exceptions to this principle is the Board of Library Trustees which has administrative powers.

It is the responsibility of the City Manager and the City staff to operate programs authorized by the City Council. In a few cases a specific program will be designated by the Council to be sponsored by a specific commission, and even in such instances the administration is the responsibility of City staff.

#### **2) Communications from Council**

Each commission will be given an opportunity to review and make recommendations on items relevant to its charge. The City staff will notify commissions of relevant items requiring Council action while the item is still in the development stage so as to provide adequate response time.

The Council may also transmit referrals for information or action through the City Clerk who notifies the secretary of the commission. The secretary then notifies the commission. When appropriate, the Council may indicate a desired date for response and specify commissions to be consulted.

Each item presented to the City Council on the Council agenda whether generated by City Manager, Councilmembers, or commissions, shall indicate to whom the item has been referred, the date of referral, and any responses. Each commission may elect to respond by means of a separate report or communication.

The City Clerk posts City Council agendas, annotated agendas, and all reports and proposed resolutions and ordinances on the City's website. The City Clerk also provides live captioned webcast and video archives of meetings. The City offers e-mail subscription notification at [www.cityofberkeley.info/subscribe](http://www.cityofberkeley.info/subscribe) for newly posted Council information. Commissioners who wish to be notified when new electronic copies of agendas and annotated agendas are posted may subscribe to the City's e-mail subscription service or request agendas and annotated agendas from the Commission Secretary.

### 3) Presenting Agenda Items to Council

A commission transmits its findings, responses to referrals and other communications to the Council through the Council agenda. Upon the direction of a commission, the secretary submits a completed commission report for the Council agenda to the agenda process no later than three weeks following commission action. The members of the commission are responsible for providing the content of the report to the secretary. The report will be placed on an upcoming Council agenda based on City Manager timelines and Council Rules of Procedure for scheduling matters on the agenda. All reports are due 33 days prior to the meeting date.

The commission is responsible for drafting the text of the report and providing the final text to the secretary. The secretary of the commission is responsible for formatting and submitting the commission report as approved by the commission and upon final review by the commission Chair or his/her designee. The Chair of the commission should be listed on the report on the "Submitted by:" line in the heading. The City Manager may ask the commission for additional information and/or clarification before placing the report on the agenda.

On rare occasions an advisory commission may be unable to achieve the number of votes needed to take official action. Any commission may communicate the opinion of fewer members than the officially required majority. Nothing in this section shall be construed to prevent the City Manager from reporting what occurred at the commission meeting.

***Example:*** A commission of nine members, where there are only five members present at the meeting (thus achieving the required quorum). These five members disagree: three voting for a proposal and two against. If time permits the matter would be held until all members were present and a definitive recommendation voted upon. If, however, the matter is time sensitive, the commission could elect to communicate the facts to the Council and indicate those voting for each of the opposing viewpoints.

Commissions may submit items to the Consent Calendar, Action Calendar, and Information Reports for the Council agenda. To be accepted for the agenda, Action and Consent Items must contain a specific recommendation for Council

approval, adoption or authorization. Such recommendations should be clear and spell out who is taking action and what the action will accomplish.

The subject matter appropriate for Information Reports is that which seeks to advise or inform the Council on a subject but does not request any action or report by the Council.

The subject matter appropriate for the Consent Calendar is that which recommends a specific Council action and is routine, non-controversial, easily explained and can be expected to receive Council approval without discussion. A subject which is controversial and complex and can be expected to generate Council discussion should not be transmitted as a Consent Calendar item but as an Action Item.

A commission report to Council shall state the full commission motion and the listing of how each commissioner voted. It must also state whether or not any commissioner was recused and the reason for recusal. Further, a complete commission report shall include all opposing points of view and not be limited to discussion of reasons for opposition stated by commissioners only.

This section is only intended to give you an overview of communicating to Council. For more detailed procedures on this subject, see Chapter VI. City Council Agenda Process.

#### **4) Completed Commission Work**

It is the commission's responsibility to provide complete, concise and accurate reports to the Council, prepared in such a manner that the City Council fully understands the issue and what action, if any, it is to take. A commission report should include a clear recommendation, the reason for the recommendation, the facts on which it is based, points of disagreement within the commission or with staff, if any, all opposing points of view, and the minority recommendation, if any. Quality commission reports and recommendations take into account the Council's need to view an issue from as many perspectives as possible. The Council must fully understand the relevant background and implications, including costs, of each action it is asked to take. It is the commission's responsibility to provide that requisite information insofar as possible. Submission of quality reports will enable the City Council to act knowledgeably and expeditiously on commission reports and will reduce the likelihood of the Council referring the report back to the commission for clarification. Prior to making a recommendation to the Council, the concerns of all affected stakeholders should be solicited and reported to the Council in the commission report.

Quality reports entail four key procedural aspects:

- Review by other affected commissions prior to submission to the City Council;



- Proper report format and preparation;
- Legal review when appropriate; and
- Realistic funding plans which do not hurt other programs.

## 5) Council Meetings and Agendas

Regular City Council meetings are generally held twice monthly on Tuesdays. The schedule is established annually taking into consideration holidays and election dates.

As an early order of business the Council considers the Consent Calendar; however, items may be removed from the Consent Calendar and discussed later in the meeting or carried over for discussion to the next regular meeting unless the City Manager requests the matter be heard as a priority.

During the discussion of the Consent Calendar the Council may move Information Reports to the Action Calendar for discussion or to be carried over as pending business until discussed or withdrawn.

Supplemental items accepted by at two-thirds vote of the Council will be available in the reference binder at the Council Chambers at the Council meeting.

When authorized by the full commission, the Chair or the representative of the commission has the right to address the City Council on matters within their charge at the time their item is heard. They may address Council from the staff table. Each commission may present a majority and minority position. Commission members not delegated to speak as the official representative may utilize the Public Comment period to present information to Councilmembers.

## B. COORDINATION WITH STAFF

### 1) Duties of Secretary

An employee of the City designated by the City Manager serves as secretary to the commission. The staff secretary represents the City Manager and at the same time, assists the commission in its functions and advises the commission of staff's recommendations. Individuals assigned to serve as secretaries to a commission are there to perform the ministerial and housekeeping functions as outlined below and do not vote. The secretary should inform commissioners about activities, projects and work that is taking place in the organization and among other commissions. In addition to this, as City professionals, they have the responsibility to assure that the commission is apprised of laws and administrative processes affecting proposed policy recommendations and operational recommendations. This will save reprocessing all the good work of these bodies which serve largely without compensation and which contribute valuable time to the City.



Open Government Commission

**DATE:** September 21, 2017

**TO:** OPEN GOVERNMENT COMMISSION

**FROM:** Emmanuelle Soichet, OGC Revolving Door and Lobbyist Registration Subcommittee

**SUBJECT:** **Revolving Door and Lobbyist Registration Subcommittee Report**

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

The subcommittee met on Sept. 7, 2017, and unanimously passed a motion (Metzger/Harper) to recommend that the OGC adopt the proposed Revolving Door and Lobbyist Registration and Regulation Ordinances, as referred by Council, with the following changes:

- Adding to the Lobbyist Registration and Regulation Ordinance an amendment to Berkeley Municipal Code section 2.06.190 to expand the authority of the OGC;
- In Proposed section 2.09.80, subdivision (A), replacing "within 30 days of" with "on the occasion"; and
- In Proposed section 2.09.160, replacing "Section" with "Chapter."

In addition, there were several possible revisions that the subcommittee recommends the OGC consider discussing at its Sept. 21, 2017, meeting. They are:

1. Adding an online disclosure provision;
2. Moving section 2.09.240 from the Lobbyist Registration Ordinance to the Revolving Door Ordinance;
3. Amending section 2.09.250 to match and be consistent with the proceedings provisions of the FCPC (i.e., adding a hearing option); and
4. Amending section 2.09.260 penalties to be consistent with penalties under BERA, in particular to allow for aggravating factors (such as repeat offenders) past the currently proposed \$1,000 maximum penalty.