



Fair Campaign Practices Commission
Open Government Commission

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

MEETING AGENDA

November 20, 2025

6:30 p.m.

2180 Milvia St., Berkeley, CA 94704

1st Floor, Cypress Room

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.

A live broadcast of this meeting will be available at: <https://cityofberkeley-info.zoomgov.com/j/1614055306>. Public comment will be taken in-person and virtually through the posted link.

Secretary: Stephen Hylas

The Commission may act on any item on this agenda

1. Call to Order 6:30 p.m.
2. Roll Call.
3. Land Acknowledgement: The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this uncended stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan Tribe and to create meaningful actions that uphold the intention of this land acknowledgement.

4. Approval of agenda.
5. Public Comment. *Comments on subjects not on the agenda that are within the Commissions' purview are heard at the beginning of meeting. Speakers may comment on agenda items when the Commission hears those items.*
6. Approval of minutes for September 18, 2025 FCPC-OGC Regular Meeting.

Fair Campaign Practices Commission (FCPC) Agenda

7. Reports
 - a. Report from Chair
 - b. Report from Staff
8. Report from Negotiating Subcommittee: Yes on Measure CC / No on Measure BB; discussion and possible action.
9. Review and possible revision of Procedures for the Fair Campaign Practices Commission; discussion and possible action.
10. Report from subcommittee on possible revisions of BERA¹ and FCPC Regulations²; discussion and possible action.

Open Government Commission (OGC) Agenda

11. Reports.
 - a. Report from Chair
 - b. Report from Staff
12. Complaint alleging irregularities at City Council April 28, 2025 special meeting; discussion and possible action.
13. Clerk referral of Non-Filing by Quarterly Lobbyist Filer Alexander Taplin; discussion and possible action.
14. Complaint from Kelly Hammargren re remote public access to City board and commission meetings; discussion and possible action.
15. Progress in providing remote access to Commission and Board meetings; discussion and possible action.

¹ <https://berkeley.municipal.codes/BMC/2.12>

² <https://berkeleyca.gov/sites/default/files/2022-01/FCPC-Regulations.pdf>

16. Complaint of Non-Compliance with Public Records Act (Johlyece Dotson); discussion possible action.
17. Referral of non-filing quarterly lobbying reports: Yuri Sadiki-Torres; discussion and possible action.
18. Web Content Accessibility Guidelines: improving compliance on the City of Berkeley website; discussion and possible action.
19. Annual report pursuant to BMC section 2.06.190.C; discussion and possible action.

Joint FCPC-OGC Agenda

20. Adopt 2026 Meeting Schedule; discussion and possible action.
21. Adjournment

Communications

- Email from Clifford Fred (Nov. 9, 2025)

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



Fair Campaign Practices Commission
Open Government Commission

DRAFT MINUTES
September 18, 2025

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

Civic Center
2180 Milvia St.
Berkeley, CA 94704
Cypress Room

Secretary: Samuel Harvey

Members Present: David Shere, Pajouabla Monica Lee, Janis Ching, Helene Silverberg, Emmanuelle Soichet, Rithwik Sudharsan, Kyle Haugh, Kitt Saginor

Also present: Stephen Hylas, Staff Secretary

1. **Call to Order**

Chair called the meeting to order at 6:33 p.m.

2. **Roll Call**

Roll call taken

3. **Land Acknowledgement**

4. **Approval of agenda**

- a. Public comment: none.
- b. Commission discussion and action.

Motion to approve agenda (M/S/C: Haugh/Ching; Ayes: Schere, Lee, Ching, Silverberg,, Haugh, Saginor; Noes: none; Abstain: none; Absent: Soichet, Sudharsan, Lazarus)

5. **Public Comment**

No speakers

6. **Approval of minutes for July 17, 2025 FCPC-OGC Regular Meeting**

- a. Public comment: none.
- b. Commission discussion and action.

Motion to approve minutes (M/S/C: Ching/Lee; Ayes: Schere, Lee, Ching, Silverberg,, Haugh, Saginor; Noes: none; Abstain: none; Absent: Soichet, Sudharsan, Lazarus)

Fair Campaign Practices Commission (FCPC) Agenda

7. Reports

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

8. Report from Negotiating Subcommittee: Yes on Measure CC / No on Measure BB

- a. Public comment: none.
- b. Item continued to October meeting.

9. Public financing matching funds disbursement process

- a. Public comment: none.
- b. Item continued to October meeting.

10. Review and possible revision of Procedures for the Fair Campaign Practices Commission; discussion and possible action.

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

11. Review and revisions of BERA and FCPC Regulations.

- a. Public comment: none.
- b. Commission discussion and action

Motion to empanel ad hoc committee to review BERA and FCPC Regulations and prepare possible revisions (M/S/C: Lee/Shere; Ayes: Schere, Lee, Ching, Silverberg, Soichet, Sudharsan, Haugh, Saginor; Noes: none; Abstain: none; Lazarus)

Chair Saginor appointed Commissioners: Lee, Sudharsan, and Haugh.

Open Government Commission (OGC) Agenda

12. Reports

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

13. **Complaints received July 2 & 3, 2025 re Council consideration of middle housing zoning ordinance amendments and conforming zoning map, and General Plan amendments at June 26, 2025 special meeting**

- a. Public comment: one speaker.
- b. Commission discussion and action

Motion to dismiss the complaints received July 2 & 3, 2025 re Council consideration of middle housing zoning ordinance amendments and conforming zoning map, and General Plan amendments at June 26, 2025 special meeting (M/S/C: Haugh/Soichet; Ayes: Schere, Lee, Ching, Silverberg, Soichet, Sudharsan, Haugh, Saginor; Noes: none; Abstain: Ching; Absent: Lazarus)

14. **Complaint alleging irregularities at City Council April 28, 2025 special meeting; discussion and possible action**

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

Motion to refer this matter to the Secretary to review and investigate the complaint and return to the October meeting with a report and a recommendation.
 (M/S/C: Silverberg/Haugh; Ayes: Schere, Lee, Ching, Silverberg, Soichet, Sudharsan, Haugh, Saginor; Noes: none; Abstain: none; Absent: Lazarus)

15. **Complaint from Kelly Hammargren re remote public access to City board and commission meetings**

- a. Public comment: two speakers.
- b. Commission discussion and action

Motion to refer this matter to the Secretary to review and investigate the complaint and return to the October meeting with a report and a recommendation.
 (M/S/C: Ching/Sudharsan; Ayes: Schere, Lee, Ching, Silverberg, Soichet, Sudharsan, Haugh, Saginor; Noes: none; Abstain: none; Absent: Lazarus)

16. **Referral of non-filing quarterly lobbying reports: Yuri Sadiki-Torres**

- a. Public comment: no speakers.
- b. Item continued to October meeting.

17. **Lobbyist Registration Forms and Procedures**

- a. Public comment: no speakers.
- b. Item continued to October meeting

18. **City Council Rules of Procedure and Order**

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

19. **Progress in providing remote access to Commission and Board meetings**

- a. Public comment: two speakers.
- b. Commission discussion and action

Motion to ask City Clerk to come to a meeting to explain the challenges in providing remote access to Commission and Board meetings and prior to that attend to hear discussion of item (M/S/C: Ching/Sudharsan; Ayes: Schere, Lee, Ching, Silverberg, Soichet, Sudharsan, Haugh, Saginor; Noes: none; Abstain: none; Absent: Lazarus)

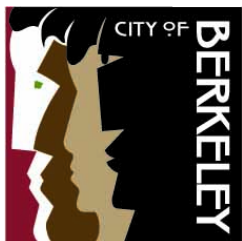
20. **Web Content Accessibility Guidelines: Improving compliance on the City of Berkeley Website**

- a. Public comment: two speakers.
- b. Commission discussion.

21. **Adjournment**

Motion to adjourn (M/S/C: Schere/Soichet; Ayes: Schere, Lee, Ching, Silverberg, Soichet, Sudharsan, Haugh, Saginor; Noes: none; Abstain: none; Absent: Lazarus)

The meeting adjourned at 9:16 p.m.



Fair Campaign Practices Commission

To: Fair Campaign Practices Commission
From: Sam Harvey, Commission Secretary
Subject: Final Draft Revisions to FCPC Procedures

At its September 18, 2025 meeting, the Commission reviewed proposed changes to the Commission's Procedures that were presented by the Commission subcommittee created to prepare a set of possible revisions. After the discussion, the Commission directed staff to fix a few typographical mistakes and submit a final draft to the Commission for adoption.

Accordingly, Commission staff have prepared the attached draft for the Commission's review and approval.

Attachment:

1. FCPC Procedures Final Draft with Redline Revisions, November 2025

PROCEDURES
for the
FAIR CAMPAIGN PRACTICES COMMISSION

Final draft with redline revisions November 2025

July 1998
(Revised July 2014)

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Fair Campaign Practices Commission Procedures

Note: The terms used in these procedures shall have the same meaning as in the Berkeley Election Reform Act of 1974, as amended (hereafter cited as BERA) to the extent they appear in that ordinance.

I. Meetings

A. Regular Meetings

1. A regular meeting of the Commission shall be held on the third Thursday of each month beginning at ~~6.30~~ 7:00 p.m. By majority vote, the Commission may change the date on which a given regular meeting will take place and may schedule regular meetings more or less frequently than once each month.
2. The agenda for each regular meeting shall be established by the Chairperson. Any commissioner may propose to the Commission matters for a future agenda. For matters of a time sensitive nature, a commissioner may submit a request to the Chairperson (through the Secretary) to add an item to the next agenda. For good cause, a majority of the Commission may delete matters from the agenda.
3. When the Chairperson, in consultation with the Secretary, determines that there is presently no business requiring Commission action, ~~he or she~~ they may cancel the next regular meeting.

B. Special Meetings

The Chairperson or a majority of commissioners may call a special meeting to occur at any time other than a regular meeting, consistent with the Brown Act. Notice of at least 24 hours must be provided to all commissioners and, to the extent required by law and these procedures, to the public and the press. Only matters contained in the meeting notice may be considered.

C. Executive Session

The Commission may meet in closed session to consider such matters as the law allows. Closed sessions shall generally be scheduled to occur immediately following regular meetings.

D. Meetings in General

1. Unless otherwise specified in these procedures, conduct of all

Commission meetings shall be in accordance with the guidelines in the City of Berkeley Commissioners' and Board Members' Manual (current ed.) and, where that document is silent, the current edition of Robert's Rules of Order.

2. Public participation in all Commission meetings is encouraged. Public comment shall be held in compliance with the Brown Act and the Commissioners' and Board Members' Manual.
 - a. *Public comment-non-agenda items:* At the beginning of each meeting, there will be a public comment period of two minutes per speaker during which members of the public may speak on items within the Commission's jurisdiction but that are not on the agenda. If there *are* more than five speakers on matters not on the agenda, the Chairperson, prior to opening public comment, may limit public comment for all speakers to one minute per speaker.
 - b. *Public comment- agenda items:* The Commission will take public comment on items that are on the agenda prior to or during the Commission's consideration of each item. The time for public comment shall generally be two minutes per speaker. If there *are* more than ten speakers on an issue, the Chairperson, prior to public comment on the agenda item, may limit public comment for all speakers to one minute per speaker.
 - c. When the Commission is considering an investigative report stemming from a Complaint or initiated by the Secretary, the Complainant, if any, and Respondent will each be given up to five minutes to speak to the Commission.
3. The Secretary shall cancel any meeting ~~when there is where he or she has~~ good cause to believe that a quorum will not be present, and shall attempt to notify commissioners and all others previously given notice of that meeting of its cancellation. The Secretary shall also post a cancellation notice. In consultation with the Chairperson, the Secretary may also cancel a regular meeting if there are no items of new or old business before the Commission.

II. Organization and Responsibilities

A. Officers

1. The Commission shall elect a Chairperson and a Vice Chairperson annually at its regular meeting in February. If the Commission does not hold a February meeting, the election shall take place at the first regular

meeting thereafter. After receiving written notice of resignation from an officer, the Commission shall promptly elect a successor to serve the balance of that officer's term.

2. The Chairperson shall perform the following duties in addition to any other duties which are necessary or customary to this office:
 - a. Preside at all Commission meetings;
 - b. Appoint ad hoc committees and chairpersons of ad hoc committees;
 - c. Approve the agenda prior to distribution;
 - d. Sign authorized correspondence on behalf of the Commission or, unless expressly prohibited, delegate such responsibility to the Secretary;
 - e. Administer oaths and affirmations to persons testifying before the Commission;
 - f. Provide guidance to the Secretary regarding staff execution of the Commission's business, including, but not limited to, investigation of possible violations of BERA, review of campaign statements and audits of candidates and committees;
 - g. Represent the Commission in dealings with the City Manager, the City Attorney, and other City staff regarding administrative and budgetary matters and the execution of enforcement activities authorized by the Commission;
 - h. Represent the Commission before the City Council on matters authorized by the Commission. No prior authorization is required for budgetary matters consistent with prior Commission action~~;~~;
 - i. Exercise the authority of the Commission with regard to administrative matters on which prompt action must be taken prior to the next scheduled meeting, provided that (1) the Chairperson shall report fully each action taken pursuant to this authorization at the next meeting and (2) this authority shall not include the power to dismiss a complaint, to make any finding of probable cause or violation, to demand records under BERA Section 2.12.250(d) or to seek judicial relief or remedies on behalf of the Commission.
3. In the event of absence of the Chairperson from a meeting or ~~their his or her~~ inability to conduct other duties of that office, the Vice Chairperson shall assume the duties of the Chairperson for the duration of such absence

or inability. If both officers should be absent or unable to conduct other duties of the Chairperson, the commissions shall elect one of their members to act as Chairperson pro tem for the duration of such absence or inability.

B. Commissioners

1. Commissioner Attendance/Termination for Absences

- a. Leaves of Absence. The appointing official, or ~~his or~~their successor, may grant a commissioner a leave of absence for up to three months.
- b. Automatic Termination of Appointment for Excessive Absenteeism. Because the Fair Campaign Practices Commission was created as a result of an initiative ordinance adopted by the voters, members of this commission are exempt from the automatic termination provision of BMC Section 3.02.020. However, through the adoption of these Procedures, the Commission agrees that a commissioner's appointment shall be terminated upon their ~~his or her~~ unexcused absence from three consecutive regular meetings of the Commission. Absences during an approved leave of absence are considered excused and thus do not count toward the three consecutive absences.
- c. Notice of Absenteeism. If the commissioner's absence from the next meeting will result in termination, the secretary shall so advise that commissioner.

2. Other Grounds for Termination

The following are additional reasons that a commissioner shall be terminated from the Commission:

- a. The non-filing of required Conflict of Interest Disclosure Statements;
- b. Failure to take the Oath of Office within thirty days of the date of the appointment letter; and
- c. Failure to meet the qualifications for membership pursuant to Section 2.12.195 of the Berkeley Election Reform Act.

3. Reappointment

Section 2.12.175 states "Each member of the commission shall serve for the same term as the councilmember appointing them. Members of the commission

may not be reappointed by the same councilmember....A member whose term has expired shall serve until his or her successor is appointed.” Based on this provision, a commissioner can continue to serve once appointed for the full term of the appointing Councilmember, and cannot be removed by the Councilmember who appointed ~~them him or her~~. If a new Councilmember is elected, that Councilmember may immediately replace the commissioner, or allow the existing commissioner to continue to serve until a new commissioner is appointed. Pursuant to Section 2.12.175, a terminated commissioner cannot be reappointed by the same Councilmember. This does not preclude a commissioner’s reappointment by a different Councilmember for an open seat on the Commission. This means that upon termination for the reasons set forth above, a commissioner cannot be reappointed by ~~their his or her~~ appointing Councilmember.

4. Resignation

A Commissioner wishing to resign shall submit a letter of resignation to the City Clerk, the appointing Councilmember and the Commission Secretary. Once submitted to the City Clerk, a letter of resignation cannot be withdrawn.

C. Commission Staff

1. The Secretary of the Commission means the employee of the City designated by the City Manager to act in this capacity~~;~~.
2. The duties of the Secretary are as follows:
 - a. Assist the Commission in the discharge of its responsibilities, including providing the Commission with advice and recommendations concerning possible violations, enforcement options, procedures and regulations;
 - b. Attend all Commission meetings and, to the extent feasible, meetings of ad hoc ~~sub~~committees;
 - c. Obtain and maintain minutes of meetings and records of proceedings, including hearings, and official actions, and all other records and documents relevant to the duties of the Commission;
 - d. Prepare and distribute Commission correspondence and reports, including materials for meetings;
 - e. Notify commissioners of meetings and prepare the agenda as approved by the Chairperson;

- f. Report on attendance of each commissioner to the City Clerk;
 - g. Provide technical assistance and informal advice to actual or potential candidates and committees active in Berkeley;
 - h. Review each campaign statement filed or required to be filed pursuant to BERA for adherence to the law and Commission regulations and request amendments to correct apparent violations or deficiencies; process all complaints alleging violations of BERA according to procedures below ~~at section IV~~ and report to the Commission all significant possible violations as provided by these procedures;
 - i. Perform or supervise investigations, including audits of possible violations of BERA as provided by these procedures or specifically requested by the Commission, and provide thorough reports to the Commission of the results;
 - j. To the extent authorized by the City Manager or the City Attorney, represent the Commission in civil or criminal proceedings it has instituted pursuant to BERA, and in dealings with judicial or other governmental officials;
 - k. Preserve strict confidentiality with regard to details and documents concerning any matter under investigation for potential violation of law or regulation until it can be fully reported to the Commission and affected parties, or unless it is required to be disclosed pursuant to the California Public Records Act. (All campaign statements and reports, as well as correspondence concerning amendments to such documents, are public records and are not confidential.)
3. Other Commission Staff. Unless otherwise prohibited, the Secretary may delegate to other City staff any matter or duty for which ~~they are~~ ~~he or she is~~ responsible.

III. Request for Advice and Opinions

A. Requests for Advice

- 1. Any person may informally request advice from the Commission regarding ~~their~~ ~~his or her~~ duties and responsibilities under BERA. Such requests shall present all relevant facts as concisely as possible and shall state the question or questions based on the facts.
- 2. The Secretary shall provide advice orally or through electronic communication if the matter is routine or does not require substantial

interpretation of the ordinance.

3. If a request for advice is complex or requires interpretation of the ordinance in an area where there is not a regulation or clear Commission policy, the Secretary shall consult with the Chairperson and may seek the advice of the City Attorney prior to giving any advice, which shall be made in writing. The Secretary may also decide that the matter must be handled only through the formal opinion process.
4. In any proceeding before the Commission, a candidate or committee may present evidence of advice rendered to it only if that entity and its representative(s) were identified to the Secretary at the time the advice was requested. Advice of the Secretary does not constitute an opinion of the Commission issued pursuant to BERA Section 2.12.220 or a declaration of policy by the Commission, but shall be evidence of good faith conduct in any Commission, civil, or criminal proceeding if the request for advice disclosed truthfully all the material facts, and the requestor acted in reliance on such advice.

B. Requests for Opinions

1. Opinion requests shall present all material facts as concisely as possible and shall state the question or questions based on the facts. They shall be submitted in writing and signed by the person requesting the opinion and shall indicate which candidate or organization such person is representing. The good faith reliance protection granted under BERA Section 2.12.220 shall extend only to those persons identified in the request, and only if the request for advice disclosed truthfully all the material facts and the requestor acted in reliance on such advice.

2. At least annually, the Commission shall publish opinions provided in response to requests by adding them to a document connected to the Commission's web site.

IV. Review of Campaign Reports and Statements

A. Detailed Review and Monitoring

1. The Secretary shall monitor campaign statements for compliance with ~~BERA~~ BERA Section 2.12.440 ~~of BERA~~.
2. The Secretary shall monitor campaign statements for compliance with BERA Section 2.12.415 regarding transfers between committees and cumulative contributions.

3. The Secretary shall monitor compliance with the late reporting requirement of ~~BERA-BERA~~ Sections 2.12.295 and 2.12.297.

The Secretary shall review all campaign communications which have been filed with the City Clerk to assure that candidates and committees are complying with the requirements of BERA, including but not limited to 2.12.297, 2.12.325, and 2.12.330.

4.

~~B. Substantial Compliance~~

~~C.~~

~~D. A campaign statement is not in substantial compliance with BERA if there is:~~

~~E.~~

~~F. Any internal discrepancies in reporting contributions, expenditures, or cash balance which total \$250 or more;~~

~~G.~~

~~H. Any discrepancy of \$250 or more between the cash position or total contributions and expenditures reported and those reported in prior~~

~~I.~~

~~J. Any omission of the address and date of receipt of any single or aggregate contribution of \$100 or more from a single source;~~

~~K.~~

~~L. Any omission of any required original signature by the treasurer or by any candidate, including one who controls a committee; or~~

~~M.~~

~~N. Any gap in periods of time covered by successive campaign statements, or statements in which the period covered is not in conformance with the law.~~

~~O.~~

~~P-B.~~ B. C. Reports of Possible Violations

1. The Secretary shall report as soon as feasible all possible violations of BERA to the Commission, along with a written preliminary investigative report if the matter involves complex factual or legal issues.

V. Complaints of Alleged Violations

A. Filing Requirements

1. Any person who believes that a violation of any portion of this ordinance has occurred or is about to occur may file a complaint with the Secretary. Each complaint shall:
- State the full name and address of the complainant;
 - Allege who has committed or is about to commit a violation;

- c. Clearly, concisely and accurately state the facts which constitute the violation;
 - d. Be accompanied by any documentation supporting the facts alleged. Statements which are not based upon personal knowledge should identify the source of information which gives rise to the complainant's belief in the truth of such statements; and
 - e. Be signed by the complainant under penalty of perjury.
2. Complaints which are not signed under penalty of perjury or which do not meet the standards for completeness described above shall be returned to the complainant and shall not be deemed received until such a declaration is made or the complaint is amended to be complete.

- ~~2. The Secretary may investigate the facts surrounding such a complaint or any oral complaint which he or she receives if it provides reasonable cause to believe a violation has occurred or will occur. Any evidence of violation discovered in such investigation shall be reported to the Commission at its next meeting.~~
- ~~3. The Secretary may conduct an initial review of the complaint to ascertain whether the complaint alleges a violation of BERA or instead falls outside of the Commission's purview. If the Secretary believes the complaint to fall outside of the Commission's purview, the complaint shall be presented as an information item to the Commission, and will only be referred back to the Secretary for investigation if the Commission determines, by a vote of a majority of appointed members, that the complaint falls within the Commission's purview.~~

~~B.~~ Processing of Complaints

~~C.B.~~

~~For purposes of the seven day requirement for Commission response, a complaint shall not be deemed received by the Commission until the first regular Commission meeting following the Secretary's receipt of the complaint, provided that it is received in time to provide copies to the Commission and to the subject of the complaint (respondent) prior to the meeting, and to be placed on the agenda consistent with the Brown Act.~~

- 1. The Secretary shall conduct an initial review of the complaint to ascertain whether the complaint alleges a violation of BERA or instead falls outside of the Commission's enforcement authority under BERA.
- 2. If the Secretary determines that the complaint falls outside of the Commission's

enforcement authority, the complaint shall be presented to the Commission with a recommendation to take no action. The Secretary shall provide notice to the complainant and the respondent that the item will appear on the agenda no later than the date the agenda is posted. The item will only be referred back to the Secretary for further action if the Commission determines, by majority vote that the complaint falls within the Commission's enforcement authority under BERA.

3. If the Secretary determines that the complaint alleges a violation of BERA, or if the Commission determines by a majority vote that the complaint falls within the Commission's authority pursuant to Part V.B.2, the Secretary shall provide notice to the respondent(s) and instruct them that they may submit a response, including any evidence demonstrating that a violation has not occurred, within 14 calendar days.
4. After the 14-day response period has passed, the Secretary shall determine whether sufficient evidence is present to suggest a violation may have occurred or may occur. Following the Secretary's determination, the Secretary shall present the determination to the Commission at the next meeting at which the matter may be placed on the agenda consistent with the Brown Act.
5. For complaints received within sixty calendar days before a City election for which the candidate, committee, or other person or matter which is the subject of the complaint appears on the ballot, the 14-day respondent response period in Parts V.B.3 and V.B.4 shall be reduced to 7 calendar days.
6. At the meeting at which the Commission receives the Secretary's determination pursuant to Part V.B.4, the Commission may: (a) direct the Secretary to investigate the complaint, (b) dismiss the complaint; or (c) find probable cause to believe a provision of BERA has been violated. Within three business days of the meeting, the Commission Secretary shall notify the parties of any action taken by the Commission.
 - a. If the Commission dismisses the complaint, the complainant may submit in writing, within 14 days of the dismissal, a request for reconsideration to the Secretary. The Secretary shall review the request for reconsideration to determine whether the request contains any new evidence or allegations which may support reconsideration of the complaint by the Commission. Following the Secretary's review, the Secretary shall present a recommendation on the request for reconsideration to the Commission at the next meeting at which the matter may be placed on the agenda consistent with the Brown Act. The Commission may then (a) direct the Secretary to investigate the

complaint, (b) dismiss the request for reconsideration; or (c) find probable cause to believe a provision of the BERA has been violated.

- b. If the Commission decides to investigate the complaint, ~~to the extent not already done so by the Secretary,~~ the Secretary shall investigate the complaint to the extent feasible as authorized by these procedures, which may including making -and to make inquiries of the parties to establish facts, ~~and to shall~~ make a report to the Commission at ~~theits~~ next practicable meeting. Notice of the date of any meeting at which the complaint will be considered, along with a copy of the complaint and ~~pertinent portions of Commission procedures~~ any accompanying Commission reports shall be transmitted to the subject of the complaint and complainant as soon as possible but not later than the date that the agenda for the relevant meeting is posted.

~~The complainant shall also receive a notice of the date the matter has been scheduled along with a copy of pertinent portions of Commission procedures.~~

- a-c. ~~The Commission shall not make a finding of probable cause except as provided in Parts VI.A and VI.B. VI (A) and (B).~~

2.—

- ~~1. At the first regular Commission meeting following the Secretary's verification that the complaint meets the above specified filing requirements, the Commission shall decide: (a) whether to direct the Secretary to investigate the complaint, to the extent the Secretary has not already done so; (b) whether to dismiss the complaint; or (c) whether to find probable cause to believe a provision of the BERA has been violated.~~

- ~~a. If the Commission dismisses the complaint, the Secretary shall notify the complainant, and the complainant may then take any other action as provided in the BERA.~~

- ~~3. Consideration of the complaint by the Commission shall proceed according to Parts VI and VII.~~

7.—

4.8. Upon conclusion of its consideration of the complaint, the Commission shall decide what further actions it intends to take, if any, and shall inform the parties complainant of the reasons for its decision.

D.C. Restrictions on Investigation/Consideration by Individual Commissioners

1. Individual commissioners shall not receive ~~or investigate~~ complaints. Individual commissioners ~~shall may not investigate complaints or~~ discuss pending complaints ~~with persons~~ other than ~~commissioners~~ during a noticed meeting ~~of the Commission, or as part of a committee empaneled pursuant to Part VI.C.1.D, or the Secretary.~~
2. Each commissioner has an obligation, as to every item before the Commission, to consider whether ~~they may have he or she has~~ a financial conflict of interest as defined by law or a political conflict of interest as set forth in Section 2.12.196, and if a conflict exists, to recuse ~~himself or herself~~ ~~themselves~~ from participating in the item.
3. Any commissioner absent from a meeting where substantial information is presented in connection with a complaint shall disqualify ~~themselves himself or herself~~ from voting on the merits of the complaint at a subsequent meeting, unless ~~they have he or she has~~ reviewed all relevant information.

E.D. Conduct of Investigations

1. The Secretary is authorized to conduct investigations on behalf of the Commission. Investigations will be commenced either based on information discovered by the Secretary in the commission of ~~their his or her~~ duties or based on a Complaint.
2. The Secretary may request records to which the Commission is entitled pursuant to BERA when ~~they have he or she has~~ reason to believe that a violation has occurred.
3. Failure to respond to written inquiries and requests for interviews or records by reasonable deadlines established by the Secretary shall be considered evidence of bad faith and shall be cause for the Commission to demand records or to initiate an audit unless the party or parties involved come forward with an explanation satisfactory to the Commission. A deadline may be extended if sufficient progress is made toward answering inquiries and the candidate or committee agrees to fully answer questions within a time established by mutual agreement between the Secretary and the parties involved.

4. If the Secretary has been unable to obtain voluntary access to such documents which the Secretary reasonably believes to be relevant to the investigation and/or the Commission's proceedings, then, upon majority vote, the Commission may issue a demand for campaign records pursuant to BERA Section 2.12.250.E ~~(e) of BERA~~.
5. The Secretary may request, and the Chairperson may appoint from time to time, an investigative committee to assist the Secretary in carrying out an investigation, auditing financial records, and preparing a report with specific recommendations to the Commission. In such cases, members of the investigative committee shall be bound by the same rules of confidentiality as the Secretary.
6. The Secretary shall present a written investigative report to the full Commission at the earliest opportunity. An investigative report shall include the following information: a description of alleged violation(s); the identification of the respondent(s); a summary of any response submitted by the respondent(s); a summary of evidence; a discussion of applicable law (which may include but not be limited to applicable statutes, regulations, caselaw, and FCPC, FPPC and FEC precedents) and precedents from FCPC and, to the extent applicable, FPPC and FEC; statement by respondent(s) or other affected parties; any aggravating or mitigating circumstances; and a recommendation for action.

VI. Disposition of Alleged Violations

A. Report by Secretary

1. The Secretary shall submit a memorandum outlining the Secretary's investigation before any probable cause determination or violation hearing.
2. Whenever a person files a complaint with the Commission alleging a violation of BERA, in addition to the above, the Secretary's report shall include a copy of that complaint, any response submitted by the respondent(s), an analysis of the complaint's ~~its~~ merits, and an analysis of the harm done by the alleged violation.

B. Proceeding After Presentation of Secretary's Report

1. The Commission may dismiss the matter (by majority vote) and proceed no further if evidence of any violation is insufficient or unreliable or if the possible violation has only a slight impact on the administration of BERA and/or the outcome of any election that further proceeding would be an inefficient use of resources.

2. The Commission may determine that probable cause exists to believe that the BERA has been violated. Probable cause exists when based on the circumstances presented there is a reasonable basis on which to believe that a violation of the BERA has occurred.

3. ~~The Commission may direct the Secretary to investigate the complaint further and return at a future meeting with an additional report.~~

2.4. ~~The Commission shall inform the parties of each action taken in regard to the complaint.~~

C. Proceeding after a Determination of Probable Cause

1. Upon making a determination of probable cause, the Commission ~~Commission~~ may take any of the following courses of action:

- a. Dismiss the complaint, where appropriate, and take no further action.
- b. Request the Secretary conduct further investigation, including an audit of campaign records;
- c. Require the timely filing of campaign statements and/or amendments to campaign statements if the probable violation involves an error and/or an omission on a campaign statement that has been filed, or if it involves the failure to file a campaign statement as required;
- d. Invite the respondents to participate in settlement negotiations. The Commission may request that the Secretary participate in negotiations on behalf of the Commission. Alternatively, the Chairperson may appoint a negotiating committee, which shall be guided by the Commission regarding the desired outcome of the settlement. Any settlement reached by the Secretary or negotiating committee and respondent(s) shall be presented to the commission for approval. Negotiations between the designated negotiator or negotiating committee and the respondent shall be confidential. Only the negotiated draft settlement agreement, or the fact of an impasse, shall be shared with the Commission.
- e. Schedule and conduct a hearing pursuant to ~~BERA~~ BERA, Section 2.12.230 of BERA. The hearing shall be conducted in accordance with Part VII below after the Secretary has completed his or her ~~their~~ report. However, the hearing must be conducted within a reasonable time after a determination of probable cause.

Field Code Changed

f. Ask the City Attorney or the District Attorney to seek legal remedies.

g. Seek any other remedy within its authority.

~~1.2. shall consider what course of action to take.~~ When deciding upon appropriate which course of action to take, the Commission may take into consideration:

- a. Its policies, procedures, regulations, and past actions in similar situations.
- b. The amount of experience of the candidate, if any, and treasurer in campaign reporting, the history or absence of other campaign violations, and the degree to which these persons made good faith efforts to correct any relevant reporting deficiencies.
- c. The presence, if any, of an apparent intent to conceal, deceive or mislead.
- d. Whether the probable violation appears deliberate, negligent or inadvertent.
- e. The effect of the probable violation upon the election or upon the administration of BERA

~~2. The Commission may take any of the following courses of action:~~

~~3. —~~

~~4. Dismiss the complaint, where appropriate, and take no further action.~~

~~5. —~~

~~6. Request the Secretary conduct further investigation, including an audit of campaign records;~~

~~7. —~~

~~8. Require the timely filing of campaign statements and/or amendments to campaign statements if the probable violation involves an error and/or an omission on a campaign statement that has been filed, or if it involves the failure to file a campaign statement as required;~~

~~9. —~~

~~10. Invite the respondents to participate in settlement negotiations. The Commission may request that the Secretary participate in negotiations on behalf of the Commission. Alternatively, the Chairperson may appoint a negotiating committee, which shall be guided by the Commission regarding the desired outcome of the settlement. Any settlement reached by the Secretary or negotiating committee and respondent(s) shall be presented to the commission for approval. Negotiations between the designated negotiator or negotiating committee and the respondent shall be confidential. Only the negotiated draft settlement agreement, or the fact of an impasse, shall be shared with the Commission.~~

~~11. Schedule and conduct a hearing pursuant to *BERA* Section 2.12.230 of *BERA*. The hearing shall be conducted in accordance with Part VII below after the Secretary has completed his or her report. However, the hearing must be conducted within a reasonable time after a determination of probable cause.~~

~~12.1.~~

~~13.1. Ask the City Attorney or the District Attorney to seek legal remedies.~~

~~14.1.~~

~~15.1. Seek any other remedy within its authority.~~

16.3. After making a probable cause determination, the Commission shall promptly inform the parties of the determination and of the course(s) of action it intends to pursue.

VII. Hearings

A. Parties

1. The parties to any hearing are (a) the Secretary or ~~their his or her~~ designee, and (b) the candidate(s), committee(s) and other persons who are the alleged violators of *BERA* (respondents).
2. Each candidate or committee who is a party shall be represented by its treasurer, ~~or~~ assistant treasurer, candidate, other principal officer, or ~~the committee's~~ attorney of record.

B. Scheduling and Notices

1. All hearings shall be scheduled by the Chairperson in consultation with the Secretary. The Chairperson may, if requested by a party, reschedule such a hearing upon a showing of good cause.
2. The Secretary shall provide notice of the hearing to all parties electronically and also either by deposit in the U.S. Mail or delivery to that party's representative or to the address of that party's representative on file with the Commission.
3. Before the Commission undertakes a hearing it shall provide each party with reasonable notice. Reasonable notice shall be considered fourteen (14) calendar days, unless a finding of probable cause is made within the four (4) weeks prior to an election, in which case seventy-two (72) hours notice will be sufficient.

C. Rules Regarding Written and Oral Submissions

1. Memoranda of argument and authorities may be submitted before the

hearing by any party. The submitting party shall furnish copies to the Commission and to all other parties. Memoranda may be up to 15 pages. For good cause, the Chairperson may extend these limits.

2. Evidence, oral and documentary, may be presented to the Commission. The formal rules of evidence do not apply. All testimony offered shall be under oath. The Chair shall administer the oath or affirmation.

Any party or commissioner, including the Chairperson, may challenge the admissibility of evidence offered to the Commission at the time it is offered. The Chairperson shall rule on its admissibility, subject to being overruled by a majority of the Commission.

D. Conduct of Hearing

1. All hearings shall be audio recorded by the Secretary.
2. Order of presentation:
 - a. Secretary;
 - b. Each respondent; and
 - c. Questions by commissioners.
3. The hearing may be continued upon a majority vote of the Commission.

E. Commission Deliberations

1. Following the hearing, the Commission shall deliberate and decide whether a violation has occurred.
2. A commissioner who has not been present at the hearing in regard to the alleged violation(s) shall not take any part in any deliberations in such proceedings.

F. Remedies

Upon making a finding of violation or willful violation, the Commission shall determine what remedy should be pursued. The Commission shall consider the factors set forth in FCPC Regulation R2.12.555 Part VI, Section C.1. above and may pursue the following remedies:

1. A stipulated agreement between itself and the party or parties found to have violated BERA. A stipulated agreement may include any of the

following provisions:

- a. The history of Commission activity regarding the matter and a statement of violation.
 - b. An admission of violation by the party or parties.
 - c. A monetary penalty to be paid to the City's General Fund.
 - d. A promise by the violating party or parties to comply with BERA.
 - e. Any other terms or conditions within the scope of the Commission's power (for example, nonmonetary settlement terms, such as attending a treasurer training, agreement to file or amend statements).
2. A monetary penalty.
 - a. The Commission may seek a monetary penalty pursuant to BERA Section 2.12.231 or BERA Section 2.12.435 ~~of BERA~~.
 - b. If the candidate or committee found to have violated BERA may have similarly violated the California Political Reform Act of 1974 as amended, the Commission may recommend that the City seek monetary penalties as prescribed in the Political Reform Act, on behalf of the State.
 3. Seek authorization from the City Council to file an action at law or equity to enforce and compel compliance with the provisions of the BERA.
 4. Referral of willful violations to the District Attorney for criminal prosecution under BERA Section 2.12.460 ~~of BERA~~.
 5. A written press release setting forth the Commission's finding of violation.

G. Reconsideration

Within 60 days of any final Commission action (dismissing or suspending a matter, approving a stipulated agreement, initiating legal proceedings or otherwise concluding all deliberations and decisions) a party may request the Commission to reconsider its action by reopening the evidentiary phase of the proceedings. The only ground for reconsideration is an offer of admissible evidence capable of affecting the outcome of Commission action, provided that the requesting party also shows good cause why such evidence could not have been presented earlier.

VIII. Communications with City CouncilA. Periodic Reports

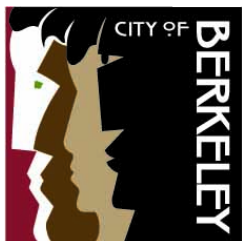
Periodic reports to Council, other than those accompanying proposed ordinance amendments, shall be submitted in accordance with the City Council agenda process in the Commissioners' and Board Members' Manual. Proposed Ordinance amendments must be submitted to Council in compliance with Berkeley Municipal Code Section 2.12.051.

B. Spokesperson for Commission

The Chairperson shall speak on behalf of the Commission or shall direct the preparation of written memoranda, correspondence and reports for the Commission. The Chairperson may delegate this responsibility to other Commissioner(s), to the Secretary, or to an ad hoc committee ~~a subcommittee~~ of the Commission as circumstances dictate.

IX. Communications With The Press

- A. Notice of meeting and agendas shall be sent to media. Minutes shall be sent out to media or other persons upon request.
- B. Copies of written press releases authorized by the Commission on various matters shall be sent to the City Manager's office pursuant to the Commissioners' and Board Members' Manual.



Fair Campaign Practices Commission

Date: November 13, 2025

To: Fair Campaign Practices Commission

From: Sam Harvey, Commission Secretary

Subject: Revisions to the Berkeley Election Reform Act (BMC Ch. 2.12) and FCPC Regulations

The Commission plans to review the Berkeley Election Reform Act (BMC Ch. 2.12) and the Commission's Regulations for possible revisions. At the Commission's July 17, 2025 meeting, the Chair requested commissioners provide any suggested revisions to Commission staff to compile for discussion at the Commission's September meeting.

Commission staff received the following suggested BERA revision topic from Commissioner Soichet:

1. Update and clarify the rules around disclosures on online video ads and text messages. Staff anticipate that this revision could include amendments to BMC sections 2.12.230 and 2.12.335.

Staff also recommend the Commission consider the following revisions, which staff have compiled based upon questions and issues raised during the 2024 election cycle.

2. Clarify the timeframe by which a candidate participating in the City's public financing program must return unspent funds, and the time after which the City Clerk must report to the Commission any candidate's failure to return such funds. (BMC § 2.12.505.H.)
3. Provide for a process by which a candidate participating in the public financing program may reuse campaign materials from a prior election (e.g. campaign signs) provided the value is deducted from any disbursement of public matching funds. (Possibly a revision to BMC § 2.12.530.)
4. Incorporate more clearly into BERA the "one bank account rule" which requires that campaign expenditures must be made from a single campaign bank account. This is a requirement under state law, but is not expressly outlined in BERA. Incorporating such a change into BERA would provide clear authority for the Commission to enforce the rule. (Possibly a revision to BMC § 2.12.250.A.)
5. Identify any other amendments to provide clarity or administrative efficiency.

At its September 2025 meeting, the Commission empaneled a subcommittee to review BERA and FCPC Regulations and prepare possible revisions. Working with Commission staff, the subcommittee has developed the attached discussion draft, which incorporates a number of the above revisions.

Additional Commission discussion and direction is needed if the Commission wishes to amend any provision of BERA pertaining to disclosures on campaign advertisements. Additionally, the subcommittee discussed whether the proposed amendment pertaining to a publicly financed candidate's reuse of old campaign materials should also address the scenario in which a candidate who was publicly financed in a previous election wishes to reuse campaign materials from that election in a new election in which the candidate is not publicly financed.

Staff recommend the Commission review the attached discussion draft and provide any feedback for proposed amendments. Staff can then work with the subcommittee to develop a proposal to submit to the Commission for approval and submission to the City Council.

Attachment:

1. Discussion draft - Berkeley Election Reform Act (BMC Ch. 2.12.)

Chapter 2.12

ELECTION REFORM ACT*

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- 2.12.005 Title for citation.**
- 2.12.010 Findings.**
- 2.12.015 Purpose.**
- 2.12.020 Liberal construction.**
- 2.12.025 Reports and statements--Signature and verification requirements.**
- 2.12.030 Reports and statements--Filed where.**
- 2.12.032 Requirement to file statements and reports electronically.**
- 2.12.033 Filing procedures.**
- 2.12.035 Reports and statements--Filing fees prohibited.**
- 2.12.040 Statements--Public inspection requirements.**
- 2.12.045 Preservation from date of filing.**
- 2.12.050 Reports and statements--City Clerk responsibilities.**
- 2.12.051 Amendment or repeal of chapter.**
- 2.12.055 Items of value--Report requirements.**
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- 2.12.065 Electronic posting of contributions prior to elections.**

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- 2.12.123** **Election cycle.**
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- 2.12.127** **Electronic filing.**
- 2.12.130** **Expenditure.**
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* The City Attorney has determined that certain uncoded provisions are unconstitutional. See Citizens for Jobs and Energy v. Fair Political Practices Comm. (1976) 16 Cal. 3d 671.

The City Attorney has determined that Ord. [4700-NS](#) § 602 applies only to ballot measures which are recalls; it has been held unconstitutional with respect to initiatives and referenda. (See Citizens Against Rent Control v. City of Berkeley (1981) 454 US 290.)

The City Attorney has also determined that Ord. [4700-NS](#) § 605 applies only to candidate campaigns and ballot measures which are recalls; it has been held unconstitutional with respect to initiatives and referenda. (See Pacific Gas and Electric v. City of Berkeley, (1976) 60 Cal. App. 3d 123).

The City Attorney has determined that Ord. [4700-NS](#) § 517, as modified by Ord. 5895-N.S. § 1, is unconstitutional; see Meyer v. Grant (1988) 486 U.S. 414, Buckley v. American Constitutional Law Foundation (1999) 525 U.S. 182.

Article 1. General Provisions

2.12.005 Title for citation.

This chapter shall be known and may be cited as the "Berkeley Election Reform Act of 1974."
(Ord. 4700-NS § 100, 1974)

2.12.010 Findings.

The people find and declare as follows:

- A. Local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth.
- B. Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.
- C. Costs of conducting election campaigns have increased greatly in recent years, and candidates have been forced to finance their campaigns by seeking large contributions from persons and organizations who thereby gain disproportionate influence over governmental decisions.
- D. The influence of large campaign contributors is increased because existing laws for disclosure of campaign receipts and expenditures have proved to be inadequate.
- E. Previous laws regulating campaign practices have suffered from inadequate enforcement.
(Ord. 4700-NS § 101, 1974)

2.12.015 Purpose.

The people have enacted the ordinance codified in this chapter to accomplish the following purposes:

- A. Receipts and expenditures in municipal election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited.
- B. The amounts that may be expended in municipal elections should be listed in order that the importance of money in such elections may be reduced.
- C. Adequate enforcement mechanisms should be provided to public officials and private citizens in order that this chapter will be vigorously enforced. (Ord. 4700-NS § 102, 1974)

2.12.020 Liberal construction.

This chapter should be liberally construed to accomplish its purposes. (Ord. 4700-NS § 103, 1974)

2.12.025 Reports and statements--Signature and verification requirements.

Reports and statements filed under this chapter shall be signed under penalty of perjury and verified by the filer. The verification shall state that the filer has used all reasonable diligence in its preparation, and that to the best of his or her knowledge it is true and complete. A report or statement filed by a committee shall be signed and verified by the treasurer, and a report or statement filed by any other organization shall be signed and verified by a responsible officer of the organization or by an attorney or a certified public accountant. Every person who signs or verifies any report or statement required to be filed under this chapter which contains material which he or she knows to be false is guilty of perjury. For a report or statement submitted as an electronic filing pursuant to Section [2.12.032](#), a secure electronic signature shall meet the requirements of this section. (Ord. 7309-NS § 5, 2013; Ord. 4700-NS § 104, 1974)

2.12.030 Reports and statements--Filed where.

Reports or statements filed under this chapter shall be filed with the City Clerk. (Ord. 4700-NS § 105, 1974)

2.12.032 Requirement to file statements and reports electronically.

A. The following elected officers, candidates, committees, or other persons required to file campaign reports or statements under this Chapter and Title 9, Chapter 4 of the California Government Code (commencing with Section [84100](#)), are required to submit all reports or statements as an electronic filing:

1. A Participating Candidate, as defined in [2.12.158](#), and any Participating Candidate's campaign committee, regardless of the monetary amount of contributions received or expenditures made;
 2. An elected officer, candidate, committee, or other person who receives contributions totaling one thousand dollars (\$1,000) or more, or makes expenditures totaling one thousand dollars (\$1,000) or more, in a calendar year.
- B. Once an elected officer, candidate, committee, or other person is required to submit reports or statements as an electronic filing, that elected officer, candidate, committee, or other person shall continue to use electronic filing until the committee has officially terminated or the elected officer, candidate or other person has no further filing obligations.
- C. An elected officer, candidate, committee, or other person that must file pursuant to this Chapter, but is not a Participating Candidate or such a candidate's campaign committee as set forth in subsection A.1 and has not met the \$1,000 threshold in subsection A.2, may submit required reports or statements as an electronic filing or in paper format.
- D. In any instance in which the original report, statement, or other document is required to be filed with the Secretary of State and a copy of that report, statement, or other document is required to be filed with the City of Berkeley, the copy may be submitted as an electronic filing. (Ord. 7564-NS § 2, 2017; Ord. 7309-NS § 2, 2013)

2.12.033 Filing procedures.

- A. Electronic filing procedures shall be administered in accordance with California Government Code Section [84615](#).
- B. Notwithstanding any other provision of law, any statement, report or other document submitted as an electronic filing pursuant to Section [2.12.032.A](#) shall serve as the filing of record and shall not be required to be filed with the City Clerk in paper format. (Ord. 7309-NS § 3, 2013)

2.12.035 Reports and statements--Filing fees prohibited.

No fee or charge shall be collected by the City Clerk for the filing of any report or statement or for the forms upon which the reports or statements are to be prepared. (Ord. 4700-NS § 106, 1974)

2.12.040 Statements--Public inspection requirements.

Campaign statements are to be available for public inspection during regular City business hours, at the office of the City Clerk and at the Berkeley Public Library during the normal hours it is open to the public. Copies of the statements or parts of statements shall be provided by the City Clerk at a price of not more than ten cents per page copied. The data contained in any campaign report or statement submitted as an electronic filing shall be available free of charge on the Internet in an easily understood format that is searchable and downloadable. The data made available on the Internet shall not contain the street name and building number of any person or entity representative listed on the report or statement or any bank account number required to be disclosed pursuant to this Chapter or state law. (Ord. 7309-NS § 6, 2013; Ord. 4700-NS § 107, 1974)

2.12.045 Preservation from date of filing.

All reports, statements and information filed with the City Clerk shall be preserved for at least four years from the date upon which it was required to be filed under the terms of this chapter. (Ord. 5895-NS § 1, 1988; Ord. 4977-NS § 1 (part), 1977; Ord. 4700-NS § 108, 1974)

2.12.050 Reports and statements--City Clerk responsibilities.

With respect to reports or statements filed with him or her pursuant to this chapter, the City Clerk shall:

- A. Supply the necessary forms and manuals prescribed by the commission;
- B. Notify in advance all candidates and known committees of the dates campaign statements are required;

- C. Report apparent violations of this chapter to the appropriate agencies; and
- D. Complete and maintain a current list of all reports and statements filed with his or her office. (Ord. 4700-NS § 109, 1974)

2.12.051 Amendment or repeal of chapter.

This chapter may be amended or repealed by the procedures set forth in this section. If any portion of subsection A is declared invalid, subsection B shall be the exclusive means of amending or repealing this chapter.

- A. This chapter, including the amendments adopted by Ordinance No. [7,524-N.S.](#) and its successors, may be amended to further its purpose by ordinance passed by a vote of the City Council of not less than two-thirds vote of its membership, following a public hearing, if at least thirty days prior to passage the amendment has been approved by the Berkeley Fair Campaign Practices Commission by not less than two-thirds vote of its membership, and has been distributed to the news media and to every person regularly receiving communications from the commission.
- B. This chapter may be amended or repealed by initiative approval of the voters of the City of Berkeley. (Ord. 7524-NS § 3.1, 2016; Ord. 5895-NS § 2, 1988)

2.12.055 Items of value--Report requirements.

Whenever in this chapter the amount of goods, services, facilities or anything of value other than money is required to be reported, the amount shall be the estimated fair market value at the time received or expended, and a description of the goods, services or facilities shall be appended to the report or statement. (Ord. 4700-NS § 110, 1974)

2.12.060 Applicability--Severability.

If any provision of this chapter, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this chapter, to the extent it can be given

effect, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this chapter are severable. (Ord. 4700-NS § 111, 1974)

2.12.065 Electronic posting of contributions prior to elections.

The City shall post in at least two public locations and electronically on the City website during the seven days before each municipal election a list of all persons contributing fifty dollars or more to any candidate or committee in that election and the amounts of the contributions reported through the filing deadline for the second pre-election statements. The City shall additionally publish in one or more newspapers at least once in the seven days before each municipal election a notice listing the locations of the posted information. The City shall direct publication of the notice in such newspaper or newspapers as are best suited to reach the largest number of Berkeley residents in a cost-effective manner. (Ord. 7234-NS § 1, 2012; Ord. 6513-NS § 1, 1999; Ord. 5895-NS § 1, 1988; Ord. 4946-NS, 1976; Ord. 4700-NS § 112, 1974)

Article 2. Definitions

2.12.070 Interpretation.

Unless the contrary is stated or clearly appears from the context, the definitions set forth in this article shall govern the interpretation of this chapter. (Ord. 4700-NS § 200, 1974)

2.12.075 Adjusting an amount for cost of living changes.

"Adjusting an amount for cost of living changes" means adjusting upward or downward by the percent change in the Consumer Price Index as last computed in accordance with State of California Government Code, Section [82001](#). (Ord. 4977-NS § 1 (part), 1977; Ord. 4700-NS § 201, 1974)

2.12.080 Campaign statement.

"Campaign statement" means an itemized report which is prepared on a form prescribed by the commission and which provides the information required by Sections [2.12.245](#) through [2.12.325](#). (Ord. 4700-NS § 202, 1974)

2.12.085 Candidate.

"Candidate," for the purposes of this chapter, means a candidate for a Berkeley municipal elective office. "Candidate" means an individual who is listed on the ballot or who has qualified to have write-in votes on his or her behalf counted by election officials, for nomination for or election to any elective office, or who receives a contribution, or makes an expenditure, or gives his or her consent for any other person to receive a contribution or make an expenditure with a view to bringing about his or her nomination or election to any elective office, whether or not the specific elective office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he or she has announced his or her candidacy or filed a declaration of candidacy at such time. "Candidate" also includes any office-holder who is the subject of a recall election and any candidate for his or her office, but does not include the proponents or opponents of a recall. The proponents or opponents of a recall are for the purposes of this chapter the proponents or opponents of a measure. (Ord. 4700-NS § 203, 1974)

2.12.090 Commission.

"Commission" means the Berkeley Fair Campaign Practices Commission. (Ord. 4700-NS § 204, 1974)

2.12.095 Committee.

"Committee" means any person or combination of persons that directly or indirectly receives contributions which total more than one thousand dollars in a calendar year or makes expenditures exceeding more than one thousand dollars in a calendar year for the purpose of

influencing or attempting to influence the action of voters for or against the nomination or election of one or more candidates, or the passage or defeat of any measure, including any committee or subcommittee of a political party. (Ord. 7875-NS § 1, 2023: Ord. 4945-NS § 1 (part), 1976: Ord. 4700-NS § 205, 1974)

2.12.100 Contribution.

"Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or in opposition to the nomination or election of one or more candidates or the qualification for the ballot or voter approval of one or more measures. The term "contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies and similar fund-raising events; a candidate's own money or property used on behalf of his or her candidacy; the granting to a candidate or committee of discounts or rebates not available to the general public; and payments for the services of any person serving on behalf of a candidate or committee, when such payments are not made from contributions the candidate or committee must otherwise report under the terms of this chapter. The term "contribution" further includes any transfer, gift, loan, advance, deposit, forgiveness of indebtedness, payment of a debt by a third party, pledge, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, received directly or indirectly by a committee from another committee. The term "contribution" shall not include a gift of service or labor, but shall include service or labor for which a payment is made, nor shall the term "contribution" include a gift of the use of personal or real property where the value of such use is not in excess of fifty dollars, nor shall it include food and beverages the value of which for any one event is no more than fifty dollars. (Ord. 4945-NS § 1 (part), 1976: Ord. 4700-NS § 206, 1974)

2.12.105 Controlled committee.

"Controlled committee" means a committee either directly or indirectly controlled by a candidate or committee, or which acts jointly with a candidate or controlled committee in the making of expenditures or the receipt or solicitation of contributions. A committee is deemed

controlled if another committee or candidate exercises significant influence over its actions or decisions. A committee may be controlled with respect to one or more candidates and independent with respect to other candidates. (Ord. 5895-NS § 2, 1988)

2.12.110 Cumulative amount.

"Cumulative amount" in a campaign statement means the amount contributed or expended since the closing date of the most recent post-election statement which has been filed by the filer. If the filer has not previously filed a campaign statement pursuant to any of these sections, the cumulative amount is the amount contributed or expended since June 4, 1974. (Ord. 4700-NS § 208, 1974)

2.12.115 Elected officer.

"Elected officer" means any person who holds an elective officer or has been elected to an elective office but has not yet taken office. A person who is appointed to fill a vacant elective office is an elected officer. (Ord. 4700-NS § 209, 1974)

2.12.120 Election.

"Election" means any primary, general, special or runoff election held in the City, including an initiative, referendum or recall election. (Ord. 5895-NS § 1, 1988; Ord. 4700-NS § 210, 1974)

2.12.123 Election cycle.

"Election cycle" means the period beginning on the day after the date of the most recent general election for the specific office or seat that a candidate is seeking and ending on the date of the next general election for that office or seat. (Ord. 7524-NS § 3.2 (part), 2016)

2.12.125 Elective office.

"Elective office" means any elective office as defined in the Berkeley City Charter. (Ord. 4700-NS § 211, 1974)

2.12.127 Electronic filing.

"Electronic filing" means the submission of required reports and statements in an electronic format approved by the Secretary of State and the City Clerk. (Ord. 7309-NS § 4, 2013)

2.12.130 Expenditure.

"Expenditure" means a payment, pledge or promise of payment of money or anything of value or other obligation, whether or not legally enforceable, for goods, materials, services or facilities in aid of or in opposition to the nomination or election of one or more candidates or the qualification for the ballot or adoption of one or more measures. The term "expenditure" includes any transfer, payment, gift, loan, advance, deposit, pledge, contract, agreement or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly by one committee to another committee. "Expenditure" also includes the forgiving of a loan or the repayment of a loan by a third party. (Ord. 4700-NS § 212, 1974)

2.12.135 Filer.

"Filer" means any person filing or required to file any statement or report under this chapter. (Ord. 4700-NS § 213, 1974)

2.12.137 Fund.

"Fund" means the Fair Elections Fund created by City Charter Article III Section 7. (Ord. 7524-NS § 3.2 (part), 2016)

2.12.138 General election.

"General election" means an election held on the first Tuesday following the first Monday of November pursuant to City Charter Article III Section 4. (Ord. 7524-NS § 3.2 (part), 2016)

2.12.140 Independent committee.

"Independent committee" means a committee which is not controlled either directly or indirectly by a candidate or controlled committee, and which does not act jointly with a candidate or controlled committee in connection with the receipt or solicitation of contributions or the making of expenditures. A committee may be controlled with respect to one or more candidates and independent with respect to other candidates. (Ord. 4700-NS § 214, 1974)

2.12.142 Independent expenditure.

"Independent expenditure" means an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee. (Ord. 6096-NS § 2 (part), 1991)

2.12.145 Late contribution.

"Late contribution" means any contribution of one hundred dollars or more, but less than one thousand dollars, received after the closing date of the last campaign statement required to be filed prior to an election and contributions of one thousand dollars or more received within the reporting period specified in California Government Code Section [82036](#). (Ord. 7296-NS § 1, 2013; Ord. 4700-NS § 215, 1974)

2.12.150 Mass mailing.

"Mass mailing" means two hundred or more identical or nearly identical pieces of mail, but does not include a form letter or other mail which is sent in response to a request, letter or other inquiry. (Ord. 4700-NS § 216, 1974)

2.12.155 Measure.

"Measure" means any City Charter amendment, ordinance or other proposition submitted to a popular vote at an election, whether by initiative, referendum or recall procedure or otherwise, or circulated for the purposes of submission to a popular vote at any election, whether or not the proposition qualifies for the ballot. (Ord. 4700-NS § 217, 1974)

2.12.156 Nomination period.

"Nomination period" means the period specified by state law during which candidates must submit nomination papers for City offices. (Ord. 7524-NS § 3.2 (part), 2016)

2.12.158 Participating candidate.

"Participating candidate" means a candidate who qualifies for Fair Elections campaign funding. (Ord. 7524-NS § 3.2 (part), 2016)

2.12.160 Period covered.

"Period covered" by a statement or report required to be filed by this chapter means, unless a different period is specified, the period beginning with the day after the closing date of the most recent statement or report in question. If the person filing the statement or report has not previously filed a report or statement of the same type, the period covered begins on June 4, 1974. Nothing herein shall exempt any person from disclosing transactions which occurred prior to June 4, 1974 according to the law then in effect. (Ord. 4700-NS § 218, 1974)

2.12.165 Persons.

"Persons" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and any other organization or group of persons acting in concert. (Ord. 4700-NS § 219, 1974)

2.12.167 Qualified contribution.

"Qualified Contribution" means a monetary contribution, excluding loans, made directly in aid of the nomination or election of one or more candidates not greater than fifty dollars (\$50)* made by a natural person resident of the City of Berkeley. This dollar amount may be adjusted for cost-of-living changes by the Commission through regulation, pursuant to Section [2.12.545](#).

* The dollar amounts in this code section are adjusted for inflation every two years. The current dollar amounts are posted [online](#).

(Ord. 7691-NS § 1, 2020; Ord. 7564-NS § 3, 2017; Ord. 7524-NS § 3.2 (part), 2016)

2.12.168 Qualifying period.

"Qualifying period" means the period beginning on the day after the date of the most recent general election for the specific office or seat that a candidate is seeking and ending at the close of regular business hours, 14 days before the date of the election for which the candidate is seeking office. (Ord. 7875-NS § 2, 2023; Ord. 7524-NS § 3.2 (part), 2016)

Article 3. Fair Campaign Practices Commission

2.12.170 Established--Number of members.

There is established in Berkeley municipal government the Berkeley Fair Campaign Practices Commission. The commission shall have nine members, including the chairperson. (Ord. 4700-NS § 300, 1974)

2.12.175 Term--Appointments and reappointments.

Each member of the commission shall serve for the same term as the councilmember appointing them. Members of the commission may not be reappointed by the same councilmember. All initial appointments shall be made by September 1, 1974. A member whose term has expired shall serve until his or her successor is appointed. (Ord. 4700-NS § 301, 1974)

2.12.180 Quorum.

A majority of the appointed members shall constitute a quorum. (Ord. 4700-NS § 302, 1974)

2.12.185 Election of chairperson.

The commission shall elect its own chairperson. (Ord. 4700-NS § 303, 1974)

2.12.186 Vice-chairperson.

The commission shall elect a vice-chairperson who shall serve the same term of office as the chairperson and who shall assume the powers of the chairperson in his or her absence. (Ord. 5574-NS § 2 (part), 1983)

2.12.190 Vacancy filling.

Vacancies on the commission shall be filled, within thirty days, by appointment of the same official, or his or her successor, who appointed the prior holder of the position. Appointments to fill vacancies shall be for the unexpired term of the member whom the appointee succeeds. A vacancy or vacancies shall not impair the right of the remaining members to execute all of the powers of the board. (Ord. 4700-NS § 304, 1974)

2.12.195 Members--Qualifications and restrictions.

Each member of the commission shall be a resident of Berkeley and registered to vote in Berkeley elections. No member of the commission, during his or her tenure, shall hold or seek election to any other public office, serve as an officer of any political party or partisan organization or participate in or contribute to a Berkeley municipal election campaign. No member of the commission shall endorse, support, oppose or work on behalf of or against any candidate or measure in a Berkeley election. Each member of the commission shall use his or her best efforts to remain independent of candidates and measures in Berkeley elections. (Ord. 4700-NS § 305, 1974)

2.12.196 Avoidance of political conflict of interest.

In addition to the limitations imposed on members of the commission by Section [2.12.195](#), each member of the commission shall use his or her best efforts to be independent of and impartial in relation to any person during the time such person is the subject of an investigation by or proceeding before the commission. Such persons include elected officers, current and previous candidates, and committees, as well as any officers or employees of such persons. (Ord. 5574-NS § 2 (part), 1983)

2.12.200 Staff powers and duties.

The commission shall have a staff which shall act in accordance with commission policies and regulations and with applicable law to investigate violations and bring proper court action and to assist the commission in the performance of its duties. (Ord. 4700-NS § 306, 1974)

2.12.205 Administrative responsibility.

The commission has the primary responsibility for the impartial, effective administration of this chapter. (Ord. 4700-NS § 307, 1974)

2.12.210 Rules and regulations--Authority.

The commission may adopt, amend and rescind rules and regulations to carry out the purposes of this chapter, and to govern the procedures of the commission. (Ord. 4700-NS § 308, 1974)

2.12.215 Additional duties.

The commission shall, in addition to its other duties:

- A. Prescribe forms for reports, statements, notices and other documents required by this chapter;
- B. Prepare and publish manuals and instructions setting forth methods of bookkeeping and preservation of records to facilitate compliance with and enforcement of this chapter, and explaining the duties of persons and committees under this chapter;
- C. Provide assistance to agencies and public officials in administering the provisions of this chapter;
- D. Determine whether required documents have been filed and, if so, whether they conform on their face with the requirements of this chapter. (Ord. 4700-NS § 309, 1974)

2.12.220 Opinions.

Any person may request the commission to issue an opinion with respect to his or her duties under this chapter. The commission shall issue the opinion within fourteen days. No person who acts in good faith of an opinion issued to him or her by the commission shall be subject to criminal or civil penalties for so acting, provided that the material facts are as stated in the opinion request. The commission's opinions shall be public records and may from time to time be published. The commission may request the City Attorney to issue an opinion, in which case the City Attorney shall issue the opinion within fourteen days. (Ord. 4700-NS § 310, 1974)

2.12.225 Investigation authority and procedures.

Upon the sworn complaint of any person or on its own initiative, the commission shall investigate possible violations of this chapter. Within seven days after the receipt of a complaint under this section, the commission shall notify in writing the person who made the complaint of the action, if any, which the commission has taken or plans to take on the complaint, together with the reasons for such action or nonaction. (Ord. 4700-NS § 311, 1974)

2.12.227 Subpoena--Testimony under oath.

After the commission has made a finding of probable cause of a violation of the Berkeley Election Reform Act (BERA) or this chapter, in any investigation or hearing conducted by the commission, the commission may:

- A. Subpoena witnesses, take testimony under oath and require the production of records by subpoena; and
- B. Issue orders requiring any person believed to have information relevant to matters under examination to submit written answers under penalty of perjury to written questions, and specify a reasonable date by which such answers must be submitted. (Ord. 5574-NS § 2 (part), 1983)

2.12.230 Notice and hearing on violations.

After the 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. (Ord. 5895-NS § 1, 1988; Ord. 4700-NS § 312, 1974)

2.12.231 Violation--Penalties.

When determining an appropriate remedy for a violation of this Chapter as specified in Section [2.12.230](#), the Commission may order any of the following:

- A. Cease and desist violation of this Chapter.
- B. File any reports, statements, or other documents or information required by this Chapter.
- C. Pay a monetary penalty of up to \$1,000.00 per violation, or up to the amount or value of the unlawful or undisclosed contribution or expenditure, whichever is greater, to the Fair Elections Fund of the City. (Ord. 7564-NS § 4, 2017; Ord. 7234-NS § 2, 2012)

2.12.235 Judicial review of actions.

Any person may seek judicial review of any action of the commission. (Ord. 4700-NS § 313, 1974)

2.12.240 Meetings to be open to the public.

All meetings of the commission shall be open to the public. (Ord. 4700-NS § 314, 1974)

Article 4. Disclosure Requirements and Procedures**2.12.245 Campaign treasurer--Appointment required--Powers and duties.**

A. Each candidate and each committee shall appoint a campaign treasurer. A candidate may appoint himself or herself as his or her campaign treasurer. No contribution and no expenditures shall be accepted or made by or on behalf of a candidate or committee at a time when there is a vacancy in the office of treasurer.

B. No expenditure shall be made by or on behalf of a candidate or committee without the authorization of the treasurer or that of his or her designated agent.

C. All contributions received by a person acting as an agent of a candidate shall be reported promptly by such person to the candidate or any of his or her designated agents. All contributions received by a person acting as an agent of a committee shall be reported promptly by the recipient to the committee's treasurer or any of his or her designated agents. "Promptly," as used in this section, means not later than five days before the closing date of any campaign statement required to be filed by the treasurer, and immediately if the contribution was received less than five days before the closing date. All contributions shall be separated from and may not be commingled with any personal funds of the recipient or any other person. (Ord. 4700-NS § 400, 1974)

2.12.250 Campaign expenditure and contribution account--Establishment required-- Procedure for use.

A. A campaign treasurer for each candidate and for each and every committee shall establish and manage a campaign expenditure and contribution checking account for the candidate or

committee. All monetary contributions to the candidate, to a person on behalf of the candidate or to a person on behalf of a committee shall be placed in the candidate's or committee's checking account promptly. All campaign expenditures shall be made from the campaign account. Any personal funds of a candidate which will be utilized to promote the election of the candidate shall be deposited in the account prior to expenditure, except for a candidate's payment for a filing fee and statement of qualifications which may be made from the candidate's personal funds.

B. Amounts shall be paid by the campaign treasurer from the campaign contribution checking account only upon receipt of a bill or voucher from a person furnishing goods or services to the candidate or committee, which bill or voucher itemizes and identifies the goods or services furnished or to be furnished and lists the unit and total price therefor. All payments of fifty dollars or more shall be made by check, credit card or debit card, and payable to the person furnishing the goods or services to a candidate or committee.

C. In the event that, after payment has been made for all goods and services furnished in connection with the campaign of a candidate or committee, there remains a balance in the checking account of the candidate or committee, the campaign treasurer shall liquidate the contribution checking account consistent with California Government Code Section [89510](#) et seq., and applicable state regulations, before terminating the campaign committee.

D. No committee or candidate shall accept or receive a non-monetary contribution with a fair market value in excess of fifty dollars unless the contributor provides the campaign treasurer with a receipt or voucher that itemizes and identifies the goods or services contributed and states the fair market value of such goods or services. Participating candidates or their controlled committees shall not accept or receive a non-monetary contribution with a fair market value in excess of fifty dollars (\$50) and must retain an itemized receipt or voucher for all non-monetary contributions. The campaign treasurer shall maintain all receipts and vouchers for a period of four years from the date of the final report.

E. Participating Candidates or their controlled committees shall not accept or receive a non-monetary contribution with a fair market value in excess of fifty dollars (\$50) and must retain an itemized receipt or voucher for all non-monetary contributions. The campaign treasurer shall maintain all receipts and vouchers for a period of four years from the date of the final report.

F. The campaign treasurer shall make available to the commission, the City Attorney, the City Clerk, the District Attorney, the California Attorney General and the California Secretary of State, or their designees, on demand, the details of any account requested and the records supporting it. In addition, the campaign treasurer shall sign a waiver permitting the aforementioned authorities or their designees to inspect the campaign account records maintained by the bank in which the campaign account is opened, and shall maintain a record of every contribution received and every disbursement made from the account, which record shall include copies of cancelled checks, bank records, bills and vouchers. Such record shall be maintained for a period of four years from the date of the final report.

G. If, prior to the date of the filing of the final report, or during a reasonable period of time not to exceed six months thereafter, the commission reasonably believes a reporting or disclosure requirement has been violated by a candidate or committee, the commission shall be empowered to conduct or cause to be conducted an independent audit of the books and records of such candidate or committee. The cost of such audit shall be borne by the commission. After an audit is completed and a written report presented to the commission, the commission shall make a determination whether there is a probable cause for a violation. If cause for violation is found, the provisions of Section [2.12.230](#) of this chapter shall apply.

H. All requests from Participating Candidates for Fair Elections funds must be submitted within thirty (30) days after the date of the election in order to be eligible for distribution of Fair Elections funds in that election cycle. Any request for matching Fair Elections funds received more than thirty (30) days after the election will not be eligible for disbursement for Fair Elections funds. (Ord. 7564-NS § 5, 2017: Ord. 7296-NS § 2, 2013: Ord. 6859-NS § 1, 2005: Ord. 5895-NS § 1, 1988: Ord. 4947-NS §§ 1, 2, 1976: Ord. 4733-NS § 1, 1974: Ord. 4700-NS § 401, 1974)

2.12.255 Statement of organization--Committee required to file.

A. Subject to the exception in Section [2.12.255\(B\)](#), every committee under Section [2.12.095](#) of this chapter shall file with the City Clerk a statement of organization, as defined in Government Code Section [84101](#) et. seq. , or its successors, within ten days after qualifying as a committee pursuant to Section [2.12.095](#).

B. Every committee that qualifies during the period between the closing date of the last pre-election statement and the election shall file with the City Clerk, by hand delivery or by such

means as the commission may prescribe, a statement of organization no later than the close of the next business day.

C. The date on which a committee qualified, and not the date on which the committee filed its statement of organization, shall determine the committee's obligation to file the campaign statements and late contribution reports required by this chapter. All committees, whether qualified before or after the date of the final pre-election statement, but before the date of an election, are subject to late contribution reporting requirements. (Ord. 7875-NS § 3, 2023; Ord. 5895-NS § 1, 1988; Ord. 4700-NS § 402, 1974)

2.12.260 Statement of organization--Information required.

Repealed by [Ord. 7875-NS](#). **2.12.265 Statement of organization--Change of information--Amendment required.**

Repealed by [Ord. 7875-NS](#). **2.12.270 Campaign statement--Filing requirements.**

A. Each candidate and each committee shall file no fewer than two campaign statements prior to an election, excluding run-off elections, and one campaign statement following the election, excluding run-off elections. Campaign statements shall be filed in accordance with the filing dates prescribed by state law. The semi-annual campaign statement that is filed pursuant to state law following an election shall serve as the post-campaign statement required by this section. If state law does not establish the filing dates for campaign statements, the commission shall set the necessary filing dates.

B. Each candidate and committee involved in a run-off election, and each committee supporting or opposing a candidate participating in a run-off election, shall file one campaign statement prior to the run-off election in addition to any other campaign statements required by this section and one campaign statement following the run-off election. The semi-annual statement that is filed pursuant to state law following a run-off election shall serve as the post-campaign statement required by this section. The campaign statements shall be filed in accordance with the filing dates prescribed by state law. If state law does not establish the filing

dates for campaign statements in run-off elections, the commission shall set the necessary filing dates.

C.

1. Notwithstanding subsections [A](#) and [B](#) of this section, a candidate or officeholder who plans to receive contributions or make expenditures of less than the committee threshold in Section [2.12.095](#) in a calendar year may file a short form campaign statement for that calendar year as prescribed by state laws and regulations. The period covered by the short form is the calendar year. If the candidate or officeholder who has filed a short form campaign statement for activity in the calendar year makes expenditures or receives contributions that exceed the committee threshold in Section [2.12.095](#), they must file campaign statements as required by subsections [A](#) or [B](#), or other applicable sections of Chapter [2.12](#).

2. During the six months prior to an election in which the candidate or officeholder is being voted upon, a candidate or officeholder who files a short form campaign statement and subsequently receives contributions or makes expenditures exceeding the committee threshold in Section [2.12.095](#) during the calendar year shall send written notification to the City Clerk, and each candidate or officeholder contending for the same office, as follows:

(a) The notification shall be sent within forty-eight hours of receiving contributions or making expenditures exceeding the committee threshold in Section [2.12.095](#);

(b) The notification shall include the name and address of the candidate or officeholder, the elective office for which the short form campaign statement was filed, the date of the election, and the date contributions exceeding the committee threshold in Section [2.12.095](#) or more were received or expenditures exceeding the committee threshold in Section [2.12.095](#) were made;

(c) The notification shall be sent by guaranteed overnight delivery, personal delivery, or facsimile transmission. (Ord. 7889-NS § 2, 2023; Ord. 6329-NS § 2, 1996; Ord. 4700-NS § 410, 1974)

2.12.271 Campaign statements--Additional filing requirements.

A. Each committee that makes expenditures in excess of \$250* in support of or in opposition to a measure must, in addition to campaign statements required by Section [2.12.270](#) of this Chapter, file campaign statements on the following dates: (1) no later than April 30 for the period January 1 through March 31; and (2) no later than October 31 for the period July 1 through September 30. If the committee has earlier pre-election statement filing deadlines, the earlier deadlines apply.

* The dollar amounts in this code section are adjusted for inflation every two years. The current dollar amounts are posted [online](#).

B. Any additional filing requirement under this section shall cease upon the occurrence of any of the following dates, whichever occurs first: (1) the election day on which the measure is voted upon, (2) six months after the measure fails to qualify for the ballot, (3) six months after an ordinance subject to referendum is repealed by the City Council, or (4) six months after an elected official subject to recall resigns or otherwise leaves office. (Ord. 7234-NS § 3, 2012)

2.12.272 Slate mailer organizations' reporting requirements.

A. Slate mailer means a mass mailing which supports or opposes a total of four or more candidates or ballot measures.

B. For the purposes of this chapter, a slate mailer organization shall be defined as an organization which meets the definition of California Government Code Section [82048.4](#).

C. A slate mailer organization which produces one or more slate mailers supporting or opposing inter alia any candidate for Berkeley elective office or any Berkeley measure shall file one copy of its campaign reports with the City Clerk. Campaign reports are those reports slate mailer organizations are required to file pursuant to California Government Code Sections [84218](#), [84219](#), [84220](#) and [84221](#). (Ord. 6096-NS § 2 (part), 1991)

2.12.275 Campaign statement--Verification.

A candidate shall verify his or her campaign statement and the campaign statement of each committee subject to his or her control. The verification shall be in accordance with the provisions of Section [2.12.025](#) except that it shall state that he or she has made reasonable inquiry into the truthfulness and completeness of such campaign statements and that to the best of his or her knowledge the treasurer of each controlled committee used all reasonable diligence in the preparation of the committee's statement. This section does not relieve the treasurer of any committee from the obligation to verify each campaign statement filed pursuant to Section [2.12.025](#). (Ord. 4700-NS § 411, 1974)

2.12.280 Campaign statement--Information required.

Each campaign statement required by this article shall contain the following information:

- A. Under the heading "receipts," the total amount of contributions received, and under the heading "expenditures," the total amount of expenditures made during the period covered by the campaign statement and cumulative amount of such totals;
- B. The total amount of contributions received during the period covered by the campaign statement from persons who have given fifty dollars or more;
- C. The total amount of contributions received during the period covered by the campaign statement from persons who have given less than fifty dollars;
- D. The total amount of expenditures disbursed during the period covered by the campaign statement to persons who have received fifty dollars or more;
- E. The total amount of expenditures disbursed during the period covered by the campaign statement to persons who have received less than fifty dollars;
- F. The balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the campaign statement;
- G. The full name of each person from whom a contribution or contributions totalling fifty dollars or more has been received together with his or her street address, occupation, and the name of his or her employer, if any, or the principal place of business if he or she is

self-employed, the amount which he or she contributed, the date on which each contribution was received during the period covered by the campaign statement, and the cumulative amount he or she contributed. In the case of committees which are listed as contributors, the campaign statement shall also contain the full name and street address of the treasurer of the committee. Loans received shall be set forth in a separate schedule and the foregoing information shall be stated in regard to the lender, together with the date and amount of the loan, and if the loan has been repaid, the date of payment and by whom paid;

H. The full name and street address of each person to whom an expenditure or expenditures totalling fifty dollars or more has been made, together with the amount of each separate expenditure to each person during the period covered by the campaign statement; a brief description of the consideration for which the expenditure was made; the full name and street address of the person providing the consideration for which an expenditure was made if different from the payee; and in the case of committees which are listed, the full name and street address of the treasurer of the committee;

I. In a campaign statement filed by a committee supporting or opposing more than one candidate or measure, the amount of expenditures for or against each candidate or measure during the period covered by the campaign statement and the cumulative amount of expenditures for or against each such candidate or measure;

J. The full name, residential and business address and telephone number of the filer or, in the case of a campaign statement filed by a committee, the name and telephone number of the committee and the committee's street address;

K. In a campaign statement filed by a candidate, the full name and street address of any committee, of which he or she has knowledge, which has received contributions or made expenditures on behalf of his or her candidacy, along with the full name, street address and telephone number of the treasurer of such committee. (Ord. 4948-NS (part), 1976: Ord. 4700-NS § 412, 1974)

2.12.283 Campaign statement--Additional information required from participating candidates.

Each participating candidate shall file reports of receipts and expenditures of Fair Elections funds at such times and in such manners as the Commission may by regulation prescribe, including, but not limited to, reports containing information necessary to verify that qualified contributions received by participating candidates and Fair Elections funds spent by participating candidates comply with the restrictions and requirements of this chapter. (Ord. 7524-NS § 3.3, 2016)

2.12.285 Campaign statement--Candidate statement in lieu permitted when.

Repealed by [Ord. 7296-NS](#). **2.12.290 Campaign statement--Consolidation permitted when.**

Repealed by [Ord. 7296-NS](#). **2.12.295 Report of late contributions.**

All candidates and committees, including committees qualified under Section [2.12.095](#) but prior to filing required statements under Section [2.12.255](#) of this chapter, shall report all late contributions received by identifying the full name, street address, occupation, and the name of the employer, if any, or principal place of business if self-employed, of the contributor. Late contributions of one hundred dollars or more, but less than one thousand dollars, shall be reported to the City Clerk within forty-eight hours of receipt; late contributions of one thousand dollars or more shall be reported to the City Clerk within twenty-four hours of receipt. Such reports do not require an original signature. Late contributions shall be reported on subsequent campaign statements in addition to reports filed pursuant to this section. (Ord. 7309-NS § 7, 2013; Ord. 5895-NS § 1, 1988; Ord. 4700-NS § 415, 1974)

2.12.297 Late independent expenditures preceding election.

A. *Disclosure of Expenditures.* Any person that makes a late independent expenditure as defined in California Government Code Section [82036.5](#) shall file the required report with the City Clerk within 24 hours of making the expenditure. The City Clerk shall post a copy of the report to the City's website within two business days after receiving the report. Late independent expenditures shall be reported on subsequent campaign statements in addition to the reports filed pursuant to this section. The person shall also provide to the City Clerk three copies of the communication funded by the expenditure.

B. *Contents of Report.* The report shall specify:

- a. Each candidate or measure supported or opposed by the expenditure;
- b. The amount spent to support or oppose each candidate or measure;
- c. Whether the candidate or measure was supported or opposed;
- d. The date and amount of each expenditure;
- e. A description of the type of communication for which the expenditure was made;
- f. The name and address of the person making the expenditure; and
- g. The name and address of the payee.

C. *Notification to Candidates of Expenditures.* The City Clerk shall notify all candidates and committees in each affected race by first class mail within two business days of receiving a report filed pursuant to this section.

D. *Exemption for Regularly Published Newsletters.* For purposes of the notification required by subsection (A) of this section, payments by an organization for its regularly published newsletter or periodical, if the circulation is limited to the organization's members, employees, shareholders, other affiliated individuals and those who request or purchase the publication, shall not be required to be reported. (Ord. 7296-NS § 3, 2013; Ord. 7234-NS § 4, 2012)

2.12.300 Contributions--Written instrument required when.

All monetary contributions of fifty dollars or more shall be made by written instrument containing the name of the donor and the name of the payee. (Ord. 4948-NS (part), 1976: Ord. 4700-NS § 420, 1974)

2.12.305 Contributions--From persons using other than legal name prohibited.

No contribution shall be made, directly or indirectly, by any person in a name other than the name by which such person is identified for legal purposes. (Ord. 4700-NS § 421, 1974)

2.12.310 Contributions--By persons on behalf of other persons prohibited.

No contribution shall be made, directly or indirectly, of anything belonging to another person or received from another person on the condition that it or part of it be used as a contribution. No contribution shall be made, directly or indirectly, by any person on behalf of another person. (Ord. 4700-NS § 422, 1974)

2.12.315 Expenditures--Report requirements--Scope.

No expenditure shall be made, other than overhead or normal operating expenses, by an agent or independent contractor, including but not limited to an advertising agency, on behalf of or for the benefit of any candidate or committee unless it is reported by the candidate or committee as if the expenditure were made directly by the candidate or committee. The agent or independent contractor shall make known to the candidate or committee all information required to be reported by this section. This section is intended as a limitation and does not authorize any expenditures which are otherwise prohibited by this chapter. (Ord. 4700-NS § 423, 1974)

2.12.320 Anonymous contributions--Restrictions--Payment to City required when.

No person shall make an anonymous contribution or contributions to a candidate, committee or any other person totaling more than fifty dollars in a calendar year. An anonymous contribution of more than fifty dollars shall not be kept by the intended recipient but instead shall be promptly paid to the City Auditor for deposit in the Fair Elections - Fund of the City. (Ord. 7564-NS § 6, 2017: Ord. 4948-NS (part), 1976: Ord. 4700-NS § 424, 1974)

2.12.325 Mass mailings--Copies to commission.

A copy of every mass mailing in support of or in opposition to a candidate or measure shall be sent to the commission. Such copies sent to the commission shall be public record. (Ord. 4977-NS § 1 (part), 1977: Ord. 4700-NS § 425, 1974)

2.12.330 Mass mailings by independent expenditure.

When a mass mailing which supports or opposes any candidate for Berkeley elective office or the qualification, passage or defeat of a ballot measure is paid for by independent expenditures a completed statement in the following form must appear on the envelope and on each page or fold of the mass mailing in no less than 10-point type, not subject to the half-tone or screening process, and in a printed or drawn box set apart from any other printed matter in the mailing:

NOTICE TO VOTERS

(Required by City of Berkeley)

This mailing is not authorized or approved by any City of Berkeley election official, candidate for elective office or campaign committee.

It is paid for by

(Name)

(Address, City, State)

(Ord. 6096-NS § 2 (part), 1991)

2.12.335 Disclosure on campaign communications of certain contributions and loans.

A. Campaign communications supporting or opposing any candidate or measure shall include the name of the committee and the phrase "Major Funding Provided By" immediately followed by the name of the contributor, the city of domicile, and the total cumulative sum of contributions by each of the top four contributors over \$250* to the committee funding the expenditure made within six months of the expenditure. For purposes of this section, the term "contributor" shall include lender, and committees shall aggregate contributions and any loan balances from the same person when determining the total cumulative sum of contributions from a contributor.

* The dollar amounts in this code section are adjusted for inflation every two years. The current dollar amounts are posted [online](#).

B. The disclosures required by this section shall list contributors in descending order by the cumulative total amount of their contributions and shall be presented in a clear and conspicuous manner to give the reader, observer, or listener adequate notice. For all communications, the complete name of the contributor must be listed. No acronyms may be used. For purposes of this section, "campaign communication" means any of the following items:

1. One thousand or more substantially similar pieces of campaign literature, including but not limited to mailers, flyers, pamphlets, and door hangers;
2. Paid advertisements, including but not limited to advertisements in newspapers, magazines, and on the Internet;
3. One thousand or more substantially similar e-mails or pre-recorded telephone calls made within a calendar month.

C. For purposes of this section, "campaign communication" does not include: small promotional items such as pens, pencils, clothing, mugs, potholders, or other items on which the statement required by this section cannot be reasonably printed or displayed in an easily

legible typeface; posters, yard or street signs, billboards, supergraphic signs, skywriting, and similar items; television, cable, satellite, and radio broadcasts or advertisements; communications paid for by a newspaper, radio station, television station or other recognized news medium; and communications from an organization to its members.

D. When a new contribution changes the list of contributors required to be disclosed on campaign communications under subsection A, campaign communications must be updated on the following schedule:

1. For printed campaign communications under subsection B.1 or subsection B.2, disclosures must be updated within seven calendar days to include current disclosure information every time an order to reproduce the campaign communication is placed, or any time the campaign communication is reprinted;
2. For e-mails or pre-recorded telephone calls under subsection B.3, disclosures must be updated to include current disclosure information within seven calendar days. (Ord. 7253-NS § 1, 2012)

Article 5. Expenditure Limitations

2.12.405 Measures--Compensation for petition circulation--Disclosure.

If compensation is received by any person for obtaining signatures or for the circulation of petitions to place a measure on the ballot, the terms of such compensation shall be clear and visible on the signature sheet of the petition. (Ord. 5895-NS § 1, 1988; Ord. 4700-NS § 517, 1974)

Article 6. Limitations on Contributions

2.12.415 Persons other than candidate--Maximum permitted amount.

No person other than a candidate shall make and no campaign treasurer shall solicit or accept any contribution which will cause the total amount contributed by such person with respect to a single election in support of or in opposition to such candidate to exceed two hundred fifty dollars (\$250). The Commission shall adjust the dollar amount in this Section for cost of living changes pursuant to Section [2.12.075](#) in March of every odd-numbered year, or as soon thereafter as practicable. Such adjustments shall be rounded to the nearest ten dollars (\$10). For purposes of this section single election is a primary, general, special, runoff or recall election. (Ord. 7857-NS § 1, 2023; Ord. 7793-NS § 1, 2021; Ord. 5895-NS § 1, 1988; Ord. 4700-NS § 600, 1974)

2.12.435 Excess amounts--Payment to City required.

If any person is found guilty of violating the terms of this chapter, each campaign treasurer who received part or all of the contribution or contributions which constitute the violation shall pay promptly, from available campaign funds, if any, the amount received from such persons in excess of the amount permitted by this chapter to the City for deposit in the Fair Elections Fund of the City. (Ord. 7524-NS § 3.4, 2016; Ord. 4700-NS § 604, 1974)

2.12.440 Contributions from certain organizations and business entities prohibited.

No proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, including non-profit corporations, or labor union shall make a contribution to any candidate or committee (supporting or opposing any candidate) directly or indirectly, and no campaign treasurer (of any such committee) shall solicit or accept such contribution. (Ord. 6096-NS § 1, 1991; Ord. 4701-NS § 1 (part), 1974; Ord. 4700-NS § 605, 1974)

Article 7. Enforcement--Penalties For Violation**2.12.445 Complaints--Filing, investigation and commission action.**

Any person who believes that a violation of any portion of this chapter has occurred may file a complaint with the commission. If the commission determines that there is reason to believe 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 provisions of this chapter. (Ord. 4700-NS § 710, 1974)

2.12.450 Actions for compliance--Who is authorized to institute.

Any resident of the City who believes that a violation of this chapter has occurred or is about to occur, may institute such action at law or equity for injunctive relief and to compel compliance with the provisions of this chapter. (Ord. 4700-NS § 711, 1974)

2.12.455 Actions for compliance--Procedure required and commission authority.

Before instituting an action pursuant to Section [2.12.450](#), a person must file a written request with the commission asking it to commence the action. The request shall include a clear statement of the facts indicating that a cause of action exists. The commission shall respond within seven days after receipt of the request stating whether or not it intends to file the action. If the commission states that it intends to file the action and files the action within ten days thereafter, no other action may be brought by any person unless the action brought by the commission is dismissed without prejudice. If the commission states that it does not intend to file the requested action or fails to do so, then the resident requesting that the action be brought may file and prosecute the action to enforce or compel compliance with this chapter. (Ord. 4700-NS § 712, 1974)

2.12.460 Violation--Deemed misdemeanor--Penalty.

Any person who knowingly or wilfully violates any provision of this chapter is guilty of a misdemeanor punishable by a fine for each violation of three times the amount the person failed to report properly, or unlawfully contributed, expended, gave or received. (Ord. 4700-NS § 700, 1974)

2.12.465 Actions for compliance--Disposition of amounts recovered.

If a judgment is entered against the defendant or defendants in an action brought under Section [2.12.450](#), the plaintiff shall receive fifty percent of the amount recovered. The remaining fifty percent shall be deposited in the Fair Elections Fund of the City. In an action brought by the Commission or the City Attorney, the entire amount recovered shall be paid to the Fair Elections Fund of the City. (Ord. 7524-NS § 3.5, 2016; Ord. 4700-NS § 701, 1974)

2.12.470 Violation--Candidate's office forfeited when.

If after his or her election a candidate receives a final judgment of conviction of a violation of any provision of this chapter, the office of such candidate shall be forfeited and such office shall become vacant immediately thereupon, or on the date upon which the candidate, if he or she is not an incumbent, would otherwise take office. (Ord. 4700-NS § 702, 1974)

2.12.475 Violation--Candidacy terminated when.

If a candidate receives a final judgment of conviction of this chapter at any time prior to his or her election, his or her candidacy shall be terminated immediately and he or she shall be no longer eligible for election. (Ord. 4700-NS § 703, 1974)

2.12.480 Violation--Persons ineligible for candidacy--Time limit.

No person convicted of a violation of this chapter shall be a candidate for City elective office for a period of four years from and after the date of his or her conviction. A plea of nolo contendere shall be deemed a conviction for purposes of this section. (Ord. 4948-NS (part), 1976: Ord. 4700-NS § 704, 1974)

2.12.485 Late filing penalties.

Any candidate or committee whose only requirement to file a campaign statement or report is pursuant to Sections [2.12.270](#), [2.12.295](#), or [2.12.297](#) of this chapter and who files such report or reports after the deadlines imposed in these sections, shall, in addition to any other penalties or remedies established by this chapter, be liable for the penalties enumerated in California Government Code Section [91013](#), which is incorporated herein. (Ord. 7234-NS § 5, 2012: Ord. 6096-NS § 2 (part), 1991)

Article 8. Berkeley Fair Elections Act of 2016**2.12.490 Title and purpose.**

This Article shall be known as the Berkeley Fair Elections Act of 2016. Its purposes are to:

- A. Diminish the public perception of corruption and strengthen public confidence in the governmental and election processes.
- B. Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- C. Help reduce the influence of private campaign contributions on Berkeley government.
- D. Reduce the impact of wealth as a determinant of whether a person becomes a candidate.
- E. Foster more meaningful participation in the political process.

F. Provide candidates who participate in the program with sufficient resources with which to communicate with voters.

G. Increase the accountability of elected officials to the constituents who elect them, as opposed to the contributors who fund their campaigns.

H. Free candidates from the time needed to raise campaign money, and allow officeholders more time to carry out their official duties. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.495 Offices covered.

Candidates for the offices of Mayor, City Council, Auditor, Board of Education, and Rent Stabilization Board shall be eligible to participate in the public campaign financing program established by this chapter. (Ord. 7793-NS § 2, 2021; Ord. 7524-NS § 3.6 (part), 2016)

2.12.500 Eligibility for Fair Elections campaign funding.

A. To be eligible to be certified as a participating candidate, a candidate must:

1) During the qualifying period for the election involved, choose to participate in the Fair Elections program by filing with the City a written application for certification as a participating candidate in such form as may be prescribed by the Commission, containing the identity of the candidate, the office that the candidate seeks, and the candidate's signature, under penalty of perjury, certifying that:

a) The candidate has complied with the restrictions of this chapter during the election cycle to date;

b) The candidate's campaign committee has filed all campaign finance reports required by law during the election cycle to date and that they are complete and accurate; and

c) The candidate will comply with the requirements of this Act during the remainder of the election cycle and, specifically, if certified an eligible participating candidate, will comply with the requirements applicable to participating candidates.

2) Meet all requirements to be eligible to hold the office sought:

a) For the office of Mayor, Councilmember, Auditor, or School Director, the requirements as set forth in Sections 9 and 10 of Article V of the Charter of the City of Berkeley; or

b) For the office of Commissioner of the Rent Stabilization Board, the requirements as set forth in Section 121 of Article XVII of the Charter of the City of Berkeley.

3) Before the close of the qualifying period, collect and submit at least 30 qualified contributions, from at least 30 unique contributors, of at least ten dollars (\$10)*, for a total dollar amount of at least five-hundred dollars (\$500)*.

a) Each qualified contribution shall be acknowledged by a receipt to the contributor, with a copy retained by the candidate. The receipt shall include the contributor's signature, printed name, home address, and telephone number, if any, and the name of the candidate on whose behalf the contribution is made. In addition, the receipt shall indicate by the contributor's signature that the contributor understands that the purpose of the qualified contribution is to help the candidate qualify for Fair Elections campaign funding and that the contribution is made without coercion or reimbursement.

b) A contribution for which a candidate has not obtained a signed and fully completed receipt shall not be counted as a qualified contribution.

4) Maintain such records of receipts and expenditures as required by the Commission;

5) Obtain and furnish to the Commission or City staff any information they may request relating to his or her campaign expenditures or contributions and furnish such documentation and other proof of compliance with this chapter as may be requested by such Commission or City staff;

6) Not make expenditures from or use his or her personal funds or funds jointly held with his or her spouse, domestic partner, or unemancipated children in connection with his or her election except as a monetary or non-monetary contribution to his or her controlled committee of \$250* or less. Contributions from a participating candidate to his or her own controlled committee are not eligible for matching funds.

7) Not accept contributions in connection with the election for which Fair Elections funds are sought other than qualified contributions, contributions not greater than fifty dollars (\$50)* made by a natural person non-resident of Berkeley, or non-monetary contributions with a fair market value not greater than fifty dollars (\$50)*. The aggregate value of all contributions from any individual must not be greater than fifty dollars (\$50)*;

8) Not solicit or direct contributions in connection with any election during the election cycle in which Fair Elections funds are sought other than qualified contributions, contributions not greater than fifty dollars (\$50)* made by a natural person non-resident of Berkeley, or non-monetary contributions with fair market value not greater than fifty dollars (\$50)* to such candidate's-controlled committee.

9) Not accept loans from any source.

10) The City has the authority to approve a candidate's application for public financing, despite a violation by the candidate related to participation and qualification in the public financing program, if the violation is minor in scope and the candidate demonstrates a timely, good-faith effort to remedy the violation. The Commission shall adopt regulations setting forth guidelines for what constitutes a minor violation under this provision.

* The dollar amounts in this code section are adjusted for inflation every two years. The current dollar amounts are posted [online](#).

B. At the earliest practicable time after a candidate files with the City a written application for certification as a participating candidate, the City shall certify that the candidate is or is not eligible. Eligibility can be revoked if the Commission determines that a candidate has committed a substantial violation of the requirements of this Act, in which case all Fair Elections funds shall be repaid.

C. At the discretion of the Commission or at the applying candidate's request, the City's denial of eligibility is subject to review by the Commission. The Commission's determination is final except that it is subject to a prompt judicial review pursuant to Section [2.12.235](#).

D. If the City or Commission determines that a candidate is not eligible, the candidate is not required to comply with provisions of this Act applicable only to participating candidates. (Ord. 7793-NS § 3, 2021: Ord. 7723-NS § 1, 2020: Ord. 7691-NS § 2, 2020: Ord. 7674-NS § 1, 2019: Ord. 7564-NS § 7, 2017: Ord. 7524-NS § 3.6 (part), 2016)

2.12.505 Fair Elections fund payments.

A. A candidate who is certified as an eligible participating candidate shall receive payment of Fair Elections funds equal to six-hundred percent (600 percent) of the amount of qualified contributions received by the candidate during the election cycle with respect to a single election subject to the aggregate limit on the total amount of Fair Elections funds payments to a candidate specified in Section [2.12.505.B](#).

B. The aggregate amount of Fair Elections funds payments that may be made to a participating candidate during an election cycle may not exceed:

- 1) \$129,000* for a candidate running for the office of Mayor;
- 2) \$43,000* for a candidate running for the office of City Council;
- 3) \$20,000* for a candidate running for the office of Auditor;
- 4) \$20,000* for a candidate running for the office of Board of Education;
- 5) \$8,000* for a candidate running for the office of Rent Stabilization Board.

* The dollar amounts in this code section are adjusted for inflation every two years. The current dollar amounts are posted [online](#).

C. A participating candidate's application for Fair Elections funds, including an initial request submitted with an application for certification as a participating candidate, shall be made using a form prescribed by the Commission and shall be accompanied by qualified contribution receipts and any other information the Commission deems necessary. This application shall be accompanied by a signed statement from the candidate indicating that all information on the qualified contribution receipts is complete and accurate to the best of the candidate's knowledge.

- 1) All Qualified Contributions, of any dollar amount, eligible for matching Fair Elections funds must be publicly disclosed with the contributor information required under Sections [2.12.280](#) and [2.12.283](#).
- 2) All campaign filings must be current in order for a Participating Candidate to receive a disbursement of Fair Elections funds and the Participating Candidate and a Participating Candidate's controlled committee must not have any outstanding fines related to campaign

filings or violations of municipal, state or federal election law. All applications for Fair Elections funds shall include a certification by the Participating Candidate that the Participating Candidate or his or her controlled committee does not have any outstanding fines or penalties related to campaign filings. Upon submission of outstanding campaign filings and payment of any outstanding fines, withheld Fair Elections funds will be disbursed at the next regularly scheduled distribution for that election cycle.

D. The City shall verify that a candidate's qualified contributions meet all of the requirements and restrictions of this Act prior to the disbursement of Fair Elections funds to the candidate. A participating candidate who receives a qualified contribution that is not from the person listed on the qualified contribution receipt shall be liable to pay the Fair Elections Fund the entire amount of the inaccurately identified contribution, in addition to any penalties.

E. The City shall make an initial payment of Fair Elections funds within seven business days of the City's certification of a participating candidate's eligibility, or as soon thereafter as is practicable. City staff shall report a certification or denial to the Commission no later than the Commission's next regular meeting, consistent with the Brown Act.

F. The Commission shall establish a schedule for the submission of Fair Elections funds payment requests, permitting a candidate to submit a Fair Elections funds payment request at least once per month. However, the Commission shall schedule a minimum of three payment request submission dates within the thirty days prior to an election.

G. The City shall provide each participating candidate with a written determination specifying the basis for any non-payment of Fair Elections funds. The Commission shall provide participating candidates with a process by which they may immediately upon receipt of such determination petition the Commission for reconsideration of any such non-payment and such reconsideration shall occur within seven business days of the filing of such petition. In the event that the Commission denies such petition then it shall immediately notify the candidate of his or her right to seek judicial review of the Commission's denial pursuant to Section [2.12.235](#).

H.

1. Unspent campaign funds of any Participating Candidate who does not qualify as a candidate for the ballot at the election for which the funds were distributed, up to the total amount of funds that the participating candidate received as Fair Election Funds distributions in that election cycle and after accounting for campaign debts and

expenditures, must be returned to the City no later than the date of the election for which the funds were distributed. All funds returned under this paragraph must be accompanied by any required supporting documentation. In such cases, the participating candidate must return the unspent funds to the City, up to the total amount of funds that the participating candidate received as Fair Election Funds distributions, prior to refunding any contributions to individual contributors.

2. Any campaign funds that remain unspent by a Participating Candidate following the date of the election for which they were distributed, up to the total amount of funds that the Participating Candidate received as Fair Elections Funds distributions in that elections cycle and after accounting for campaign debts and expenditures, must be returned to the City, no later than the close of the semi-annual reporting period immediately following the date of the election. All funds returned under this paragraph must be accompanied by any required supporting documentation.

3. All unspent campaign funds returned to the City shall be deposited in the Fair Elections Fund pursuant to the City Charter.

4. Following the deadline for filing the semi-annual campaign statement occurring immediately after the election, the City Clerk shall refer to the Commission for enforcement any participating candidate who has not returned unspent funds as required by this subsection.

5. After the deadline to return unspent funds in [2.12.505.H.2](#), a participating candidate may continue to raise funds in accordance with Article [8](#) of Chapter [2.12](#) to pay campaign-related debt from the most recent election. Any such contributions received shall not be eligible for matching funds.

I. Any request by a Participating Candidate for a refund of any amount of unspent campaign funds previously repaid to the City, for a qualified campaign expenditure or other permissible campaign purpose, shall be submitted to the Commission to approve, in whole or in part, or deny. The Commission shall make a final determination on the refund within 45 days of receipt.

J. Requests for matching funds may be submitted no later than 30 days after Election Day for the election at which the participating candidate qualified as a candidate.

K. Upon approval of a participating candidate's Initial Qualifying Request, the candidate is prohibited from withdrawing from the Public Financing Program and receiving contributions pursuant to Section [2.12.415](#) for the same office at the same election for which they are a participating candidate. (Ord. 7875-NS §§ 6--8, 2023; Ord. 7793-NS § 4, 2021; Ord. 7723-NS § 2, 2020; Ord. 7691-NS § 3, 2020; Ord. 7674-NS § 2, 2019; Ord. 7564-NS § 8, 2017; Ord. 7524-NS § 3.6 (part), 2016)

2.12.507 Return of Contributions by Participating Candidates.

A. Notwithstanding the requirements in Section [2.12.505.H.1](#), if a participating candidate returns a qualified contribution for which they have requested and received matching funds, they must immediately return all said matching funds to the City.

B. Notwithstanding the requirements in Section [2.12.505.H.1](#), a participating candidate may return a non-qualified contribution to the contributor at any time without triggering any requirement that they return matching funds. (Ord. 7875-NS § 9, 2023)

2.12.510 Candidate statement notice.

A candidate certified as a Fair Elections program participant shall be identified as such by a notice prominently posted on the City website. (Ord. 7875-NS § 10, 2023; Ord. 7524-NS § 3.6 (part), 2016)

2.12.515 Transition rule for current election cycle.

During the first election cycle that occurs after Council implementation of this Act, a candidate may be certified as a participating candidate, notwithstanding the acceptance of contributions other than qualified contributions before the date of enactment that would, absent this Section, disqualify the candidate as a participating candidate, provided that any funds other than qualified contributions accepted but not expended before the effective date of this Act shall be:

A. Returned to the contributor;

- B. Held in a special campaign account and used only for retiring a debt from a previous campaign; or
- C. Submitted to the City for deposit in the Fair Elections Fund. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.520 Special municipal elections.

The provisions of this chapter apply to special municipal elections as defined in City Charter Article III Section 4. The Commission shall adjust the deadlines in this Act to account for the circumstances of the special municipal election. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.525 Campaign accounts for participating candidates.

- A. During an election cycle, each participating candidate shall conduct all campaign financial activities through a single campaign expenditure and contribution account as required by Section [2.12.250](#).
- B. A participating candidate may maintain a campaign account other than the campaign account described in subsection A if the other campaign account is for the purpose of retiring a campaign debt that was incurred during a previous election campaign in which the candidate was not a participating candidate.
- C. Contributions for the purposes of a retiring a previous campaign debt that are deposited in the kind of "other campaign account" described in subsection B shall not be considered "contributions" to the candidate's current campaign.
- D. Participating candidates shall file reports of financial activity related to the current election cycle separately from reports of financial activity related to previous election cycles. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.530 Use of Fair Elections funds.

A. A participating candidate shall use Fair Elections funds and contributions only for direct campaign purposes to further the candidate's own campaign for the relevant office and election cycle.

B. A participating candidate shall not use Fair Elections funds or contributions for:

- 1) Costs of legal defense in any campaign law enforcement proceeding under this Act, or penalties arising from violations of any local, state, or federal campaign laws;
- 2) The candidate's personal support or compensation to the candidate the candidate's family, or a business in which the candidate or candidate's immediate family member has a ten (10) percent or greater ownership interest;
- 3) Indirect campaign purposes, including but not limited to:
 - a) Any expense that provides a direct personal benefit to the candidate, including clothing and other items related to the candidate's personal appearance;
 - b) Capital assets having a value in excess of five hundred dollars (\$500)* and useful life extending beyond the end of the current election period determined in accordance with generally accepted accounting principles;
 - c) A contribution or loan to the campaign committee of another candidate or to a party committee or other political committee;
 - d) An independent expenditure as defined in Berkeley Municipal Code Section [2.12.142](#) as may be amended;
 - e) Any payment or transfer for which compensating value is not received

* The dollar amounts in this code section are adjusted for inflation every two years. The current dollar amounts are posted [online](#).

C. A participating candidate may use equipment, campaign materials, and/or other items paid for with Fair Elections funds in a previous election provided that the candidate provides an accounting of the fair market value of such items to the City Clerk Department and such value is deducted from any Fair Elections funds disbursed to the candidate in the current election. In the case of campaign materials including but not limited to yard signs and campaign

literature, the fair market value shall be the cost the candidate would expect to incur in order to design and create new versions of the same materials minus any cost to affix updated disclaimer language to the campaign materials. All campaign materials must comply with Section 2.12.335 and any other applicable disclaimer requirements.

D. The term "Contribution" is defined in [2.12.100](#) and includes "Qualified Contributions" as defined in [2.12.167](#) and contributions from non-residents of Berkeley as described in [2.12.500.A.7](#).

E. The dollar amounts in Section [2.12.530.B.3.b](#) may be adjusted for cost-of-living changes by the Commission through regulation, pursuant to Section [2.12.545](#). (Ord. 7793-NS § 5, 2021: Ord. 7691-NS § 4, 2020: Ord. 7674-NS § 3, 2019: Ord. 7564-NS § 9, 2017: Ord. 7524-NS § 3.6 (part), 2016)

2.12.535 Administrative modification of timelines.

Notwithstanding any provision in this chapter to the contrary, the Commission may alter any of the time periods or deadlines listed herein if it finds that they are impracticable, so long as the readjusted period or deadline meets the objectives of this chapter. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.540 Insufficient funds in the program.

If the Commission determines that there are insufficient funds in the Fair Elections Fund to fund adequately all participating candidates, the Commission shall notify participating candidates that the Commission will not likely be capable of distributing to all participating candidates the maximum aggregate amount of Fair Elections funds payments permissible under Section [2.12.505.B](#). Under such circumstances, at such time as the Commission is unable to fulfill a valid application for Fair Elections funds submitted by a participating candidate pursuant to Section [2.12.505.C](#), the participating candidate may solicit for such candidate's controlled committee and accept any contributions permissible under City law and shall no longer be subject to the restriction on use of personal funds established by Section [2.12.500.A.6](#). (Ord. 7524-NS § 3.6 (part), 2016)

2.12.545 Cost of living adjustments.

A. The Commission shall adjust the dollar amounts specified in Sections [2.12.167](#), [2.12.271](#), [2.12.335](#), [2.12.500.A.3](#), [2.12.500.A.6](#), [2.12.500.A.7](#), [2.12.500.A.8](#), [2.12.505.B](#) and [2.12.530.B.3.b](#) for cost of living changes pursuant to Section [2.12.075](#) in January of every odd-numbered year following Council implementation. All such adjustments shall be rounded to the nearest ten dollars (\$10), except for adjustments to the amount specified in Section 2.12.505.B, which shall be rounded to the nearest one thousand dollars (\$1,000).

B. As soon as practicable after adoption of the amendments providing for the adjustment of Sections [2.12.271](#) and [2.12.335](#), but no later than December 31, 2024, the Commission shall perform an initial adjustment of the dollar amounts in those sections. (Ord. 7889-NS § 1, 2023; Ord. 7875-NS § 11, 2023; Ord. 7857-NS § 2, 2023; Ord. 7691-NS § 5, 2020; Ord. 7564-NS § 10, 2017; Ord. 7524-NS § 3.6 (part), 2016)

2.12.550 Fair Elections Act penalties.

In addition to other enforcement and penalty provisions of this Article:

A. It is a violation of the law for candidates to accept more Fair Elections Act benefits than those to which they are entitled or misuse such benefits or Fair Elections funding.

B. If a participating candidate knowingly or willfully accepts or spends Fair Elections funding in violation of this Act, then the candidate shall repay to the Fair Elections Fund an amount equal to twice the value of Fair Elections funding unlawfully accepted or spent.

C. The Commission shall, after a hearing held pursuant to Section [2.12.230](#), have the authority to impose the fine created by this section upon a two-thirds vote. (Ord. 7524-NS § 3.6 (part), 2016)

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

No person who commits a substantial violation of this chapter shall be eligible to receive public funds for a period of four years from and after the date that the Commission determines, upon a two-thirds vote, that such a violation has occurred, following a hearing held pursuant to

Section [2.12.230](#). The Commission shall by regulation state the criteria to be satisfied in order to make a finding of a substantial violation. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.560 Review by Commission.

After each of the first two election cycles that occur after Council implementation of this Act, the Commission shall review the Fair Elections program and make recommendations to Council for policy changes to improve and refine the program. (Ord. 7524-NS § 3.6 (part), 2016)

The Berkeley Municipal Code is current through Ordinance 7936-NS, passed October 15, 2024.

Disclaimer: The City Clerk's Office has the official version of the Berkeley Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

[City Website: www.berkeleyca.gov](http://www.berkeleyca.gov)

[Hosted by General Code.](#)



Open Government Commission

Date: October 30, 2025

To: Open Government Commission

From: Sam Harvey, Secretary
Lauren Packard, Secretary
Stephen Hylas, Secretary

Subject: Complaint alleging a procedural irregularity at the Council's April 28, 2025 Special Meeting

EXECUTIVE SUMMARY

On June 16, 2025, the Open Government Commission ("OGC") received the attached email from Niloofar Shambayati ("Complaint"). The Complaint alleges that a "procedural irregularity" occurred at the April 28, 2025 Special Meeting in which City Council considered adopting a resolution regarding the conflict in Gaza. Specifically, the Complaint alleges that the Clerk violated the City Council's Rules of Procedure and Order when he continued to solicit votes on a motion to adopt CM Taplin's resolution even though the Mayor had made a motion to adjourn in the middle of the roll call. Subsequently, the OGC directed staff to investigate this complaint.

After thoroughly reviewing the facts and relevant authorities, staff conclude (1) the Complaint was not properly submitted; (2) even if it were, the subject of the Complaint does not fall within the OGC's jurisdiction pursuant to the Berkeley Municipal Code; and (3) even if the OGC did have jurisdiction to consider the Complaint, the video recording from the meeting shows that the City's procedures were properly followed and the subject resolution was properly adopted.

ANALYSIS

- I. This OGC cannot consider this Complaint because it was not properly submitted and does not fall within the OGC's jurisdiction.

The Open Government Ordinance ("OGO") provides, "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." Berkeley Municipal Code ("BMC") § 2.06.190(A)(1). The Complaint was submitted via email and was not provided on the OGC's complaint form.

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Complaint re: Procedural Irregularity at April 28, 2025 Special Council Meeting

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The OGO further provides, that the OGC shall “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, elected or appointed officials, officers or employees.” BMC § 2.06.190(A)(1). The Complaint does not allege a violation of any of these pieces of legislation but rather alleges a violation of the Berkeley City Council Rules of Procedure and Order. Therefore, the OGC does not have jurisdiction to consider the Complaint.

II. No violation of the City Council Rules of Procedure and Order occurred.

The Berkeley City Council Rules of Procedure and Order, Section V.D. “Precedence of Motions” provides, “When a question or motion is before the Council, no motion shall be entertained except:

1. To adjourn;
2. To fix the hour of adjournment;

...These motions shall have precedence in order indicated. Any such motion, except a motion to amend or substitute, shall be put to a vote without debate.”

The Complaint alleges that *during* the roll call for the main motion to adopt a resolution co-authored by Mayor Ishii and CM Bartlett, the Mayor made a motion to adjourn the meeting, which CM Kesarwani seconded. Therefore, the Complaint alleges, the meeting should have adjourned and the Clerk should not have continued soliciting votes on the main motion.

Multiple staff carefully reviewed relevant portions of the video footage of the April 28 special meeting at which the alleged violation occurred. Even though the meeting, which ran from 5:04 pm to 11:48 pm, was consistently, persistently, and loudly disrupted by protesters, the video footage clearly showed that the roll call for the vote on the main motion had been completed *before* the motion to adjourn was made.

The Clerk begins the roll on the main motion at 6:42:43 (note that this timestamp refers to six hours, 42 minutes, and 43 seconds into the meeting). Between then and 6:44:40, the Clerk audibly gathers votes from CMs Kesarwani, Taplin, Bartlett, Tregub, O’Keefe, Blackaby, Lunaparra, and Humbert. Then, at 6:44:43, the Clerk calls on the Mayor, who gets up from her seat at the dais and goes over to speak with the Clerk, but their conversation is inaudible. At 6:45:54, the Mayor makes a motion to adjourn, which CM Kesarwani seconds. The Clerk could not immediately take roll on this motion because of the loud protests in the room. At 6:47:10, CM Taplin (who was attending the meeting remotely on Zoom) says, “I can’t hear anything!” so the Clerk clarifies, “Mayor Ishii has voted yes, the motion passes. The motion carries.” The Mayor then says above the protests, “Folks, do you want to hear what was decided? There was a vote that happened already.” Then, at 6:48:05, the Clerk takes roll on the motion to adjourn. A fuller transcript is available in Attachment 2.

Therefore, it is clear that all members of the Council present, including the Mayor, had voted on the main motion *before* the motion to adjourn was made. While the Mayor’s vote was inaudible from the video, her remarks and those of the Clerk clearly indicate she had placed a vote. The fact that her vote was inaudible is a technical, not a procedural, issue, perhaps implicating her microphone or the room’s recording equipment. Further, the votes of eight other

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Complaint re: Procedural Irregularity at April 28, 2025 Special Council Meeting

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Councilmembers *were* audible and six of those votes were “ayes,” so the motion would have carried even without the Mayor’s vote.

RECOMMENDATION

Pursuant to Section 2.06.190, subdivision (A)(1) of the OGO, the OGC 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, elected or appointed officials, officers or employees;
- b) consider ways to informally resolve those complaints and make recommendations to the Council regarding such complaints;
- c) seek advice from the City Attorney concerning those complaints;
- d) advise the City Council of its opinion, conclusion or recommendation as to any complaint; and
- e) take any action authorized by the Lobbyist Registration Act under Chapter 2.09.

Staff recommend that the OGC dismiss the complaint because it falls outside of its jurisdiction. At a future meeting, the OGC may wish to agendize and discuss the sufficiency of technology-assisted remote meeting attendance.

Attachments.

1. Complaint from Niloofar Shambayati
2. Staff-generated transcript of relevant portions of the April 28, 2025 Special Meeting at issue.

Harvey, Samuel

From: Niloofar Shambayati <niloofar.peace@gmail.com>
Sent: Monday, June 16, 2025 12:02 AM
To: FCPC (Fair Campaign Practices Commission)
Subject: A Irregularity At Special Meeting Of Berkeley City Council

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

To the members of the Fair Campaign Practices Commission,

I would like to report the occurrence of a procedural irregularity at the April 28's Berkeley City Council special meeting (https://berkeley.granicus.com/player/clip/5436?publish_id=c8e26584-251d-11f0-9f54-005056a89546&redirect=true) to vote on the Peace and Justice Commission's (PJC's) Palestine Resolution and two alternative proposals. When PJC's Resolution, which was adopted in September 2024, and mayor Ishi's alternative proposal were both voted down, Councilmember Taplin's proposed resolution was introduced.

Since Mr. Taplin's proposal did not address the critical issues laid out in PJC's Resolution and the mayor's alternative, the overwhelming majority of the attendees started to object. When some of the voices became loud, the mayor motioned to adjourn the meeting, which was seconded by Councilmember Kesarvani. However, in clear violation of the Section D of the Precedence of Motions in Berkeley City Council's *Rules of Procedure and Order* (P.30), the City Clerk ignored the mayor's motion and proceeded with soliciting votes on Mr. Taplin's proposal. It was only after the passage of Mr. Taplin's resolution that the City Clerk took a vote on the mayor's motion to adjourn!

I related my assessment of this situation to the Mayor a few weeks ago but have not heard back from her or her staff. I hope the Commission looks into this matter closely and offers the City Council a corrective action, which can start building public trust in our local government. I encourage the members of the Commission to watch the last ten minutes of the meeting recording from the moment the mayor's proposal was voted down, around 6:40:00 to the end of the meeting.

I would greatly appreciate to be informed of the result of the Commission's review of the proceedings of the April 28's city council meeting.

Respectfully,
 Niloofar Shambayati
 Berkeley

ATTACHMENT 2

6:36:00 – CM Lunaparra makes the motion to consider CM Taplin’s supplemental (“main motion”); seconded by Mayor Iishi.

6:36:30 – Mayor makes motion to consider her supplemental; seconded by CM Bartlett.

6:36:44 – CM Taplin offers some friendly amendments to the Mayor’s supplemental; the Mayor declines the amendments.

6:41:54 – Clerk calls roll on the substitute motion to adopt the resolution submitted by Mayor Iishi and CM Bartlett; the motion fails.

6:42:43 – Clerk calls roll on main motion to adopt the resolution submitted by CM Taplin; CM Kesarwani votes yes

6:42:50 – Before the Clerk can continue calling roll, room interrupted by protests, Mayor says, “Folks, please stop.”

6:42:55 – Clerk calls CM Bartlett’s name but CM Bartlett can’t respond over the protests.

6:43:00 – Mayor says, “Decorum! Decorum! Folks, we need to finish the roll! Folks, folks, we need to finish the vote.”

6:43:14 – Clerk calls CM Bartlett’s name again.

6:43:16 – Mayor asks protesters who are standing on furniture to please sit down.

6:43:20 – Clerk calls CM Bartlett’s name two more times. Mayor calls CM Bartlett’s name again and so does the Clerk.

6:43:40 – Bartlett says, “abstain.” Clerk calls on CM Tregub who votes yes.

6:43:57 – Clerk calls on CM O’Keefe who votes yes.

6:44:02 – Over continued protests, the Mayor says, “Folks, if you’re not quiet, we’re not going to vote on anything.”

6:44:05 – Clerk calls on CM Blackaby, who votes yes.

6:44:10 – Clerk calls on CM Lunaparra.

6:44:12 – Mayor says, “Sorry, sorry, we’re going to take...” and then her voice is drowned out.

6:44:20 – Clerk says “What? Sorry?” And again calls on CM Lunaparra.

6:44:32 – Clerk says, “CM Lunaparra, do you wish to register a vote?” CM Lunaparra votes no. Clerk calls on CM Humbert, who votes yes.

6:44:43 – Clerk calls on Mayor Iishi, who gets up from her spot at the dais to go speak to Mark directly

6:45:50 – Mayor says, “Alright, that’s it. Ok. Is there a motion to adjourn then?”

6:45:54 – Mayor says, “There’s a motion to adjourn, is there a second?”

6:46:18 – CM Kesarwani second the motion.

6:47:10 – CM Taplin (on video) says, “I can’t hear anything.”

6:47:42 – Clerk says, “Mayor Iishi has voted yes, the motion passes. The motion carries.”

6:48:00 – Mayor says, “Folks, do you want to hear what was decided? There was a vote that happened already. Folks, I can’t tell you what’s happening. Do you want to know what’s going on? You don’t want to know what’s going on.”

6:48:05 – Clerk says, “Was there a motion to adjourn?” And takes roll on the motion to adjourn.



City Clerk Department

Date: November 6, 2025

To: Sam Harvey, Secretary, Open Government Commission

From: Mark Numainville, City Clerk

Subject: Referral of Non-Filing by Quarterly Lobbyist Filer

The Lobbyist Registration Act requires certain local government lobbyists to file quarterly disclosures of lobbying activity with the City Clerk Department. The following lobbyist has not filed for the April 1 – June 30, 2025, and July 1 – September 30, 2025 reporting periods:

Lobbyist Filer	Employer
Alexander Taplin	Riaz Capital

Notice of the filing requirement for the reporting period 04/01/25 to 06/30/2025 was sent to quarterly lobbyist filers by the City Clerk Department on July 21, 2025, July 24, 2025. Past due notices were sent on August 14, 2025.

Notice of the filing requirement for the reporting period 07/01/25 to 09/30/2025 was sent to quarterly lobbyist filers by the City Clerk Department on October 21, 2025, October 28, 2025, and October 31, 2025.

Lobbyists are required to file a final disclosure form and registration form indicating that all lobbying activities have terminated. Berkeley Municipal Code § 2.09.120 states that in the case of an in-house local government lobbyist, the lobbyist employer or agent thereof, may complete and file the required forms.

My office recommends referral of these matters to the Open Government Commission for consideration of: 1) Whether or not the failure to file quarterly disclosure report and terminating registration report is a violation of the Lobbyist Registration Act; and 2) Appropriate enforcement action as determined by the Commission.



Open Government Commission

Date: November 13, 2025

To: Open Government Commission

From: Sam Harvey, Secretary
Lauren Packard, Secretary
Stephen Hylas, Secretary

Subject: Complaint alleging Open Government Ordinance violation regarding City's policies and protocols for allowing public to attend meetings remotely

EXECUTIVE SUMMARY

On September 10, 2025, the Open Government Commission ("OGC") received the attached complaint ("Complaint") from Kelly Hammargren. The Complaint alleges that several City commissions are violating the Open Government Ordinance (Berkeley Mun. Code Chapter 2.06) by failing to allow members of the public to attend meetings remotely. These allegations are both general and specific. Generally, the complainant challenges the City's failure to conduct all meetings in a hybrid fashion, and to allow remote attendance by the public even when hybrid technology is readily available. Specifically, the complainant alleges that even though she had tested positive for COVID-19 in September 2025, two City commissions that are otherwise conducting hybrid meetings for commissioners and have hybrid technology available (the Commission on Disability and the Disaster and Fire Safety Commission) did not permit her to attend remotely as a member of the public.

The Complaint, as subsequently clarified by the complainant, also takes issue with several other City practices, including the following:

- The Complaint alleges that written comments, which are encouraged by the City's Health and Safety Protocols for sick members of the public who cannot attend meetings in-person, are not adequately received or considered by the legislative body or the public in attendance at the meeting. The Complaint asserts, for instance, that City Council Committees have never publicly recognized written comments they have received from the public.
- The Complaint alleges that City Commissions' practice of only posting the actions associated with agenda items, without posting a transcript or video, does not allow the public to adequately understand what occurred in board and commission meetings. The Complaint asserts that all City board and commission meetings should have live transcription and recordings posted to the City website after the meeting for maximum transparency.

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- The Complaint alleges that the City's protocols for accommodations requests by members of the public with disabilities should account for people with temporary illnesses.

After thoroughly reviewing the facts and relevant authorities, staff conclude that (1) the Complaint does not allege a violation of the Open Government Ordinance, and (2) to the extent the Complaint is intended to allege a violation of the Americans with Disabilities Act ("ADA") or the settlement agreement in *Fisher v. Berkeley*, the OGC does not have jurisdiction to consider the Complaint.

ANALYSIS

I. The Complaint does not allege any violation of the Open Government Ordinance.

On the OGC's Complaint form, the complainant indicates that her complaint is intended to allege a violation of the Open Government Ordinance (Berkeley Mun. Code Chapter 2.06).

There are two provisions of that Ordinance that are arguably related to some of the Complaint's allegations. First, BMC 2.06.100.A provides that "all regular and special meetings of the City Council, Redevelopment Agency, Rent Stabilization Board, and Zoning Adjustments Board, when held in the venue regularly used, shall be recorded, televised and video-streamed live as well as archived for replay. The live broadcasts shall be captioned." Second, BMC 2.06.100.B provides that "it is the intent of the City to broadcast the meetings of the Planning Commission, Landmarks Preservation Commission, and Housing Advisory Commission, in the same manner as specified in paragraph A, as City resources become available."¹

However, the Complaint does not appear to allege that the City Council, Rent Stabilization Board, or Zoning Adjustments Board have failed to record, caption, or archive meeting footage as required by the Ordinance.² Rather, the Complaint relates to other City boards and commissions that have failed to meet these standards. These other boards and Commissions are not required to record, caption, or archive meeting footage under the Ordinance. While the Ordinance provides that it is the "intent" of the City to achieve these goals for the Planning Commission, Landmarks Preservation Commission, and Housing Advisory Commission "as City resources become available," it does not mandate that the City do so.

OGC staff have not located any other provisions of the Ordinance that relate to the allegations in the Complaint. Specifically, OGC staff cannot locate any provision that requires the City to offer remote attendance options for members of the public at meetings of City boards and commissions; to post a live transcript or audio or video recording of all City board and commission meetings (other than the legislative bodies mentioned above); or to publicly recognize written comments that City commissions receive from the public.

Accordingly, the Complaint does not allege a violation of the Open Government Ordinance.

¹ The Ordinance also requires that the City "make audio and video available for both download and streaming using open, cross-platform, standards-based formats, accessible by a broad range of computer operating systems and portable devices." (BMC 2.06.170.A.3.) This standard, however, pertains to technological standards for audio and video that is posted to the City website. It does not require the City to post audio and video in the first instance.

² The Redevelopment Agency ceased to exist in 2012, so it is no longer holding meetings.

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II. The OGC Does Not Have Jurisdiction to Consider ADA Complaints or Challenges to Legal Settlements.

Aspects of the Complaint appear to express concerns with the City's disability-accommodations processes for members of the public, in particular those with temporary illnesses or other temporary disabilities. The Complaint also mentions the City's settlement in *Fisher v. Berkeley*, under which the City agreed to a new process for granting remote attendance accommodations to commissioners and board members with disabilities.

It is not clear if the Complaint is intended to allege violations of the ADA or of the settlement agreement. To the extent it is intended to do so, the OGC cannot consider those allegations because it lacks jurisdiction over them. Under the Open Government Ordinance, the OGC may "hear complaints by any person concerning alleged non-compliance with this Ordinance, the Brown Act, the Public Records Act, or the Lobbyist Registration Act." (BMC 2.06.190.A.1.a). As such, the OGC only has jurisdiction to consider alleged violations of these laws; it cannot consider alleged violations of other laws or a legal settlement.

However, for the benefit of the complainant, the Commission, and the public, staff wish to clarify that the Complaint appears to be mistaken about the reach of the settlement agreement in *Fisher v. Berkeley*. That litigation related only to the ability of *City board members and commissioners* to attend meetings remotely as an accommodation; it did not relate to or affect the ability of *members of the public* to attend meetings remotely. (See Attachment 3.) Upon investigating the issue, staff have found that the latter is neither prohibited nor guaranteed by City policy. Staff's understanding is that some City commissions are allowing everyone in the public to attend remotely; some are currently restricting remote attendance to members of the public with disabilities; and others are not offering remote attendance options for the public at this time due to resource constraints, although other accommodations for disabled individuals are available.

RECOMMENDATION

Pursuant to Section 2.06.190, subdivision (A)(1) of the OGO, the OGC 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, elected or appointed officials, officers or employees;
- b) consider ways to informally resolve those complaints and make recommendations to the Council regarding such complaints;
- c) seek advice from the City Attorney concerning those complaints;
- d) advise the City Council of its opinion, conclusion or recommendation as to any complaint; and
- e) take any action authorized by the Lobbyist Registration Act under Chapter 2.09.

Staff recommend that the OGC dismiss the Complaint because it does not allege a violation of the Open Government Ordinance, and to the extent it alleges a violation of the ADA or the settlement agreement, the OGC lacks jurisdiction to consider them.

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Nonetheless, given the OGC's interest in the City's progress in implementing hybrid meetings for all City boards and commissions, staff will agendize that topic for discussion at an upcoming meeting. The OGC may also wish to agendize for an upcoming meeting any of the other policy issues raised in the Complaint.

Attachments:

1. Complaint from Kelly Hammargren
2. Email exchange relating to complaint
3. 9-27-24 memo from City Clerk re settlement



Open Government Commission

Complaint of Noncompliance

Open Government Ordinance (“OGO”) - Brown Act - Public Records Act - Lobbyist Registration Act

Name: _____

Date: _____

Mailing Address/
Contact Info: _____

Identify the area of noncompliance (check all that apply):

OGO

Brown Act

Public Records Act

Lobbyist Registration Act

Describe the act(s) of noncompliance. (Attach additional page if more space is needed.)

List the date(s) on which the noncompliance occurred.

Describe any steps taken to address the noncompliance directly with City of Berkeley staff and/or elected official, including the name of any staff person involved, if known.

Documents:

Attach any written requests or complaints submitted to the City and any responses received. You should also attach any additional information that you believe will assist the Commission and staff in reviewing your complaint.

Complaints 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. Complaints may be submitted via email to FCPC@berkeleyca.gov

On September 24, 2024 the City of Berkeley settled the lawsuit from three members of the Commission on Disability for violations of the Americans with Disabilities Act. This settlement resulted in allowing remote access to commissioners with disabilities.

<https://dralegal.org/press/berkeley-remote-meetings-settlement/>

That settlement has been extended to provide accommodation including remote access to members of the public if the person meets being disabled and makes a request. It is through prior attendance at the Commission on Disability that I added the following to my weekly Calendar of Meetings.

If you are unable to attend a meeting in person and/or it is not offered in the hybrid or an accessible format, **TO REQUEST A DISABILITY RELATED ACCOMMODATION(S) TO PARTICIPATE IN THE MEETING**, including auxiliary aids or services, please contact the ADA Program Coordinator at 510-981-6418 or (TTY) 510-981-6347 and/or ada@berkeleyca.gov at least 3 days before the meeting (the sooner the better). Thomas Gregory is the ADA Program Coordinator.

The full policy for commissioners is available in the link under “policy on remote participation” in paragraph 4 on the City of Berkeley Boards & Commissions webpage.

<https://berkeleyca.gov/sites/default/files/documents/ADA%20Accommodation%20-%20Remote%20Participation.pdf>

The advisory for the public for “Health and Safety Protocols for In-Person Meetings of Berkeley Boards and Commission February” is available in paragraph 2 under “health and safety protocols” on the City of Berkeley Boards & Commissions webpage with instructions to stay home if sick and to submit comments in writing in lieu of attending.

<https://berkeleyca.gov/sites/default/files/documents/ADA%20Accommodation%20-%20Remote%20Participation.pdf>

Submitting comments in advance denies members of the public to hear discussion and/or to modify comments based on the live discussion at the meeting. The member of the public is denied access to meeting discussions, presentations and comments made by other members of the public. Since the practice of Boards and Commissions is to record action minutes only, discussions are decidedly absent from meeting minutes and lost to anyone who was not present to hear them.

It should also be noted that only a few of the Boards and Commissions are posting minutes within the required 14-day time frame.

While there is an expense associated with fully equipping the North Berkeley Senior Center, the South Berkeley Senior Center, the Frances Albrier Community Center and the Live Oak Park Creekside meeting room with equipment, there are meeting rooms throughout the City of Berkeley buildings that are fully equipped for remote access. This commission in fact uses one of the equipped meeting rooms to provide hybrid meetings.

City Council meeting and council committee meeting agendas which are conducted in the hybrid format contain this phrase, *“This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this*

meeting, however, if you are feeling sick, please do not attend the meeting in person."
[emphasis added]

The lack of remote access to commission and board meetings are by in large a matter of policy.

Besides city council, council committees, the Police Accountability Board, the Zoning Adjustment Board, the Rent Board and the Fair Campaign Practices Commission and Open Government Commission are conducted in the hybrid format.

The Commission on Disability and the Disaster and Fire Safety Commission do provide remote access for the commissioners, however, even though these two commissions are providing remote access and therefore have set up the meeting room with the equipment to conduct those meetings using zoom, the public is denied access to the link as a matter of policy not lack of equipment.

I am home writing this complaint instead of attending the Commission on Disability and the Parks, Recreation and Waterfront Commission, because we are in a COVID wave with high incidence of infection in California, I have a break-through COVID infection and continue to test positive using an antigen test which means I am still shedding virus.

Continuing to be COVID positive means I should not be attending to these commission meetings today if I adhere to the City's request that I not attend.

This means that I cannot hear the presentations at the Commission on Disability even though commissioners are attending remotely and the meeting is conducted in the hybrid format. (I requested remote access and was denied).

While I am including personal experience of not being able to attend these in-person meetings, the issue is the City of Berkeley has continually failed to follow through with the vague promise of an open government.

It is a quite a contrast to deny the public remote access to commission and board meetings while there is a readiness to invest in cameras to surveil the public.

Kelly hammargren

Berkeley Resident

From: [kelly hammargren](#)
To: [FCPC \(Fair Campaign Practices Commission\)](#)
Cc: [Hylas, Stephen](#); [Harvey, Samuel](#); [Packard, Lauren](#)
Subject: Re: OGC Complaint.
Date: Friday, October 3, 2025 3:34:50 PM

My complaint is really multiple complaints

1) The City's Health and Safety Protocols for In-Person Meetings of Boards and Commissions, the request to a person who is sick to not attend in person and to submit comments in writing.

<https://berkeleyca.gov/sites/default/files/documents/Health%20and%20Safety%20Protocols%20for%20Commissions%20Feb%202023%20v2.pdf>

Submitting comments in writing does not assure that comments in writing will be received by the body prior to the meeting, heard by any other member of the public or available at all. Additionally, the assumption being made in the Health and Safety Protocols for In-Person Meetings of Boards and Commissions is that the only thing of importance is submitting a comment and that listening to comments of other members of the public and the discussion of the commission or board is of no interest. When the practice of the City is to record minutes as action only, the entire discussion, details of any presentations beyond the published presentation power point, commentary is completely lost and unavailable to the person who intended to attend the meeting and because of following the public health precaution did not attend.

The decision and compromise by the city and ADA coordinator in practice is limited to disabilities and does not include illness. The request is for illness to be routinely included.

2) All City meetings need to be hybrid, in-person and on zoom with accommodation for persons with disabilities.

3) While the City is completing distributing the technology to meeting sites, any public meeting that is in a room that is fully equipped for a hybrid meeting, should be run as a hybrid meeting and any public meeting that is providing remote access for anyone, the remote access should be published and available to the public. (exception closed session meetings)

4) The City has multiple meeting rooms fully equipped for hybrid meetings that are not being utilized for public meetings and sit empty while instead public meetings are scheduled for sites that lack equipment for hybrid meetings.

5) All public meetings need to be set up with live transcription either by voice recognition or live captioner and the ability of attendees to save the transcript.

6) When public meetings are not recorded, minutes do not include discussion or comment, there is no public record to request to fill the gap of what is lost by not attending.

7) I have never seen any recognition by any City Council Committee that any written comment from the public was received. Note the Council Committee meetings are audio recorded and the audio recordings are available for a limited time without a public records request.

I think that covers it
 kelly hammargren

On Fri, Oct 3, 2025 at 2:44 PM FCPC (Fair Campaign Practices Commission) <FCPC@berkeleyca.gov> wrote:

Hi Ms. Hammargren,

I hope you're doing well and have now fully recovered from COVID. Consistent with the Commission's instructions at our last meeting, I'm writing to clarify some aspects of your complaint, which I've attached for your convenience. Specifically, it would be good to know the following:

- The Open Government Ordinance says that the OGC has authority to "hear complaints by any person concerning alleged non-compliance with [the Open Government Ordinance], the Brown Act, the Public Records Act, or the Lobbyist Registration Act." (BMC 2.06.190.A.) Which of these four laws is your complaint contending that the City has violated?
- In terms of your substantive allegations, is your complaint intended to be directed at all City commissions that are not yet allowing remote access for members of the public, or only those commissions that typically do provide remote access for commissioners (i.e., the Commission on Disability and the Disaster and Fire Safety Commission) but that aren't providing such access for the public as a matter of policy? Please let us know. As you know, the City is rolling out hybrid meeting technology for all City boards and commissions but that process is ongoing. I will check with the city clerk on status.

I also wanted to flag that to the extent your complaint is intended to relate to a failure to accommodate based on a temporary disability (COVID), you should be advised that the OGC does not have authority to investigate potential violations of the ADA or other disability-rights laws. However, we're happy to work with you and with City staff informally to try to address your concerns.

Thank you,

Stephen

(As an FYI, I have also copied myself on this email as well as my co-secretaries, Sam Harvey and Lauren Packard).

From: kelly hammargren <kellyhammargren@gmail.com>
Sent: Wednesday, September 10, 2025 6:45 PM
To: FCPC (Fair Campaign Practices Commission) <FCPC@berkeleyca.gov>
Cc: Igor Tregub <itregub@gmail.com>
Subject: OGC Complaint.

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

To the Open Government Commission, please see the attached complaint.

Please notify me by email at kellyhammargren@gmail.com when my submitted complaint will be heard.

kelly hammargren

Berkeley Resident

District 4

cc: District 4 Councilmember Igor Tregub



City Clerk Department

September 27, 2024

To: Commission Secretaries

From: Mark Numainville, City Clerk

Subject: Fisher et al. v. City of Berkeley, Case No. 3:23-cv-04280-TSH –
Accommodation for Commissioners with Disabilities

Pursuant to the settlement of Fisher et al. v. City of Berkeley, United States District Court, Northern District of California; Case No. 3:23-cv-04280-TSH, the City is implementing a new policy regarding the remote attendance of commissioners at commission meetings as a reasonable accommodation for a disability. This policy is effective immediately. This memo is provided as a preliminary notice of the new policy due to the legal deadline to enact the policy and post it to the website.

Under the new policy, commissioners that request an accommodation to participate in commission meetings remotely will be offered a form that will allow them to self-attest to their need for remote participation. Commissioners that receive an approved accommodation request may participate in commission meetings remotely. Upon self-attesting to their need to do so, commissioners with an approved accommodation may also participate remotely without listing their remote location on the agenda, allowing public access at their remote location, or posting the agenda at their remote location.

For your reference, attached you will find the new policy titled “Exhibit A - Accommodations Policy” as well as the new form titled “Reasonable Accommodation Request – Self-Attestation.” The policy and the form are posted to the City website.

The ADA Program Coordinator will accept, review, and approve the accommodation requests and coordinate with secretary on the best manner to provide the accommodation. More information on the process for conducting meetings with remote participation will be provided soon.

Attachments:

1. Exhibit A – Accommodations Policy
2. Exhibit B – Reasonable Accommodation Request – Self-Attestation

Accommodation for Commissioners with Disabilities

September 27, 2024

cc: Paul Buddenhagen, City Manager
LaTanya Bellow, Deputy City Manager
Anne Cardwell, Deputy City Manager
Department Heads
Farimah Brown, City Attorney
Stephen Hylas, Deputy City Attorney

CHAPTER II, C. ACCOMMODATIONS FOR COMMISSIONERS WITH DISABILITIES

Members of boards, commissions, and the public who have a disability have a right to reasonable accommodations necessary for them to participate in City meetings and programs. The Americans with Disabilities Act (ADA) and other laws mandate that the City provide programmatic access and effective communication in order for people with disabilities to be able to participate in the City's programs, services, and activities including public meetings. More information is available on page 48 and in Appendix H on page 97.

Individuals with disabilities who need accommodations to participate at a City of Berkeley meeting should make their requests to the ADA Program Coordinator, who will evaluate the individual's request and determine the appropriate method of accommodation. If possible, individuals are asked to attempt to make a disability-related accommodation request 72 hours in advance of meetings to ensure that the City has an adequate opportunity to provide reasonable accommodation. The City will make good faith efforts to provide accommodations that are requested less than 72 hours in advance of a meeting.

Requests to the ADA Program Coordinator can be made by calling the ADA Program Coordinator at (510) 981-6418 or emailing ada@berkeleyca.gov.

Appendix H

RESPONDING TO REQUESTS FOR ACCOMMODATIONS FOR PERSONS WITH DISABILITIES

Procedures for Members of Boards and Commissions and Staff

Members of boards, commissions, and the public who have a disability may have a right to receive reasonable accommodations, if necessary for them to participate in City meetings and programs. The Americans with Disabilities Act (ADA) and other laws mandate that the City provide programmatic access and effective communication in order that people with disabilities are able to participate in the City's programs, services, and activities including public meetings. (See "What the ADA Says About Accommodations" below.)

Individuals with disabilities who need accommodations to participate at a City of Berkeley meeting should make their requests to the ADA Program Coordinator. An analysis will be initiated on a case-by-case basis to evaluate the individual's request and determine the appropriate method of accommodation. If possible, individuals are asked to make disability accommodation requests at least 72 hours in advance of their desired committee meeting and implementation date. The City will make good faith efforts to provide accommodations that are requested less than 72 hours in advance of a meeting.

The ADA Program Coordinator will respond to accommodation requests according to the criteria below:

1. Review of the accommodation request:

- a. Nature of the accommodation and why the accommodation is needed.
 - b. Estimated duration of the requested accommodation.
 - c. Commission assignment or meeting for which the accommodation is requested.
 - d. Estimated duration of the assignment.
2. The ADA Program Coordinator and Commission Secretary will promptly act on the accommodation, determine the most effective way to provide an accommodation, coordinate the details with the individual with a disability and follow through to ensure the accommodation's success.
3. Any doubt should be resolved in favor of accommodation and accessibility.

The ADA Program Coordinator and Commission Secretary shall oversee the vendor payment process.

All reasonable accommodation request responses shall be provided in writing, when such written response can be transmitted in a timely manner prior to the start of the specific meeting. Otherwise, the response will otherwise be provided orally. Responses will identify whether the accommodation is granted, granted in part, or whether an alternative accommodation is granted, and will also identify any instructions necessary to access the accommodation. If denied the response will identify the grounds for denial. City staff will document requests and responses provided orally.

CONSIDERATIONS FOR SELECTING ACCOMMODATION METHODS

The person requesting an accommodation should make the request in advance to allow adequate time for staff to make any arrangements. Staff may be able to provide an accommodation directly, but it can take time to arrange an accommodation from a service vendor, through the use of assistive technology (equipment), or through modification in the way an activity is conducted. Accommodations must be reasonable in accordance with the ADA and other applicable laws.

Examples of accommodations include but are not limited to:

- Assistance with writing and other tasks for persons with manual impairments.
- Interpreters or captioning for persons with hearing impairments.
- Speakers for persons with speech impairments.
- Braille, large print, or electronic versions of printed text and descriptions or tactile representations of graphics for persons with vision or other print-related impairments.
- Remote attendance at meetings (see below).

The City provides accommodations for participation in regular or special board and commission meetings, meetings with City staff, and meetings of subcommittees of boards and commissions where applicable. The City does not provide accommodations for activities sponsored by

another agency or for an individual engaged in community activities that are not official activities of the City.

REQUESTS TO ATTEND MEETINGS REMOTELY AS AN ACCOMMODATION

When a commissioner or board member requests remote or teleconference attendance at City meetings as an accommodation for a disability that prevents them from attending the meeting in person, such as but not limited to an immunocompromising disability or a disability that limits time spent outside of home or bed, the following procedures will be followed. The individual should attempt to make disability accommodation requests for remote attendance at least 72 hours before the time of the first meeting for which remote attendance is requested. The City will make good faith efforts to provide remote attendance accommodations that are requested after this time. “Teleconference” or “teleconferencing” as used in this policy means a connection by electronic means through either audio or video, or both.

1. The following information should be included in any request:
 - a. A self-attestation that the accommodation is needed as a result of a disability and a general description of why it is needed. A general description ordinarily need not exceed 20 words and shall not require the member to submit medical documentation or disclose any specific medical diagnosis or disability.
 - b. Estimated duration of the requested accommodation.
 - c. Commission assignment or meeting(s) for which the accommodation is requested.
 - d. Estimated duration of the assignment.
2. In consultation with the individual with a disability, the ADA Program Coordinator will determine the most effective way to provide the accommodation, ensure the technology used to provide the accommodation is functional and effective, coordinate the details with the individual with a disability, and follow through to ensure its success. Videoconference will be provided unless another technology is requested.
3. Individuals may be granted a teleconferencing accommodation on a permanent basis or on a temporary basis. The duration of any accommodation will be determined in accordance with the individual’s disability-related needs. There is no formal limit on the number of meetings an individual may attend remotely; the individual may attend remotely for the duration permitted by their accommodation.
4. When remote attendance is provided as a disability accommodation, the ADA Program Coordinator will waive the requirements that each teleconference location be identified in the notice and agenda, that agendas be posted at each teleconference location, and that each teleconference location be accessible to the public, as follows. Waiver of these requirements will be based on whether individuals who require remote attendance as an accommodation cannot invite others into their home or other location for disability-related reasons, or may otherwise be subject to privacy intrusions or unwarranted harassment if these requirements are not waived. Any doubts will be resolved in favor of accessibility and the individual with a disability.

5. A commissioner or board member appearing remotely as an accommodation shall publicly disclose at the meeting before any action is taken whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals. This requirement shall not apply if the commissioner or board member includes a self-attestation exempting them from this requirement.

WHAT THE ADA SAYS ABOUT ACCOMMODATIONS

The ADA describes accommodations generally as “reasonable modifications in policies, practices, or procedures” (28 C.F.R. Section 35.130(b) (7)). Unless the City can demonstrate that a modification would fundamentally alter the nature of the service, program, or activity, the City must make reasonable modifications when necessary to allow an individual with a disability to participate in the City's services, programs, and activities (28 C. F. R. Section 35.130(b)(7)).

Although the City is not required to provide devices or services that are of a personal nature (such as eyeglasses, hearing aids, or mobility devices), the ADA requires that communication with disabled members of the public be effective, including the provision of auxiliary aids and services necessary for effective communication with the City.

Regarding effective communication, the ADA's specific language is:

(a) A public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.

(b)(1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.

(2) In determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities. (28 C. F. R. Section 35.160)

Auxiliary aids and services include:

(1) Qualified interpreters, note takers, transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments.

(2) Qualified readers, taped texts, audio recordings, braille materials, large Responding to Requests for Accommodations for Persons with Disabilities page print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments. Web content on the City of Berkeley website and electronic documents created for use at public meetings will be in compliance with accessibility standards required by the ADA.

(3) Acquisition or modification of equipment or devices.

(4) Other similar services and actions. (28 C. F. R. Section 35.104 (in part))

REASONABLE ACCOMMODATION REQUEST – SELF-ATTESTATION

Under City of Berkeley policy, members of City commissions may attend meetings remotely as a reasonable accommodation under the Americans with Disabilities Act (“ADA”).

By signing below, I, a Commissioner or Board Member, hereby attest that:

_____ I require an accommodation to attend meetings remotely due to a disability that sometimes or always prevents me from attending meetings in-person.

If box is checked, please provide the following:

1. Why accommodation is needed (a general description is sufficient; you need not disclose any particular medical diagnosis, disability, or personal medical information):

2. Estimated duration for which accommodation is needed:

- ☐ Ongoing
- ☐ Specific duration: _____

_____ I further require that the City waive the requirements that I (a) post the address from which I am attending remotely on the meeting agenda; (b) post the agenda at the remote location; and (c) open the remote location from which I am attending to members of the public. By checking this box, I attest that I require an exemption from these requirements due to my disability.

Please note that under City policy, commissioners appearing remotely must publicly disclose at the meeting whether any other individuals 18 years of age or older are present in the room with them at the remote location, and the general nature of the commissioner's relationship with any such individuals.

____ I understand and agree to this requirement

____ I request an exemption from this requirement due to disability-related reasons

By signing below, I attest to the accuracy of each of the above statements:

(Name) _____

(Title/Commission) _____



City Clerk Department

June 27, 2025

To: Commission Secretaries

From: Mark Numainville, City Clerk

Subject: Update on the Status of Hybrid Meetings for City Commissions

Pursuant to previous City Council action, City commissions will move toward a hybrid meeting format when technical and operational requirements are met.

In a hybrid meeting format, members of the community may participate either in-person at the physical meeting location or through an online audio-visual platform such as Zoom.

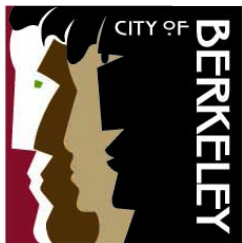
Commissioners will participate in-person unless they are permitted to participate remotely as outlined in the teleconference policy or ADA procedure in the Commissioners' Manual.

The City Clerk Department and Department of Information Technology are currently in the process of configuring and testing the equipment used for a hybrid meeting. This testing is expected to be completed this summer. As part of the testing, the City Clerk Department is developing step-by-step procedures for the set up and conduct of a virtual meeting using City equipment at a City facility.

There will be two types of remote meeting audio-visual equipment. The first type is large screens on a rolling cart. These A/V carts will be used only for commission meetings held in the Multi-Purpose Rooms (MPR) at the North Berkeley Senior Center and South Berkeley Senior Center. The second type of remote meeting equipment is an "Owl Kit" – these kits consist of a meeting Owl, laptop, and projector. The Owl Kit is used for any commission meeting not held in an MPR at a senior center. Of course, if your commission currently meets in a location that has built-in videoconference capability, you may use that equipment for your hybrid meetings.

The current timeline is for quasi-judicial commissions to begin hybrid meetings in the fall of 2025. Upon successful completion of the pilot program with the quasi-judicial commissions, the hybrid meeting program will be expanded to all city commissions.

My office will schedule a series of in-person, hands-on trainings to allow secretaries and commission staff to become comfortable and proficient with the teleconference equipment. More information will be forthcoming as we continue the implementation process.



Open Government Commission

Complaint of Noncompliance

Open Government Ordinance ("OGO") - Brown Act - Public Records Act - Lobbyist Registration Act

Name: Johlyece Dotson

Date: 10/06/2025

Mailing Address/
Contact Info: _____

Identify the area of noncompliance (check all that apply):

☐ OGO ☐ Brown Act ☒ ***Public Records Act ☐ Lobbyist Registration Act

Describe the act(s) of noncompliance. (Attach additional page if more space is needed.)

Please see attached letter

List the date(s) on which the noncompliance occurred.

Please see the attached letter

Describe any steps taken to address the noncompliance directly with City of Berkeley staff and/or elected official, including the name of any staff person involved, if known.

Please see the attached letter
CPRA REQUESTS #'S 25-1775, 25-1967, 25-1998, 25-2142, 25-2187, 25-2192, 25-2284

Documents:

Attach any written requests or complaints submitted to the City and any responses received. You should also attach any additional information that you believe will assist the Commission and staff in reviewing your complaint.

Complaints 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. Complaints may be submitted via email to FCPC@berkeleyca.gov

Harvey, Samuel

From: lyece1@aol.com
Sent: Monday, October 6, 2025 1:47 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: RE: Complaint Regarding CPRA Violations – Ongoing Harassment, Misuse of City Systems, and Justification for a Second Claim
Attachments: _FCPC-Complaint-Form Non Compliance 1.pdf

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Complaint Regarding CPRA Violations – Ongoing Harassment, Misuse of City Systems, and Justification for a Second Claim

Hello,

I am submitting this complaint regarding repeated violations of the California Public Records Act (Cal. Gov. Code § 6250 et seq.) and the City of Berkeley's obligations to respond to records requests. This complaint concerns multiple CPRA requests, emails, and claims I have submitted to City staff, the City Attorney, HR, City Council, City Manager, City Auditor, and City Clerk, all relating to ongoing harassment and misuse of my personal information.

- On June 30, 2025, I filed a tort claim against the City of Berkeley, which was denied by default. The claim arose from a terrifying incident in which my personal information was fraudulently submitted to a suicide prevention website. This submission was traced back to a City of Berkeley IP address.
- After filing my claim and receiving no substantive response from the city, I received a phone call that appeared to originate from a City number. The call rang twice and disconnected with no voicemail or explanation. This incident, following the initial misuse of my information, has significantly increased my fear and concern for the safety of myself and my children.
- TPX (the City's phone service provider, or a related entity) confirmed that the phone number involved belongs to the City of Berkeley, registered at 2180 Milvia Street. 510-981-6995
- Due to these incidents, I have repeatedly instructed the city that any communications with me should be in writing only, as I no longer feel safe receiving calls. Despite my efforts, my concerns continue to go unaddressed.

- The continuing harm after the denial of my initial claim justifies the filing of a second claim to address new and ongoing harassment and events

CPRA Concerns:

- I have submitted multiple CPRA requests seeking records related to these incidents, including device and network logs, IP address traces, and internal communications from City systems. Despite these requests, I have not received full or timely responses. All requests have been subject to repeated extensions, leaving me without clarity about whether my information continues to be misused.
- Emails expressing my concerns about personal safety, harassment, and unauthorized use of my information have been sent to HR, the City Attorney, Mayor, City Council members, City Manager, City Auditor, and City Clerk, and are now included in this complaint to the Open Government Commission. No substantive responses have been received.

Specific Concerns:

- The city has failed to provide timely, complete, and responsive records regarding my CPRA requests, despite its statutory obligations.
- Repeated extensions and partial responses have left me uncertain whether my personal information continues to be misused.
- Prior CPRA requests were submitted in good faith and cover serious matters, including the fraudulent submission of my information to a suicide prevention website traced back to a City IP address and subsequent unexplained contact from a city number.
- The continuation of harassment and unauthorized activity after the denial of my first claim demonstrates the urgent need for proper oversight and accountability.

Request:

1. I respectfully request that the Open Government Commission investigate these repeated CPRA violations and compel the City of Berkeley to provide full and complete records responsive to my prior requests.

2. I request that the Commission ensure all emails, communications, and internal responses relating to my requests are formally acknowledged and included in the official record.
3. I request that the Commission take note of the continuing harm and ongoing risk to my family, including the circumstances that justify the filing of a second claim due to delayed or incomplete compliance.
4. If any responsive records do not exist, I request that the city explicitly state this in writing for each request.

Public Meeting and Attendance:

Complaints must be submitted to the Secretary of the Commission no less than 14 days prior to the meeting at which they will be considered. The Open Government Commission meets on the third Thursday of the month. Should this complaint be placed on a meeting agenda, I respectfully request that representatives from the City Attorney's Office, Human Resources Department, and City Manager's Office be present to respond to questions regarding the City's handling of my CPRA requests and related communications. Their direct participation would ensure transparency and accountability in the discussion of these serious concerns.

While I understand that the Commission may decide whether or not a public meeting is necessary, I believe this matter is significant enough to warrant one. However, based on the City's prior handling of this issue, I am also aware that a meeting may not be scheduled in an attempt to avoid further public scrutiny.

I appreciate your attention to this matter and request that the Commission treat it as urgent given the ongoing impact on my safety and the repeated lack of compliance by City staff.



City Clerk Department

Date: November 18, 2024

To: Sam Harvey, Secretary, Open Government Commission

From: Mark Numainville, City Clerk

Subject: Referral of Non-Filing by Quarterly Lobbyist Filer

The Lobbyist Registration Act requires certain local government lobbyists to file quarterly disclosures of lobbying activity with the City Clerk Department. The following lobbyist has not filed for the January 1 – March 31, 2024, April 1 – June 30, 2024 and July 1 – September 30, 2024 reporting periods:

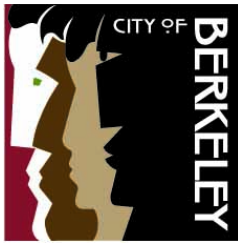
Lobbyist Filer	Employer
Yuri Sadiki-Torres	Northern California Land Trust (NCLT)

Notice of the filing requirement for the reporting period was sent to quarterly lobbyist filers by the City Clerk Department on April 16, 2024, July 22, 2024 and October 18, 2024. Past due notices were sent on June 4, 2024, August 21, 2024 and November 13, 2024.

Lobbyists are required to file a final disclosure form and registration form indicating that all lobbying activities have terminated. Berkeley Municipal Code § 2.09.120 states that in the case of an in-house local government lobbyist, the lobbyist employer or agent thereof, may complete and file the required forms.

My office recommends referral of these matters to the Open Government Commission for consideration of: 1) Whether or not the failure to file quarterly disclosure report and terminating registration report is a violation of the Lobbyist Registration Act; and 2) Appropriate enforcement action as determined by the Commission.

DRAFT - DRAFT - DRAFT - DRAFT - DRAFT - DRAFT



**Fair Campaign Practices Commission
Open Government Commission**

Date: February 21, 2025

To: Honorable Mayor and Members of the City Council

From: Kitt Saginor, Chair

Subject: City of Berkeley compliance with Web Content Accessibility Guidelines (WCAG)

The Fair Campaign Practices Commission (“FCPC”) and Open Government Commission (“OGC”) are concerned that many documents provided on the World Wide Web to the members of the public are not accessible to persons with low vision. This includes documents that are crucial to understanding issues coming before City Council, instructions and requirements for candidates for elected office, and even the agenda for the Commission on Disability. This is not only unfortunate, but also it is out of compliance with the Web Content Accessibility Guidelines (WCAG) Version 2.1, Level AA¹. Last year, the U.S Department of Justice issued a final rule² requiring compliance by April 24, 2026 for local governments which represent 50,000 or more persons.

It is our understanding that City staff have been working with the Commission on Disability to develop and implement the changes needed to bring Berkeley into compliance with the new standards.

I have been directed by FCPC and OGC to write to you recommending that you prioritize this work and urging you to provide additional resources if needed to bring success to these efforts. Providing relevant information to all persons, including those with low vision, is crucial for Berkeley’s commitments to open government and fair campaign practices. We look forward to full implementation of these Web Content Accessibility Guidelines.

Sincerely,

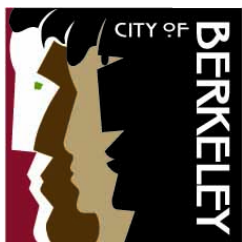
¹ Web Content Accessibility Guidelines (WCAG) 2.1. <https://www.w3.org/TR/WCAG21/>

² Fact Sheet: New Rule on the Accessibility of Web Content and Mobile Apps Provided by State and Local Governments <https://www.ada.gov/resources/2024-03-08-web-rule/> and Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities: A Rule by the Justice Department on 04/24/2024 <https://www.federalregister.gov/documents/2024/04/24/2024-07758/nondiscrimination-on-the-basis-of-disability-accessibility-of-web-information-and-services-of-state>

FCPC / OGC
November 20, 2025
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Kitt Saginor
Chair
Fair Campaign Practices Commission
Open Government Commission

cc. Commission on Disability



Office of the City Attorney

DATE: November 13, 2025

TO: Open Government Commission

FROM: Samuel Harvey, Deputy City Attorney/Commission Secretary

SUBJECT: 2024 Annual Report (BMC section 2.06.190.C)

Introduction

The Open Government Ordinance (“OGO” or the “Ordinance”) (Berkeley Municipal Code (“BMC”) Chapter 2.06) requires that the City Manager prepare an annual report to the Open Government Commission that contains the following information:

1. The number of Public Records Act (“PRA”) 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, or open and effective government in Berkeley.

(BMC §2.06.190.C.)

The City Attorney’s Office has been designated to fulfill the City Manager’s PRA obligations. This report covers the 2024 calendar year. The topics specified in Berkeley Municipal Code section 2.06.190.C are addressed below.

I. The Number of Public Records Act Requests Received by the City; the Average Length of Time Taken to Respond to Public Records Act Requests; and the Approximate Number of Pages Produced in Response to Public Records Act Requests

Currently, there are over 50 designated staff in 17 departments that use the City's NextRequest online portal system to track and respond to PRA requests. For each request, staff must track the date of the initial response, provide all responsive documents, and post the results of the request to the NextRequest system. The City adopted the NextRequest system in 2020.

Under the PRA, the City must respond to a request within 10 calendar days. (Cal. Gov. Code § 7922.535.) The City may assert a 14-day extension for a number of reasons, including where the request seeks a voluminous amount of records, requires inter-agency coordination, seeks records maintained in off-site storage, or requires elaborate technological/IT work to fulfill. (Id.) A request submitted on a weekend or holiday or after City business hours is not deemed received by the City until the next business day. (Cal. Civ. Code § 10.) If the 10-day (or 14-day) response deadline falls on a weekend or City holiday, the response is due on the next business day. (Cal. Civ. Code § 11; Cal. Gov. Code § 6704; BMC § 1.040.080.)

When providing the initial response, City staff must either provide the responsive records, inform the requestor that no responsive records exist, or provide an estimated time for production of the records. The PRA does not provide concrete deadlines for records production, but requires that records be provided "promptly." (Cal. Gov. Code § 7922.530(a).)

The City received 2,189 PRA requests from January 1, 2024 to December 31, 2024, a 42% increase over the number received in 2023 (1,539).

The 2,189 requests break down by department as follows: City Attorney (110), City Auditor (10), City Clerk (66), City Council (35), City Manager (85), Mayor's Office (10), Finance (69), Fire Department (204), Health, Housing & Community Services (44), Human Resources (44), Information Technology (17), Library (2), Parks (13), Planning (574), Police (557), Public Works (113), Rent Board (902), Multi-Department (219).

Over half of the PRAs received were fulfilled and closed within the initial 10-day response period. The average number of days to fulfill all requests was 25.

As the chart below demonstrates, there has been a substantial increase in the number of PRA requests received by the City in recent years.

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<i>Year</i>	<i>Number of Requests</i>
2018	873
2019	944
2020	762
2021	1,025
2022	1,191
2023	1,539
2024	2,189

Attached to this report as Attachment 1 is a report generated by the City's NexRequest system for the period January 1, 2024 to December 31, 2024.

The data in this report is generated from automated features within the City's NextRequest PRA software. For a number of reasons, this software will often over-report the number of missed deadlines.

For example, if a staff member has responded to a request and provided all responsive records but does not close out the request in the program until a later date, the request's closure date will be erroneously reported as late. This could occur where a staff member wishes to leave a request "open" to ensure all records have been provided or otherwise review the City's response to the request, or where a staff member fails to timely mark the request as "closed" after producing records.

Additionally, the City will often respond to voluminous requests on a "rolling basis," where staff will provide sets of records as they are able to compile, review and produce them. Oftentimes, staff will manage a rolling production by adjusting the deadlines in the program to reflect the next estimated date of production. Failure by staff to meet a self-imposed estimated date of next production entered into the NextRequest system is not itself a violation of the PRA. Nonetheless, the system may be marking these requests as "overdue."

Finally, it is not clear that the NextRequest system accurately accounts for weekends or holidays. Therefore, a request submitted after business hours or on a weekend or holiday is counted as received on the date of submission rather than the next business day. It also appears that some requests are being marked as due on City holidays, meaning that even when staff timely respond on the next business day, the request is marked as overdue.

Following adoption of the NextRequest program, staff have identified a notable increase in the reported lateness of PRA responses. Staff estimate that most of this reported increase is due to the above-noted discrepancies between the response dates as reported by the NextRequest program and the actual timeliness of staff's response. However, the increased sensitivity of the NextRequest program may also be identifying a larger number of actually late responses than the City's old PRA program.

II. The Number and Resolution of all Written Complaints Received by the City Concerning its Compliance with the Public Records Act, the Brown Act, and the Open Government Ordinance

The City received the following relevant complaints in 2024:

1. Lawsuit alleging violation of Section 54957.9 of the Brown Act

In February 2024, the Berkeley People's Alliance and Nathan Mizell filed a lawsuit against the City alleging that the City violated the Brown Act with the manner in which the City Council proceeded with meetings on November 21 and 28, 2023, and January 16, 2024. Specifically, the complaint alleged that the City failed to follow the provisions of Government Code section 54957.9, which provides a process for continuing to hold a Council meeting without the public physically present in the event that the meeting is willfully interrupted by a group of people so as to render the orderly conduct of the meeting unfeasible.

The City demurred and the Superior Court issued a ruling sustaining the demurrer in October 2024. The complainants appealed the matter to the California Court of Appeal (1st District). Oral argument for that case was heard on September 2, 2025. On September 30, 2025, the Court of Appeal issued a ruling holding that a legislative body applying Section 54957.9 cannot reconvene in an adjacent room.

2. OGC complaint from Chris Nardi alleging violation of the PRA

In May 2024, a member of the public submitted a complaint to the OGC alleging that the Police Department had provided an incomplete explanation of redactions applied to records provided in response to two requests and that the requestor believed additional records existed. At the Commission's direction, the Secretary worked with Police Department staff to confirm completeness of the records search and provide clarifying information to the requestor on the rationale for any redactions.

3. Communications from Kelly Hammergren regarding Zoom access

In June 2024, a member of the public submitted correspondence to the OGC advocated for increased use of teleconferencing technology in City commission meetings. The Commission asked the Secretary to review the capabilities of the Commission's meeting room (the Cypress Room at 2180 Milvia Street). The Commission Secretary obtained guidance from City staff on the Cypress Room's teleconferencing capabilities and the Commission now provides for public participation via videoconference. The Commission also continues to monitor and discuss the City's progress in providing public videoconferencing participation in all City board and commission meetings.

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III. Any Other Information the City Manager Deems Appropriate that Relates to the City's Compliance with the OGO, the Brown Act or the Public Records Act

Public Records Act

The City Attorney's Office conducts regular trainings for City staff on the requirements of the California Public Records Act and how to properly respond to those requests. These trainings started in 2014 and are conducted on an as-needed basis. The trainings are helpful for staff to properly identify a request for public records, fulfill the request in a legal and timely manner, and to track the requests in the City database.

Attachment

A: NextRequest Data Summary

City of Berkeley Performance Report

January 1, 2024 - December 31, 2024 All departments

General Overview: Requests received, opened, and closed in this period.

2189 request(s) received

Total number of new requests received during this reporting period.

3857 total request(s)

Total number of requests in the portal at the beginning of the reporting period.

2149 request(s) closed

Total number of requests closed during this reporting period.

233 request(s) open

Total number of open requests by the end of this reporting period.

502 request(s) overdue

Total number of requests that became overdue in this reporting period.

8 request(s) paused

Total number of requests that were paused by the end of this reporting period.

Response and Fulfillment: How fast your agency responds to and fulfills requests

7 day(s) to respond

Median response time in days in this reporting period.

8 day(s) to respond

Average response time in days in this reporting period.

983 fulfilled outside 10 days

Number of requests closed beyond 10 days of request submission during this reporting period.

1162 fulfilled within 10 days

Total number of requests closed within 10 days of request submission during this reporting period.

10 day(s) to fulfillment

Median number of days taken to fulfill all requests in this reporting period.

25 day(s) to fulfillment

Average number of days taken to fulfill all requests in this reporting period.

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Requests by Department

This table breaks down how many requests were received and closed by each department, as well as median fulfillment speed for each department in this reporting period.

Department	New	Closed	Median	Avg
City Attorney	110	103	24	65
City Auditor Office	10	10	8	22
City Clerk	66	65	2	6
City Council	35	37	38	77
City Manager's Office	84	90	25	63
City Mayor's Office	10	8	26	23
Finance	69	70	13	21
Fire - Emergency Medical Services	0	0	0	0
Fire - Fire Prevention	0	0	0	0
Fire - General	204	192	9	19
Fire - Office of Emergency Services	0	0	0	0
Fire - Operations	0	0	0	0
Fire - Special Programs & Projects	0	0	0	0
Fire - Training	0	0	0	0
Fire - Wildland Division (WUI)	0	0	0	0
Health, Housing and Community Services – Affordable Housing/Homeless Services	0	0	0	0
Health, Housing, and Community Services – Aging Services	0	0	0	0
Health, Housing, and Community Services – Environmental Health	7	4	101	161
Health, Housing, and Community Services – Mental Health	1	0	0	0
Health, Housing, and Community Services – Public Health	1	1	22	22

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Health, Housing & Community Services	35	27	44	107
Human Resources	44	46	26	82
Information Technology	17	13	38	59
Library	2	2	16	16
Multi-Department	219	205	36	66
Parks, Recreation and Waterfront	13	12	38	54
Planning - Administration	45	43	10	12
Planning and Development	116	119	9	19
Planning - Building & Safety	184	190	11	15
Planning – Housing Code Enforcement	80	81	8	11
Planning - Land Use	17	18	12	11
Planning - Toxics	132	131	3	14
Police Accountability Board	5	4	19	21
Police Department	557	555	2	7
Public Works	63	58	9	17
Public Works - Engineering	24	23	10	13
Public Works - Operations	2	2	19	19
Public Works - Transportation	21	22	13	65
Public Works - Zero Waste	3	2	18	18
Rent Board	90	88	9	10
SET (do not use)	0	0	0	0
Not Assigned	0	0	0	0

ITEM No.19 - ATTACHMENT 1

This table includes all message templates used within this reporting period

Message Template	Times
Anonymous Requests	2
Architectural Plans	3
Basic Produce - BPD Response	138
BPD - BWC Denial	43
BPD - Denial - Audio, Video	8
BPD-Denial-Elder Abuse	1
BPD-Denial-Juvenile(s) Involved	5
BPD- No Records to Produce	100
BPD - Ready for Pick Up	54
BPD - Redacted Records Released	117
BPD-Request Report Template	56
BPD-Under Investigation/Pending Criminal Litigation-Denial	27
Charges \$\$	1
{City Auditor} Produced with Exemptions for Ongoing Audits	1
Duplicate Request	37
PRA response - [10-day, anticipated production]	50
PRA response - [14-day]	661
PRA response - [basic produced]	897
PRA Response - [basic + Toxics hard copies]	6
PRA response - [long response time, request to narrow]	53
PRA Response - [No Records & No Obligation to Create a Record]	76
PRA response - [no records to produce]	168
	126

PRA response - [Partial production now, additional production forthcoming]	647
PRA response - [Produced with Exemptions]	16

Closure Response Report

This table includes all closure responses and totals used in this reporting period.

Closure Response	Times Used
BPD-Records request process sent to the requestor.	79
City Manager's Office	1
Denied. Investigative Records	92
Duplicate Request	139
Fulfilled	1426
No Records: Does Not Exist	176
No Records: Other Agency	31
No Response from Requester	18
No responsive records	177
Not a Request	43
Physical files only	4
Records Request Granted in its Entirety and Records Disclosed	2
Request Withdrawn	22

Tag Report

This table includes the tags applied to requests opened in this reporting period.

Tag Name	Times Used
BPD Accident and Incident Roll-up	19
OIS	4

Key Assumptions

Requests Overdue

For requests that were closed prior to October 28, 2018 requests are counted as overdue only if they were overdue at the time the request was closed.

Response and Fulfillment Speed

Response time is tracked using the first external message sent through the NextRequest portal. This metric assumes that the message sent includes either a "request for clarification" or a time estimate.

Fulfillment time is calculated based on the time from when the request was created to the first date the request was closed (if there are multiple closed dates, only the first one is used).

Median days to close and average days to close are calculated based on the number of requests that have a closed date within the reporting period.

Staff Time

Staff time only accounts for time logged in NextRequest. This metric assumes that staff members regularly log all staff time in the portal and that the hourly rates are accurate and up-to-date.

Staff Cost

Staff cost only accounts for costs logged in NextRequest. This metric assumes that staff members regularly log costs in the portal.

Message Templates Report

The message templates report tracks message template usage from February 25, 2018 onwards.



Fair Campaign Practices Commission
Open Government Commission

Date: November 13, 2025

To: Fair Campaign Practices Commission and Open Government Commission

From: Sam Harvey, Secretary

Subject: Adoption of 2026 FCPC-OGC Joint Concurrent Meeting Schedule

The FCPC and OGC ("Commissions") must set their annual meeting schedule for 2026. Traditionally, the Commissions have met in a concurrent meeting on each third Thursday of the month at 6:30 p.m. in the Cypress Room at 2180 Milvia Street.

In recent years, the Commissions have not had a regular meeting scheduled in August or December consistent with the City Council's recess schedule. The proposed schedule below does not include a regular meeting date for August, but does include a regular meeting date in December. The Commissions may schedule additional meetings as needed throughout the year.

The proposed schedule also includes a regular meeting date for January 2027, by which the Commissions will need to adopt a schedule for the remainder of 2027.

The Commission Secretary has generated the following proposed schedule for the remainder of the year, which the Commissions should feel free to adjust as they see fit:

- Thursday, January 15
- Thursday, February 19
- Thursday, March 19
- Thursday, April 16
- Thursday, May 21
- Thursday, June 18
- Thursday, July 16
- Thursday, September 17
- Thursday, October 15
- Thursday, November 19
- Thursday, December 17
- Thursday, January 21, 2027

All meetings to begin at 6:30 p.m.

COMMUNICATIONS

Harvey, Samuel

From: Winheld, Herschel
Sent: Monday, November 10, 2025 8:16 AM
To: Harvey, Samuel; Hylas, Stephen; Packard, Lauren
Cc: Brown, Farimah F.; Jensen, Christopher
Subject: FW: LETTER FOR NEXT OPEN GOVERNMENT COMMISSION MEETING PACKET

From: cafred1@juno.com <cafred1@juno.com>
Sent: Sunday, November 09, 2025 11:50 PM
To: City Attorney's Office <attorney@berkeleyca.gov>
Cc: FCPC (Fair Campaign Practices Commission) <FCPC@berkeleyca.gov>
Subject: LETTER FOR NEXT OPEN GOVERNMENT COMMISSION MEETING PACKET

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Please include this letter in the agenda and meeting packet for the next Berkeley Open Government Commission meeting (if not already done so).

Please confirm receipt.

Thank you,
Clifford Fred

November 3, 2025
Clifford Fred


To: CITY OF BERKELEY OPEN GOVERNMENT COMMISSION

THERE ARE SERIOUS FLAWS IN THE BERKELEY OHLONE GREENWAY MODERNIZATION & SAFETY PROJECT & APPROVAL PROCESS.

WHY WAS THERE NO PUBLIC HEARING ON THE PROJECT?

WHY WAS THERE NEVER ANY DISCUSSION OF THE PROJECT AT THE CITY COUNCIL?

WHY WERE THERE NO ALTERNATIVES TO REMOVING PARKING ON PERALTA CONSIDERED?

WHY WAS THERE NO CONSIDERATION OF SEPARATE PATHWAYS FOR PEDESTRIANS, INCLUDING PEOPLE IN WHEELCHAIRS?

WHY DIDN'T THE CONSULTANTS ALERT THE CITY TO THE EXISTANCE OF A GAS STATION AT THE NORTH EAST CORNER OF PERALTA & HOPKINS FOR MANY YEARS?

THE OHLONE PROJECT AS PROPOSED VIOLATES BERKELEY'S 1986 MEASURE 'L'
WHY HAVE THE CITY MANAGER AND CITY ATTORNEY CONTINUED TO IGNORE ALL ARGUMENTS THAT MEASURE 'L'
REQUIRES VOTER APPROVAL OF THE OHLONE GREENWAY PROJECT BEFORE IT CAN BE IMPLEMENTED?

WHY DID THE CITY COUNCIL APPROVE MILLIONS IN CONTRACTS FOR THE DEVELOPMENT OF THIS PROJECT ON THE
CONSENT CALENDAR, NOT EVEN ALLOWING MEMBERS OF THE PUBLIC VOICE THEIR CONCERNS?

THE CONTRACTS SHOULD NOT BE CONSIDERED UNTIL THE CITY'S BICYCLE PLAN UPDATE IS APPROVED NO MORE FUNDS
SHOULD BE GIVEN TO DIABLO ENGINEERING

Both the Project and the City's approval process are very seriously flawed.

The City hired Diablo Engineering with some of the funds Transportation Commission gave to the City. The 2022
Contract with Diablo Engineering states on p.12 – RE; CEQA –“If unusual circumstances are identified such as sensitive
species, cultural resources, hazardous sites, a (CEQA) Negative Declaration or Mitigated Negative Declaration may need
to be prepared.”

The site of the Karl Linn Community Garden – at the NE corner of Peralta & Hopkins – immediately adjacent to where a
two-way concrete bicycle track is proposed in the Project, was a Signal Oil Station from 1950 or earlier to 1957 or later. A
photo shows that it was a Texaco Gas Station in 1962. In 1963, it was Eddie Hancock service. The site was operated as a
gasoline & automobile service station as early as 1927. The address of the Signal Oil Station & Texaco Gas Station was
1297 Hopkins Street.

The Signal Oil Station & Texaco Gas Station closed many years before underground storage tank removal and soil and
ground water remediation were required.

The underground storage tanks are likely still at the site.

A remediation plan needs to be prepared and implemented.

CUMULATIVE IMPACT ANALYSIS OF LOSS OF STREET PARKING NEEDED

The Ohlone Project would result in the loss of 12 or more street parking spaces on the east side of Peralta Ave, so as to
make way for a two-way exclusive bicycle track. Parking would also be removed on Hopkins and Rose streets. The City of
Berkeley, Diablo Engineering, & the sub-contractors have failed to provide any analysis of the loss of these parking spaces
to the neighborhood, combined with the additional demand for parking and the further significant projected loss of
parking spaces from recent and planned projects:

Fehr and Peers, who has done traffic and parking analysis for many years, should have done a thorough analysis of the
loss of all this street parking combined with the increased demand for street parking in the immediate area, as follows:

The pickle ball courts at Hopkins and Peralta bring dozens of cars to the neighborhood six days a week. If the 12 or more
parking spaces on Peralta and Hopkins are removed, pickle ball players will monopolize the parking spaces in front of
peoples' homes on Hopkins and Peralta.

We won't be able to park in front of our homes again. High speed bicycle lanes with concrete barriers will keep people
from safely backing out of their driveways. People without driveways will forced to park far away front their homes & will
risk assault walking home after dark.

Removing street parking on Peralta Avenue & on other nearby streets will result in more auto break-ins, more catalytic
converter thefts, & more out right car thefts. People with driveways would be forced to back out into high speed bicycle
lanes.

The Hopkins Corridor Project would remove up to 200 street parking spaces on Hopkins Street. Although work on this project has been suspended, the Project has not been cancelled.

The planned large-scale apartment development at the North Berkeley BART site would add 1200 or more dwelling units and 2000 or more residents to the neighborhood, yet would result in the loss of 500 parking space.

The far-reaching “missing middle” residential up-zoning approved by the Berkeley City Council in June 2025 will in time add thousands of more residents to the surrounding neighborhoods.

As there continues to be a relentless string of bills passing the state legislature and signed by the governor weakening CEQA and weakening local control over land use, there will be an increased demand for street parking in residential neighborhoods. Just in the past month, the Governor signed SB79, which further weakens local control over development.

The more people have to drive around and around looking for parking spaces, the more fossil fuels will be burned, and the more likelihood there will be of accidents.

WHY ARE RECKLESS BICYCLISTS, ELECTRIC BICYCLISTS & ELECTRIC SCOOTER RIDERS TOLERATED?

Bicyclists, electric bicycle riders, & electric scooter riders are getting more & more reckless. They routinely run stop signs and stop lights, pass pedestrians way too close & on the right, and overtly knock into pedestrians. It's time to strictly enforce all traffic laws against bicyclists and scooter riders.

Electric scooters & electric bicycles should NOT be on sidewalks or in bicycle lanes. All motorized vehicles belong in the street. Electric scooter riders should be licensed & at least 18. It makes no sense to exempt them from the rules of the road.

Diablo Engineering, Fehr and Peers, and the City of Berkeley are ignoring the new reality of reckless bicycle, e-bicycle, & e-scooter riders.

So-called shared pathways between pedestrians & bicyclists & electric vehicle users do not work, & put pedestrians, including people using wheel chairs & other mobility aides, & people pushing baby carriages at great risk.

Pedestrians on the Ohlone Pathway have to continually look over their shoulder to make sure bicyclists or electric vehicle riders are not about to knock them over.

The intersections as of the Ohlone Pathway at Gilman, Hopkins, Rose & Cedar as currently proposed in the Project are all terribly designed. These intersections are all designed to the benefit of fast moving bicyclists, e-bicycle rider & electric scooter riders, to the detriment of everyone else. None of these intersections are designed with separate and safe crossings for pedestrians.

The City needs to deal with this two wheeled recklessness that is permeating our local cultural, and not reward people who are riding two wheeled vehicles carelessly.

The Ohlone Project was on the March 2024 Berkeley Commission on Aging agenda. However, when the item came up, a commissioner announced that the Project was a done deal, that they should not waste their time listening to residents' concerns about the project or waste their time talking about it, and persuaded the commission to strike the item from their agenda.

At the January 18, 2024 City Transportation & Infrastructure Commission meeting, two commissioners asked Mr. Jung if he had contacted the administrators of Ala-Costa Center Program for developmentally disabled youth, housed in a building in Cedar Rose Park. He responded that he only communicated with groups and individuals that mattered. He

thus strongly implied that that the many young people –who benefit from the Ala-Costa Center – and their parents, but would not be getting any safe pedestrian pathway in the Park as the Project is currently planned don't matter to the City of Berkeley.

The Hopkins Corridor Project was to have had a well-noticed City Council Public Hearing in February 2023. That hearing was then prominently rescheduled to April 2023 (but was subsequently cancelled.)

The removal of 5 parking spaces on Virginia Street was scheduled for discussion and/or a public hearing in July 2024, but was delayed.

So why is the Ohlone Project's implementation and construction being allowed to begin without a City Council public hearing on the merits of the Project, but with only a Consent Calendar item on approving the construction contracts.

THE OHLONE PROJECT AS PROPOSED VIOLATES BERKELEY'S 1986 MEASURE 'L' –THE BERKELEY PUBLIC PARKS AND OPEN SPACE PRESERVATION ORDINANCE

THE PROPOSED OHLONE GREENWAY MODERNIZATION & SAFETY PROJECT VIOLATES BERKELEY'S 1986 MEASURE 'L' – THE BERKELEY PUBLIC PARKS AND OPEN SPACE PRESERVATION ORDINANCE

The 1986 Citizen's Initiative Measure 'L' requires that approval by Berkeley's voters is needed before the Cedar Rose Park pathway or the Greenway Pathway between Peralta and Gilman can be widened as part of the Ohlone Greenway Modernization & Safety Project.

Measure 'L' - The Berkeley Parks and Open Space Preservation Ordinance, was adopted by Berkeley voters in November 1986 by a vote of 21,946 to 18,854. It is codified in BMC Chapter 6.42.

I was one of the signers of the ballot argument in favor of Measure 'L'.

Measure 'L' states, "Shall an ordinance be adopted to require voter approval of non-recreational uses of parks or open space and require acquisition of open space controlled or leased by the City if acquisition is the only means of preserving the open space?"

Measure 'L' is still in effect today.

In 1996, the City of Berkeley wanted to place temporary buildings on Civic Center (Provo) Park for various city bureaucratic functions while the Civic Center building on Milvia Street went through extensive renovations and a seismic upgrade. Because of Measure 'L', the City had to put a measure on the November 1996 ballot - Measure X - to get the public's approval.

The last of the "where as's" at the start of the Full Text of Measure X" states,

"Where as Measure 'L', BMC Chapter 6.42 requires voter approval to use public parks for purposes other than park or open space uses,"

"Shall the MLK Jr. Civic Center Park be used for a period to expire no later than June 30, 2001 for the purpose of temporarily housing City of Berkeley offices in portable buildings, as well as associated site preparation and maintenance activities in order to allow the abatement of seismic hazards at the site of the MLK Jr. Civic Center Building at 2180 Milvia Street if the Council finds after a public hearing that there is no other feasible alternative to relocate City employees during such seismic work?"

Measure X failed 17,476 to 23,151. Thus, the City could not install temporary offices in Civic Center Park, and subsequently leased commercial property around downtown instead.

The proposed Ohlone Greenway Modernization & Safety Project (being prepared under the auspices of the Public Works Department) would take away open space in Cedar Rose Park, so as to expand the bicycle, electric bicycle, & electric scooter right of way. This is a violation Berkeley's Measure 'L'.

As noted above, Measure 'L', adopted by Berkeley voters in November 1986, requires a vote of the people before any park or open space under the city's control can be used for other purposes. A bicycle/ electric scooter/ e-bike pathway or roadway is not a park use, it's a transportation use. The Ohlone Greenway is clearly for transportation, not recreation.

The December 8, 2023 Ohlone Greenway Project - Project Information Sheet (page 2) states that "this pathway receives relatively high volumes of pedestrian and bicycle traffic."

The December 2023 Project Information Sheet further states (page 2) that "the proposed pathway improvements are also included in the 2016 Berkeley Strategic Transportation (BeST) Plan, which designates the Project as a priority & a signature project, as the BeST Plan seeks to increase mobility, user safety, access to commercial districts & opportunity areas, choices for mode of transportation & environmental sustainability/resiliency."

The December 2023 Ohlone Project Information Sheet could not have made it clearer. The Purpose of the Ohlone Pathway is "transportation." The purpose of the Project is to improve the "transportation" function of the Pathway.

Measure 'L' clearly prohibits the expansion or widening of the bicycle/e-scooter/e-bicycle paths in Cedar Rose Park, thus shrinking the available public open space in Cedar Rose Park, without an affirmative vote of Berkeley voters at a regularly scheduled election.

MEASURE 'L' COVERS ALL CITY PARKS & ALL CITY CONTROLLED OPEN SPACE

Please note that Measure 'L' is still in effect, & covers all City parks & city owned or controlled open space.

In recent years, Councilmember Taplin cited Measure 'L' in insisting that the City preserve the open space at the former Lawn Bowling Club site.

Last year, Councilmember Lunaparra cited Measure 'L' to insist that the City preserve the public open space at the Dwight - Telegraph triangle.

And in recent years, former Councilmember Harrison cited Measure 'L' to designate the open space around City Hall as a city park, so as to give it more protection.

MEASURE 'L' PROTECTS THE NATIVE PLANTS ADJACENT TO THE OHLONE PATHWAY IN THE FORMER SANTA FE RIGHT OF WAY

The City acquired the former Santa Fe Right of Way between Peralta & Gilman after the trains stopped running & Santa Fe abandoned the track in 1981.

On 7/23/2019, The City Council designated the entire Ohlone Greenway and the West Street Bike Path as linear city parks.

Thus, the native plants that have long been cultivated on either side of the Ohlone Pathway are part of the Ohlone Greenway City Park. And these areas additionally meet the definition of public "open space."

Thus, Measure 'L' protects the native plantings on either side of the Ohlone Pathway. The native plants on either side of the Ohlone Pathway cannot be dug up for the purposes of widening the Pathway – as proposed in the Ohlone Greenway Project & which the Project defines as "transportation," without voter approval.

The Berkeley Chapter of the California Native Plant Society has gathered over 500 signatures of people telling the Berkeley City Council that they want these native plants preserved where they are now.

HOW CAN CITY CLAIM THAT THE OHLONE GREENWAY PROJECT WOULD NOT TAKE AWAY RECREATIONALLY USED LAND FOR TRANSPORTATION PURPOSES?

The Ohlone Project was always being run by the Public Works Department, which includes transportation, and NOT by the Department of Parks and Recreation.

The lead commission for the Project was the Transportation And Infrastructure Commission, NOT the Parks, Recreation And Waterfront Commission.

The Ohlone Greenway Project was allegedly approved in The Berkeley Strategic Transportation Plan in 2017. If that's the case, then this Project is a Transportation plan, not a recreational plan.

24 HOUR LIGHTING

Ken Jung of Public Works has stated that as part of the Ohlone Greenway Project, there would be 24 Hour LED lighting along the pathway between Peralta and Gilman. Berkeley parks are closed to the public after 10PM. Since the widened pathway between Peralta and Gilman would be brightly lit with LED lighting 24 hours a day, it is clearly meant to be for transportation, not recreation. 24/7 extremely bright lighting is incompatible with enjoyment of a City park, and with park space being closed at night.

Don't reward reckless bicycle riders with 24 hour lighting while disrupting the sleep of hundreds of Berkeley residents.

\$3 MILLION GRANT FROM BART FOR THE OHLONE GREENWAY PROJECT CLEARLY STATES THE MONEY IS TO ENHANCE TRANSPORTATION TO AND FROM BART

The October 1, 2024 \$3 million funding agreement from BART for the Ohlone Greenway Project clearly states that the funds are for transportation, to improve transportation along the Greenway to and from BART.

The BART funds would in part be used to widen the pathway in Cedar Rose Park and along the Greenway between Peralta and Gilman, thus removing land that is now dedicated to parks and open space use.

Using the BART funds for this Project without first putting the issue before the voters would be a violation of Measure 'L'.

Measure 'L' should not be seen as an inconvenience, but as an opportunity to allow the public to vote on proposed changes to existing city parks and open space.

In 1996, city officials were not dismissive of Measure 'L' even though it would slow down the seismic upgrade of the 2180 Milvia Civic Center Building. They put approval of the temporary use of Civic Center Park for city offices on the ballot, because honoring the law and the will of the voters was the right thing to do.

Today in 2025, city officials should not be dismissive of Measure 'L' just because its implementation might slow down the widening of the pathways in Cedar Rose Park and along the Greenway between Peralta and Gilman.

If city officials could delay the seismic upgrade of 2180 Milvia in 1996 to honor the will of the voters, city officials can certainly delay the widening of the Cedar Rose Park pathway and the Greenway pathway between Peralta and Gilman, to honor the will of the voters.

If city officials believe that taking away open space in Cedar Rose Park and along the Greenway between Peralta and Gilman, so as to make more land available for 2 wheeled vehicle transportation is the appropriate thing to do, then our city officials can certainly make that argument on the ballot,

PLEASE DO NOT APPROVE THESE CONTRACTS

Based on Measure 'L', the proposed Ohlone Greenway Project and the City's Bicycle Plan Update cannot include widening the bicycle, e-bicycle, e-scooter pathway in Cedar Rose Park nor widening the pathway between Peralta and Gilman, unless the City is prepared to first put the matter on a general election ballot for voter approval.

DIABLO ENGINEERING IGNORED 2020 BERKELEY PEDESTRIAN PLAN

On page 3 of her 5-10-2022 proposal for the Ohlone Project contract Ms. Harmon of Diablo Engineering states that her team will review and analyze the Berkeley Bicycle Plan and other documents, but makes no mention of the City's 2020 Pedestrian Plan.

The Ohlone Project consistently emphasizes promoting bicycle use, but ignores the needs of pedestrians.

The Berkeley Strategic Transportation Plan Second Addendum page 10 states that The Berkeley Pedestrian Master Plan should be referenced as a starting point for all transportation and street planning, engineering and construction projects."

Unfortunately, Diablo Engineering and the City's Project Manager appear to have ignored the Berkeley Pedestrian Plan.

The 2021 Funding Request to the County Transportation Commission states that separate Pedestrian Pathways should be considered.

However, Diablo Engineering and City Staff have never given separate Pedestrian Pathways any serious consideration.

PROCESS FLAWED

When was the Project approved? Some in the City argue it was approved in 2017, in The Berkeley Strategic Transportation Plan. That was almost nine years ago? None of the existing city council members nor the mayor were on the Council back then.

Why does the City Council refuse to have an open discussion or a workshop or a public hearing on the Ohlone Greenway Project?

The Diablo Engineering's process was greatly flawed. We had one outdoor meeting in February 2023 with Phil Erickson, of Diablo Engineering, who refused to take notes.

Our various emails to Garret Gritz of Diablo Engineering were systematically ignored, not even a cursory note thanking us for our comments.

Despite having lived on Peralta Avenue since 1977, being within 200 feet of both the proposed Peralta Bicycle Track and the planned widening of the Ohlone Pathway and installation of new lighting (taking away our night sky) we never received any notices from the City nor from Diablo Engineering about the process.

The 2022 contract with Diablo Engineering said they were supposed to be present and answering questions at the January 18, 2024 Transportation and Infrastructure Commission Meeting. (page 2 of their 5-10-2022 proposal) I attended the entire meeting, and addressed my concerns to the Commission. I remember clearly that Project Manager

Ken Jung was there giving a presentation and answering questions, but do not remember Mr. Jung ever introducing anyone from Diablo Engineering, nor do I remember anyone from Diablo Engineering talking about the Project.

DIABLO ENGINEERING HAS A PROBLEM WITH THE NAMES OF CITY STREETS AND PARKS.

In her proposal for the Ohlone Project contract on pages 7, 9,10 & elsewhere, Diablo Engineering president Jennifer Harmon refers to Cedar Rose Park as Crystol Red Park. What is the significance of this? On pages 8 & 10 of her proposal, Ms. Harmon spells Peralta "Perlata."

WHY WERE THERE NO ALTERNATIVES TO REMOVING STREET PARKING ON PERALTA, INSTALLING EXCLUSIVE TWO-WAY BICYCLE TRACKS ON PERALTA CONSIDERED?

WHY WASN'T THE POSSIBILITY OF SEPARATE PATHWAYS FOR PEDESTRIANS CONSIDERED?

I have thus far been unable to find the origins on the insistence that 12 or more parking spaces be removed from Peralta Avenue (& more elsewhere) and that two-way exclusive bicycle tracks be installed on Peralta Avenue. The 2021 Funding Agreement with the Alameda County Transportation Commission – Appendix A, page 2 describes a "Class IV cycle track along Peralta 'Street'" as a done deal. (As with the Diablo Engineering team, the City of Berkeley keeps mistakenly calling Peralta Avenue a "Street.")

The Ohlone Project was thus presented in its final form to the Alameda County Transportation Commission in 2021 and to Diablo Engineering in 2022 before people knew anything about it.

Thus the City obtained \$1,271,000 from the Alameda Transportation Commission and agreed to pay Diablo Engineering over \$500,000 for a Plan that had already been decided upon before these funds were requested or allocated.

THE CONTRACTS SHOULD NOT HAVE BEEN CONSIDERED UNTIL THE CITY'S BICYCLE PLAN UPDATE IS APPROVED.

The Ohlone Project assumes that the exclusive concrete bicycle tracks will continue to be City policy. This is not necessarily the case. Since the updated Bicycle Plan will be coming to the council in the coming weeks or a few months at most, it would be fair and reasonable to put the Ohlone Project contracts on hold pending approval of the new Bicycle Plan.

WE NEED A FAIR AND OPEN PROCESS

Why was there no public hearing?

Why was this on the Consent Calendar?

This Project itself was never approved by the Council.

The April 2025 Council Agenda Item to award the Diablo Engineering, the planning consultant \$500,000 more than previously agreed to.had no Staff Report.

Why is there no acknowledgement of the hundreds of people who signed a petition to save the native plants that have been growing for over 20 years adjacent to the path between Peralta and Gilman that would be destroyed by the Project?

Why is there no acknowledgment has to how harmful the all night LED lights that the project would install along the path between Peralta & Gilman would be to humans, to our sleep, and to birds, bees, and other animals?

PLEASE DO NOT ALLOW A BAD PROCESS TO CONTINUE

The Open Government Commission should tell the City Manager to delay negotiating the construction contracts for the Ohlone Greenway Project until all of the above issues are resolved.

The Open Government Commission should urge the City Council to rescind it's October 28 approval of the construction contracts for this project.

Please do not give any more funds to Diablo Engineering. Please not spend any additional funds – no matter the funding source, Ohlone Greenway Project.

Please carefully review all aspects of this Project, including all aspects of the Diablo Engineering Contract, and the information that Diablo Engineering has and has not given the City.

The City and Diablo Engineering need to go back to the drawing board and to go back to the community to come up with real alternatives to removing street parking and alternatives to installing exclusive bicycle tracks, and to figure out how to have separate pedestrian pathways.

We need real alternatives, public workshops, commission meetings, City Council workshops, and plenty of opportunities to meet face to face with the decision makers, before any further decisions are made on the Ohlone Greenway Modernization and Safety Project.

Thank you,
Clifford Fred
Berkeley California