



JONES HALL

# Overview of Federal Securities Laws

May 20, 2025

Chris Lynch  
Jones Hall

# Outline of Discussion

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Key Federal Securities Laws

Disclosure Responsibilities

Potential Liability of Elected Officials/Staff

City Disclosure Policies and Procedures

# Key Laws

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**Securities Act of 1933  
( ' 33 Act)**

**Securities Exchange Act of 1934  
( ' 34 Act)**

SEC Rule 10b-5  
SEC Rule 15c2-12  
Dodd-Frank reforms

# Securities Act of 1933

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Registration

Exemption for munis

Anti-Fraud – Section 17(a)

# Securities Exchange Act of 1934

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## Anti-Fraud

Section 10(b) & Rule 10b-5

Rule 15c2-12

# Rule 15c2-12

NEW ISSUE - FULL BOOK-ENTRY

RATING:  
S&P: "AA+"

*In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, under existing law, the interest on the Bonds is not excluded from gross income for federal income tax purposes. In the further opinion of Bond Counsel, interest on the Bonds is exempt from California personal income taxes. Bond Counsel expresses no opinion regarding any other tax consequences caused by the ownership or disposition of, or the accrual or receipt of interest on, the Bonds. See "LEGAL MATTERS – No Federal Tax Exemption."*



**\$40,000,000**  
**CITY OF BERKELEY**  
**2022 General Obligation Bonds, Series B**  
**(2018 Election Measure O: Affordable Housing)**  
**(Federally Taxable)**

**Dated: Date of Delivery**

**Due September 1, as shown on inside front cover**

**Issuance.** The general obligation bonds captioned above (the "Bonds") are being issued by the City of Berkeley (the "City") under provisions of the California Government Code and under a Resolution adopted by the City Council of the City (the "City Council") on April 26, 2022 (the "Bond Resolution"). The Bonds were authorized at an election of the registered voters of the City held on November 6, 2018, which authorized the issuance of general obligation bonds for the purpose of financing the improvement and acquisition of affordable housing (the "2018 Authorization"). The Bonds are the second series of bonds to be sold and issued under the 2018 Authorization. See "THE BONDS – Authority for Issuance."

**Purpose.** The Bonds are being issued for the purpose of financing the improvement and acquisition of affordable housing. See "PLAN OF FINANCE – Purpose of Issue."

**Security.** The Bonds are general obligations of the City, payable solely from ad valorem property taxes levied by the City and collected by Alameda County (the "County"). The City Council is empowered and is obligated to annually levy ad valorem taxes for the payment of interest on, and principal of, the Bonds upon all property subject to taxation by the City, without limitation of rate or amount (except certain personal property that is taxable at limited rates). See "SECURITY FOR THE BONDS."

**Book-Entry Only.** The Bonds will be issued in book-entry form only, and will be initially issued and registered in the name of Cede & Co. as nominee of The Depository Trust Company, New York, New York ("DTC"). The Bonds are issuable as fully registered securities in denominations of \$5,000 or any integral multiple of \$5,000. Purchasers of the Bonds (the "Beneficial Owners") will not receive physical certificates representing their interest in the Bonds. See "THE BONDS" and "APPENDIX E – DTC AND THE BOOK-ENTRY ONLY SYSTEM."

**Payments.** Interest on the Bonds accrues from the date of delivery and is payable semiannually on March 1 and September 1 of each year, commencing September 1, 2022. Payments of principal and interest on the Bonds will be paid by The Bank of New York Mellon Trust Company, N.A., as Paying Agent, to DTC for subsequent disbursement to DTC Participants, which will remit such payments to the Beneficial Owners of the Bonds. See "THE BONDS - Description of the Bonds."

**Redemption.** The Bonds are subject to optional and mandatory redemption prior to maturity. See "THE BONDS – Redemption."

The following firm, serving as municipal advisor to the City, has structured this issue.



**Maturity Schedule**  
**(See inside cover)**

**Cover Page.** This cover page contains certain information for general reference only. It is not a summary of all the provisions of the Bonds. Prospective investors must read the entire Official Statement to obtain information essential to making an informed investment decision.

The Bonds will be offered when, as and if issued and accepted by the Purchaser, subject to the approval as to legality by Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel to the City, and subject to certain other conditions. Jones Hall is also serving as Disclosure Counsel to the City. Certain legal matters are being passed upon for the City by the City Attorney. It is anticipated that the Bonds, in book entry form, will be available for delivery by DTC in New York, New York, on or about May 24, 2022.

The date of this Official Statement is May 10, 2022.

## Initial Disclosure (GO Bonds)

# Rule 15c2-12

## Initial Disclosure (Lease Revenue Bonds)

### NEW ISSUE - FULL BOOK-ENTRY

RATING: S&P: "AA"  
See "RATING."

*In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however to certain qualifications described herein, under existing law, the interest on the Bonds is excluded from gross income for federal income tax purposes and such interest is not an item of tax preference for purposes of the federal alternative minimum tax. In the further opinion of Bond Counsel, such interest is exempt from California personal income taxes. See "TAX MATTERS."*



### \$3,975,000 BERKELEY JOINT POWERS FINANCING AUTHORITY 2021 REFUNDING LEASE REVENUE BONDS (2010 Animal Shelter COP Refinancing)

Dated: Date of Delivery

Due: October 1, as shown on inside cover

**Authority for Issuance.** The bonds captioned above (the "Bonds") are being issued by the Berkeley Joint Powers Financing Authority (the "Authority") under a resolution adopted by the Board of Directors of the Authority on February 25, 2020, and an Indenture of Trust dated as of June 1, 2021 (the "Indenture"), by and between the Authority and The Bank of New York Mellon Trust Company, N.A. as trustee (the "Trustee"). See "THE BONDS – Authority for Issuance."

**Purpose.** The Bonds are being issued primarily to refinance on a current basis the outstanding certificates of participation of the City of Berkeley (the "City") captioned "\$5,750,000 City of Berkeley 2010 Certificates of Participation (Animal Shelter Financing)" and the City's related lease payment obligation. In addition, the proceeds of the Bonds will be used to pay the costs of issuing the Bonds. See "FINANCING PLAN."

**Security.** Under the Indenture, the Bonds are payable from and secured by a first pledge of and lien on "Revenues" (as defined in this Official Statement) received by the Authority under the Lease Agreement, dated as of June 1, 2021, by and between the Authority, as lessor, and the City, as lessee (the "Lease"), consisting primarily of lease payments (the "Lease Payments") made by the City under the Lease with respect to the lease of certain real property, as further described in this Official Statement. The Bonds are also secured by certain funds on deposit under the Indenture. Neither the Authority nor the City is establishing a reserve fund for the Bonds. See "SECURITY FOR THE BONDS."

**Book-Entry Only.** The Bonds will be issued in book-entry form only, and will be initially issued and registered in the name of Cede & Co. as nominee of The Depository Trust Company, New York, New York ("DTC"). The Bonds are issuable as fully registered securities in denominations of \$5,000 or any integral multiple of \$5,000. Purchasers of the Bonds (the "Beneficial Owners") will not receive physical certificates representing their interest in the Bonds. See "THE BONDS" and "APPENDIX F – DTC AND THE BOOK-ENTRY ONLY SYSTEM."

**Payments.** Interest on the Bonds accrues from the date of delivery and is payable semiannually on April 1 and October 1 of each year, commencing October 1, 2021. Payments of principal and interest on the Bonds will be paid by the Trustee to DTC for subsequent disbursement to DTC Participants, which will remit such payments to the Beneficial Owners of the Bonds. See "THE BONDS – General Provisions."

**Redemption.** The Bonds are subject to optional redemption, mandatory sinking fund payment redemption and special mandatory redemption from insurance or condemnation proceeds prior to maturity. See "THE BONDS – Redemption."

NONE OF THE BONDS, THE OBLIGATION OF THE AUTHORITY TO PAY PRINCIPAL OF OR INTEREST THEREON, OR THE OBLIGATION OF THE CITY TO MAKE THE LEASE PAYMENTS CONSTITUTE A DEBT OR A LIABILITY OF THE AUTHORITY, THE CITY, THE STATE OF CALIFORNIA OR ANY OF ITS POLITICAL SUBDIVISIONS WITHIN THE MEANING OF ANY CONSTITUTIONAL LIMITATION ON INDEBTEDNESS, OR A PLEDGE OF THE FULL FAITH AND CREDIT OF THE CITY. THE BONDS ARE SECURED SOLELY BY THE PLEDGE OF REVENUES AND CERTAIN FUNDS HELD UNDER THE INDENTURE. THE BONDS ARE NOT SECURED BY A PLEDGE OF THE TAXING POWER OF THE CITY.

The following firm, serving as municipal advisor to the Authority and City, has structured this issue.



### MATURITY SCHEDULE (see inside cover)

**Cover Page.** This cover page contains certain information for general reference only. It is not a summary of all the provisions of the Bonds. Prospective investors must read the entire Official Statement to obtain information essential to making an informed investment decision.

*The Bonds will be sold and awarded pursuant to a competitive bidding process to be held on May 18, 2021, as set forth in the Official Notice of Sale. The Bonds are offered when, as and if issued and received by the Purchaser, and subject to the approval as to their legality by Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel. Certain legal matters will also be passed upon for the Authority and the City by Jones Hall, A Professional Law Corporation, as Disclosure Counsel. Certain legal matters will be passed upon for the City by the City Attorney. It is anticipated that the Bonds will be delivered in book-entry form through the facilities of DTC on or about June 2, 2021.*

The date of this Official Statement is: May 18, 2021

# Responsibilities of Officials – Orange County

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- County was relying on risky investment strategies to balance its budget, and failed to disclose the risky nature of its investments
- County filed for bankruptcy protection in 1994; SEC brought enforcement action in 1996 (there were no bond defaults)
- Board of Supervisors failed to take *“steps appropriate under the circumstances”* to assure that the County's financial situation was being adequately disclosed to potential investors

*“Public official may not authorize disclosure while recklessly disregarding facts that indicate that there is a risk that the disclosure may be misleading”*

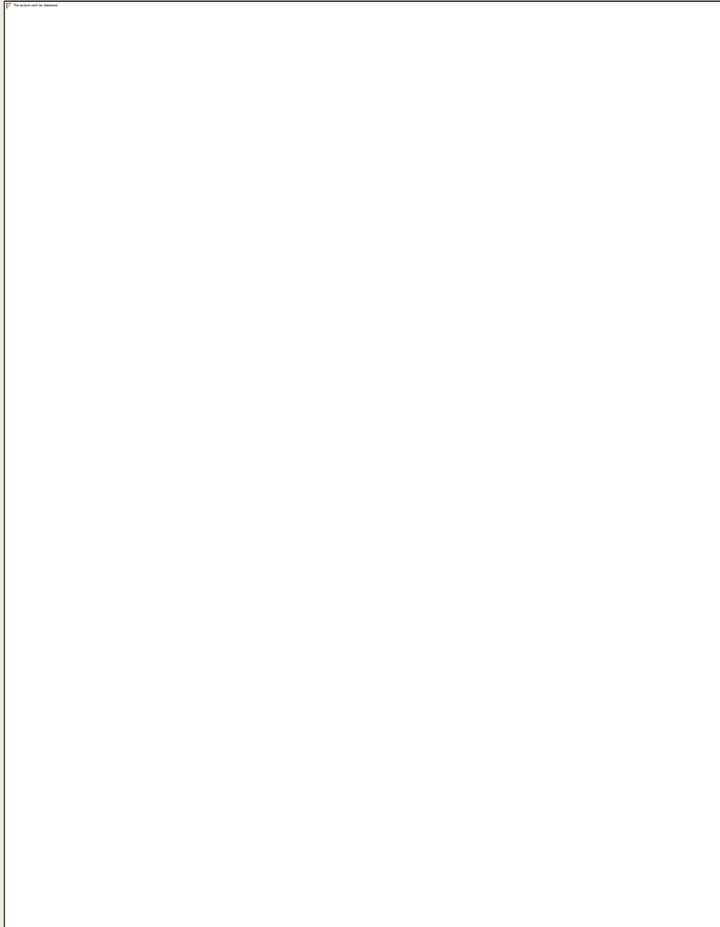
- Takeaway: Public officials must exercise reasonable oversight

# Rule 15c2-12

## Continuing Disclosure

Annual reporting

Event reporting



### APPENDIX D

#### FORM OF CONTINUING DISCLOSURE CERTIFICATE

This Continuing Disclosure Certificate (this "Disclosure Certificate") is executed and delivered by the City of Berkeley (the "City") in connection with the issuance of the bonds captioned above (the "Bonds"). The Bonds are being issued under the Constitution and laws of the State of California, including but not limited to, Article 4.5 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, under a resolution adopted by the City Council of the City on April 27, 2021 (the "Bond Resolution") and pursuant to and consistent with the Charter of the City.

The City hereby covenants and agrees as follows:

**Section 1. Purpose of the Disclosure Certificate.** This Disclosure Certificate is being executed and delivered by the City for the benefit of the holders and beneficial owners of the Bonds and in order to assist the Participating Underwriter in complying with S.E.C. Rule 15c2-12(b)(5).

**Section 2. Definitions.** In addition to the definitions set forth above and in the Bond Resolution, which apply to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section 2, the following capitalized terms have the following meanings:

*"Annual Report"* means any Annual Report provided by the City pursuant to, and as described in, Sections 3 and 4.

*"Annual Report Date"* means the date not later than April 1 after the end of each fiscal year of the City (currently June 30<sup>th</sup>).

*"Dissemination Agent"* means the City or any other Dissemination Agent designated in writing by the City and which has filed with the City a written acceptance of such designation. As of the date of this Disclosure Certificate, NHA Advisors, LLC is acting as Dissemination Agent.

*"Listed Events"* means any of the events listed in Section 5(a).

*"MSRB"* means the Municipal Securities Rulemaking Board, which has been designated by the Securities and Exchange Commission as the sole repository of disclosure information for purposes of the Rule.

*"Official Statement"* means the final official statement executed by the City in connection with the issuance of the Bonds.

*"Participating Underwriter"* means any of the original underwriters of the Bonds required to comply with the Rule in connection with offering of the Bonds.

*"Rule"* means Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

D-1

# SEC Guidance

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“Lessons Learned from San Diego,” Linda Chatman Thomsen, Director, SEC Division of Enforcement (2007)

“What should the municipal securities markets take away from these actions? I can tell you that the Enforcement Division believes there are five critical lessons that municipalities should learn from our recent actions”

- adopt written disclosure policies and procedures
- provide appropriate training to city officials and employees
- focus on the big picture issues facing the city
- disclose the bad with the good
- hire competent professionals

# Unfunded Liabilities/Unfunded Infrastructure

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Office of the City Manager

## 01 Special Meeting Item

**ACTION CALENDAR**  
May 23, 2023  
(Continued from April 11, 2023)

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Sharon Friedrichsen, Budget Manager  
Subject: Unfunded Liability Obligations and Unfunded Infrastructure Needs

### RECOMMENDATION

That the City Council takes the following actions:

1. Accept the Unfunded Liability Obligations and Unfunded Infrastructure Needs report
2. Receive a presentation on Pensions and Other-Post Employment Benefits tonight and provide staff with direction
3. Schedule for either the April 25, 2023 City Council Meeting or at a later date to be determined a presentation and discussion on Unfunded Infrastructure Needs

### INTRODUCTION

On May 29, 2012, the City Council adopted Resolution No. 65,748 N.S. "Requiring that the City Manager Develop and Publish a Biennial Report of Current City Liabilities and Projections of Future Liabilities. The purpose of this report is to provide a thorough overview of the City's long-term expenditure obligations in a format that is easily understandable in a single report. As indicated below, the enacting Resolution stipulates that information pertaining to personnel-related costs, City-issued bonds, capital assets and infrastructure be included within the report as follows:

1. Employee and retiree benefit costs over a 10-year horizon
2. Costs for current active employees including:
  - a. total payroll costs for active employees during the current year;
  - b. projected payroll costs for the same number of employees for the next 10-year period with costs increases based on MOU's with bargaining units.
3. A summary of all current City obligations including:
  - a. general obligation bonds;
  - b. revenue bonds.

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Unfunded Liability Obligations and Unfunded Infrastructure Needs

ACTION CALENDAR  
May 23, 2023

4. Summary of all capital assets and infrastructure including:
  - a. Appraisal of Public Buildings valued at \$5 million or more
  - b. Condition of Streets and Roads using the "Street Saver" information projecting costs to bring streets and roads condition to an average Pavement Condition Index (PCI) of 75 within 5 years.
  - c. Sewers: updated asset management plan for public sewers including projected costs for succeeding 5 years and projected revenue from sewer fees for the succeeding 5 years.

This report is required to be published every two years, in the second year of the biennial budget, in advance of the Council's consideration of the upcoming biennial budget. Instead of preparing a two-year budget for FY 2022 & FY 2023, the City prepared a one-year budget for FY 2022 and subsequently prepared a two-year budget for FY 2023 & FY 2024. Therefore, this report is being presented in the first year of the biennial budget to adhere to the two-year reporting requirement.

The projections in this report were developed by staff in the City Manager's Budget Office and the Finance Department, with the assistance of several financial advisors including the City's sales tax consultant and actuaries. Revenues are, of course, sensitive to normal business cycles as well as unanticipated economic volatility. Thus, it is important that the City continue its fiscally prudent planning to balance expenditures against projected revenues while addressing employee compensation as well as historically underfunded infrastructure needs.

### SUMMARY

The following is a summary of key points that will be explained in detail in this report:

- Due to projected increases in personnel expenses, the City currently projects a General Fund structural deficit in FY 2025 through FY 2027.
- The City has a significant pension liability that is anticipated to grow due to recent financial losses experienced by CalPERS. Also, of note, the City's pension contributions for all City employees are anticipated to increase more than \$32 million over the next ten years putting a strain on resources and services.
- The City's retiree health plans are significantly underfunded with the funded status of the City's plans ranging from a low of 6.93% to a high of 51.22%.
- Due to the age of the City's infrastructure and limited resources allocated to infrastructure, the City's unfunded infrastructure needs have increased over the years and is anticipated to range around \$2.52 billion from FY 2024 to FY 2028.
- Despite the recent adoption of Measure T1 and Measure O, the City has an aggregate bond tax rate for FY 2023 of 0.0623% (which represents \$62.30 for each \$100,000 in assessed value ("A.V"), which is below the historical peak of approximately \$95 (per \$100,000 in A.V) in tax year 1999-2000.

# Potential Liability of Elected Officials/Staff

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Orange County

San Diego

Westlands Water District (2016)

“A little Enron accounting” hid true financial condition

District paid \$125K fine

Fines paid by GM (\$50K) and AGM (\$20K)

# Questions

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