



COMMISSIONERS' & BOARD MEMBERS' MANUAL 2025 Edition

**BACKGROUND INFORMATION
RULES AND PROCEDURES**

**AMENDED AND OFFICIALLY ADOPTED BY
Resolution No. 71,677-N.S.**

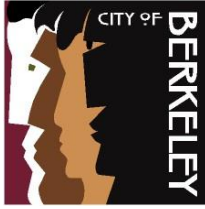
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MESSAGE FROM THE CITY CLERK:

Members of boards and commissions provide an invaluable service to our City. They advise the City Council on a wide variety of subjects by making recommendations on important policy matters. Without the assistance of the various boards and commissions, the City Council could give many complex and significant matters only a perfunctory review. The detailed studies and considered advice of boards and commissions are often catalysts for innovative programs and improved services.

Serving on a board or commission can be a rewarding experience for community service-minded residents. It is an excellent way to participate in the functioning of local government and to make a personal contribution to the improvement of our community. Making local government effective and responsive is everybody's responsibility.

On behalf of the City Council, I wish to thank all commissioners for their service and extend an invitation to all residents of the City to give serious consideration to serving on an advisory body.

Again, thank you for your service to the City of Berkeley.

Berkeley City Clerk

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A. PUBLIC PARTICIPATION

Berkeley's system of boards and commissions provides members of the public who have special experience or interests a method to participate in the City's decision-making process by advising the City Council on numerous issues. Throughout this manual, the word "commission" is used to denote all boards, commissions, and committees; and "commissioner" denotes all members of a board, commission, or committee.

It is not only the right but also the duty of residents to participate in planning for their future, and the City has a responsibility to provide commissioners with the tools to carry out their charge. That responsibility includes training and useful written procedures. This handbook attempts to fulfill the latter requirement.

The board and commission system provides the opportunity to interact with people of all ages, interests, and backgrounds. A better democracy can be realized when people are able to come together across neighborhood and economic lines to assist in making the community decisions that will shape all of their lives. While commissioners are themselves appointed from within the community, it is important that they in turn ensure that a wide variety of viewpoints from the rest of the community are considered when they make recommendations to the Council. Commissioners should treat these widely varying viewpoints of other commissioners and members of the public with respect so that all residents are encouraged to participate in government.

The City of Berkeley enjoys a wide variety of Council-appointed boards, commissions, and committees that advise the Council on numerous issues. As resident participation has evolved into a vital and integral part of local government, the number of commissions has steadily grown. There are now approximately 33 such bodies functioning within the City of Berkeley. The Board of Education and the Rent Stabilization Board are separately elected, independent of the City Council, and are not within the purview of this Manual.

The roster of commissioners is a public document available in the City Clerk Department. The roster includes the name, residential or mailing address, home or business phone number, appointed by, and term start date of each commissioner.

B. COMMISSION ORIGINS

Commissions originate from four different sources: the City Charter, Council action, federal or state mandate, and a vote of the people.

All commissions share a common characteristic: Some or all commissioners are appointed either by the Council as a whole, or by each individual Councilmember in accordance with the Fair Representation Ordinance, Berkeley Municipal Code (BMC) Sections 2.04.030–2.04.130. Some Commissioners are directly appointed by the Berkeley Unified School District Board.

1) Charter

The present charter, first adopted in 1909, initially authorized the Personnel Board, the Civic Arts Commission, and the Board of Library Trustees, all of which are still active today.

2) Council Action

Indefinite Tenure

The overwhelming majority of commissions are created by ordinance or resolution to perform defined duties within a sphere of interest for an indefinite period of time. From time to time, the Council may create a new commission or consolidate or eliminate commissions as needed.

Limited Tenure

The Council may establish a commission or task force for a specific purpose and a limited period of time. The Council can take action to extend the tenure of a limited tenure commission.

3) Federal and State Mandate

Certain commissions are required by federal or state law, and the purposes and duties are specified by said law.

Examples include the Housing Advisory Commission, Human Welfare & Community Action Commission, and Mental Health Commission.

4) Ballot Measure Approved by Voters

Five bodies derive authority from measures adopted by the voters. These are the Fair Campaign Practices Commission (FCPC), the Police Accountability Board (PAB), the Sugar-Sweetened Beverage Product Panel of Experts (SSBPPE), the SAFE STREETS Citizens Oversight Committee (SSCOC), and the Independent Redistricting Commission. The FCPC is exempt from attendance rules cited in Chapter II but is bound by rules contained in its initiative ordinance, the Conflict of Interest program, and procedural rules devised to meet state open meeting standards. The SSBPPE, PAB, and SSCOC follow the rules in this manual.

There are several local and regional advisory bodies to which the Council may appoint only one or two members. The remainder are appointed by other agencies. Appointees may be Councilmembers, staff members, or members of the public. This category includes but is not limited to the Mosquito Abatement District Board, 2x2 Committee (City-BUSD), 4x4 Joint Task Force Committee (City-Rent Board), Alameda County Waste Management Commission, Association of Bay Area Governments, and League of California Cities (East Bay Division). These bodies are not subject to the guidelines in this handbook.

C. COMMISSION TYPES

Commission activities are varied but generally fall into four categories.

1) Quasi-Judicial

Certain commissions have the authority to make binding decisions that require or restrict the action of individuals. Aggrieved parties have the right to appeal the commission decisions to the City Council. Quasi-judicial commissions have provisions in the Municipal Code to hold noticed public hearings. For more information regarding public hearings, see pages 42 and 60.

Quasi-Judicial Commissions:

- Fair Campaign Practices Commission
- Open Government Commission
- Housing Advisory Commission (building official appeals)
- Landmarks Preservation Commission
- Planning Commission
- Police Accountability Board
- Zoning Adjustments Board

2) Administrative

This type of commission has administrative powers to manage the subject under its purview.

Administrative Commission:

- Board of Library Trustees

3) Advisory to the City Manager

These commissions make recommendations to the City Manager.

Advisory to the City Manager:

- Personnel Board
- Police Accountability Board

4) Advisory to Council

All commissions listed below advise the City Council concerning policies and programs, within the limitations of their enabling legislation.

Advisory to Council:

- Cannabis Commission
- Civic Arts Commission
- Commission on Aging
- Commission on Disability
- Commission on Labor
- Commission on the Status of Women
- Community Environmental Advisory Commission
- Community Health Commission
- Design Review Committee
- Disaster and Fire Safety Commission

- Elmwood Business Improvement District Advisory Board
- Environment and Climate Commission
- Housing Advisory Commission (policy)
- Human Welfare & Community Action Commission
- Loan Administration Board
- Mental Health Commission
- Parks, Recreation and Waterfront Commission
- Peace & Justice Commission
- Police Accountability Board
- SAFE STREETS Citizens Oversight Committee
- Solano Avenue Business Improvement District Advisory Board
- Sugar-Sweetened Beverage Product Panel of Experts
- Transportation and Infrastructure Commission
- Youth Commission
- Zero Waste Commission

D. COMMISSION PURVIEW

Every commission is created by enabling legislation, which may take the form of an ordinance or resolution. The enabling legislation defines the role, scope, and responsibilities of the commission. The enabling legislation is how the City Council assigns and defines what types of work each commission may undertake and limits on what type of recommendations each commission may make.

In order for commission recommendations to have significant meaning in the eyes of the City Council, all commissions should take special care to ensure that they remain within their subject area purview and the constraints of their enabling legislation. Occasionally two or more commissions will have overlapping subject matter. In these cases, the secretaries should work together to ensure the subject is handled by the proper commission (see Chapter III, Section C, page 37).

E. DEVELOPMENT OF A WORK PLAN

In 2016, the City Council took formal action directing all commissions, except Board of Library Trustees (BOLT), Design Review Board, and Zoning Adjustments Board (ZAB), to submit an annual work plan at the start of each fiscal year to the Council in the form of an Information Report. A commission work plan should contain the commission's mission statement, goals, resources, activities, outputs, and desired outcomes. This planning document specifies how and when the commission plans to accomplish its objectives (by specifying outcomes) during the fiscal year. Goal statements explain the nature and scope of the work to be performed and the time needed to accomplish the goal.

Designing yearly work plans or goal statements may be done in conjunction with the development of the relevant departmental work plan so that the work of the department and the commission will complement each other throughout the year.

When developing a work plan, commissions should take special care to ensure that they remain within the subject area purview of their enabling legislation.

CHAPTER II. SERVING ON A COMMISSION

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A. MEMBERSHIP

1) Residency Requirements and Affidavit of Residency

As required by BMC Section 2.04.140, commissioners appointed by the Council or individual Councilmembers shall be residents of the City unless the commissioner is required by federal or state law or the ordinance establishing the commission to represent a specified organization, agency, group, category, or profession and residency is not required.

Pursuant to BMC Section 2.04.145, most commissioners are required to execute an Affidavit of Residency prior to appointment. The appointing Councilmember submits the executed affidavit with the appointment form. Appointments to the FCPC and PAB and appointments made by the Berkeley Unified School District are exempt from the Affidavit of Residency requirement.

Commissioners must inform the secretary if they are no longer residing in the City of Berkeley. The secretary of the commission shall inform the City Clerk in writing within one week after receiving such notification from a commissioner. The term of the commissioner shall expire on the date the notice is received by the City Clerk. If, however, a commissioner states that they are temporarily moving out of Berkeley and fully intend to reestablish residency in Berkeley within six months, the commissioner may continue to serve on the board or commission. At the end of the six months, the commissioner must inform the secretary whether the commissioner has reestablished residency in Berkeley. If the commissioner has not reestablished residency, automatic termination of membership will occur upon receipt of notification by the City Clerk. Commissioners are required to notify the City Clerk and secretary of contact information changes.

2) City Employees

BMC Section 3.80.030 prohibits City employees from being appointed to or sitting on Boards and Commissions as of December 1, 2016 except as specifically provided for in the Charter or BMC.

3) Application Procedure

Commission appointments are made in most cases by individual Councilmembers and sometimes by the Council as a whole. A comprehensive list of current boards and commissions and the applications to apply are available in the City Clerk Department. This information may also be obtained through the City's website at <https://berkeleyca.gov/your-government/boards-commissions>. Completed application forms must be

returned to the City Clerk. The City Clerk will forward the applications to each member of the City Council. Councilmembers will contact applicants in whom they are interested to discuss appointment or other participation opportunities.

4) **Appointments**

Appointments to most commissions are regulated by BMC Sections 2.04.030–2.04.130, commonly referred to as the Fair Representation Ordinance, or “FRO.” This voter initiative, adopted in 1975, requires that Councilmembers have equal representation on boards and commissions. Most commissions created by the Council are governed by the Fair Representation Ordinance.

Commissions responsible for appointing commissioners to other commissions must follow the rules for appointments in this Manual and the Municipal Code. Furthermore, these appointments to other commissions that arise from membership on a parent commission are terminated if the commissioner is terminated or resigns from the parent commission.

Example: If a ZAB commissioner who is also the ZAB’s appointee to the Design Review Commission is terminated, their term on the Design Review Committee also terminates.

Generally, the appointment process begins when a Councilmember submits an appointment form and an Affidavit of Residency to the City Clerk. The City Clerk determines if the person is eligible to serve and processes the appointment. The Clerk then notifies the commission secretary that the appointment is valid. A commissioner may not serve at any commission meeting until the commission secretary receives approval from the City Clerk Department and the commissioner has taken the Oath of Office.

NOTE: Participation of commissioners not deemed eligible by the City Clerk may result in nullification of commission actions.

After a new commissioner is appointed, the City Clerk Department will e-mail a packet of important information and will mail the appointment letter to the commissioner.

Requirement:

Commissioner appointments must be submitted to the City Clerk before 5:00 p.m. the day of the meeting and prior to the beginning of the meeting, to allow sufficient time to determine the appointee’s eligibility and process the appointment.

Consequence:

Failure to notify the City Clerk Department of commissioner transactions in a timely manner will result in a delay in the effective date of the transaction. This may lead to unexcused absences, nullification of commission votes, or possible termination from the commission.

5) Oath of Office

Before commissioners can participate as voting members of their commissions, they must take the Oath of Office as required by law (City Charter Article V, Section 18) at the City Clerk Department or through their commission secretaries. Failure to take the Oath of Office within 30 days of the appointment date is cause for automatic termination. Commissioners must take the Oath of Office for every temporary appointment they accept, unless they are appointed as Alternate Commissioners (see page 21).

Secretaries must check with the City Clerk Department prior to the commission meeting to verify that all newly appointed commissioners have taken the Oath of Office before allowing them to be seated. If the secretary is unable to verify if the oath has been taken, they must administer the oath prior to allowing the commissioner to be seated. It is the secretary's responsibility to forward completed oaths of office to the City Clerk Department upon completion.

Requirement:

All commissioners must complete and sign the Oath of Office within 30 days of the appointment date *and* prior to serving in their official capacity.

Consequence:

If a commissioner fails to take the Oath of Office within 30 days, their appointment will be automatically terminated. Serving at a meeting without having taken the Oath of Office may result in nullified votes and items that have to be re-agendized.

6) Terms of Office

Most Berkeley commissioners have both “term minimums” and “term maximums.”

Term Minimum

The term minimum ensures that, regardless of the date of appointment, a commissioner cannot be replaced by a Councilmember prior to December 1 in the year in which they were appointed.

If the appointing Councilmember dies, resigns, or is recalled prior to December 1, the term minimum of appointees of that Councilmember expires on the date of death, resignation, or recall (BMC Section 2.04.075).

Commissioners who have reached the term minimum may continue to serve at-will, and retain full voting rights after December 1 until they are replaced, terminated, resign, or reach their eight-year term limit.

Commissioners serve at the pleasure of the Councilmember who appointed them. As a matter of courtesy, it is recommended that the Councilmember should set the date a commissioner is to be replaced on a commission and communicate that date to the commissioner at least two weeks prior to the official date of replacement.

Question:

A commissioner resigned to take a job out of state in March. The Councilmember appointed a new commissioner to the position. In April, the original commissioner returned to Berkeley and requested their appointment back. May the Councilmember terminate the newly appointed commissioner and reappoint the original one?

Answer:

No. The new commissioner serves under the term minimum policy until December 1 of that year. They may only be removed from office through resignation or failure to meet terms of service (e.g., residency, attendance, etc.).

Term Maximum

Commissioners who have served the maximum of eight years on a commission shall not be eligible to serve on that commission until a two-year break in service has occurred (BMC 3.02.040). The City Clerk will notify the commissioner and the secretary in advance of the expiration of the eight-year limit.

The eight-year limit is not affected by interruption of service due to:

- Absence from the commission due to termination for excessive absences, from missing three consecutive meetings, or from missing 50% or more regular meetings in a six-month period (BMC 3.02.020).
- Absence from the commission due to any leave(s) of absence (BMC 3.02.030).
- Absence from the commission due to termination pursuant to the provisions of the City's Conflict of Interest Code or for failure to file the required Statement of Economic Interests.

Question:

If a commissioner begins their term on April 1, 2005, is terminated for lack of attendance on July 1, 2008, and reappointed on October 1, 2008, does their eight-year clock reset with the new appointment date?

Answer:

No. According to BMC, 3.02.040, despite the three-month gap in service in 2008, the commissioner's term expires on April 1, 2013.

7) Vacancy

Each vacancy on a commission is to be filled through appointment or reappointment by the Councilmember to whom the vacancy is credited. In the case of newly elected first-time Councilmembers, the appointee of the newly elected Councilmember shall replace the appointee of the Councilmember from the same Council district who was not reelected, and the appointee of a newly elected Mayor shall replace the appointee of the outgoing Mayor.

A temporary appointment may not be made to fill a vacancy on any board or commission.

8) Commissions with Special Regulations

Several commissions require special qualifications for appointment. For example, some appointees to the Community Health Commission, Cannabis Commission, Mental Health Commission, the SSCOC, and the Sugar-Sweetened Beverage Product Panel of Experts must satisfy occupational or specific category requirements under state or local law.

Other commissions have unique terms of appointment, such as the PAB (Charter Art. XVIII), which sets terms of four years, and the Youth Commission (BMC 3.42.030), which sets terms of one year. The FCPC (BMC 2.12.175) sets terms the same as the appointing Councilmember or Mayor. Appointments to the Mental Health Commission are made by the Council as a whole for three-year terms (Resolution No. 65,945-N.S.).

The two youth commissioners on the Environment and Climate Commissions are appointed by the Council as a whole from candidates recommended by the Berkeley Unified School District Board of Directors.

If specific rules deviating from the norm concerning appointments and terms exist, these are contained in the BMC sections or resolution that establishes the commission.

9) Attendance Requirements

Failure to comply with attendance rules and other requirements can result in automatic termination and/or lack of a quorum. It is important to note that all commissions, regardless of the frequency of meetings, are subject to these attendance regulations.

Commissioners must attend all meetings in order to avoid being marked absent. A commissioner is determined to be “absent” unless they 1) have been granted an excused absence because the meeting conflicts with a religious or cultural holiday (see below); or 2) The commissioner has obtained an approved leave of absence from their appointing councilmember or commission (see Chapter II, Section A.10). Commissioners who have excused absences, or an approved leave of absence, or who attended, will not be marked as absent.

Commissioners should inform the secretary as far in advance as possible if they cannot attend a meeting. Secretaries should advise these commissioners to request a leave of absence for the meeting.

NOTE: A commissioner must be present at least one hour, or 50% of the entire meeting, whichever is less, to be counted as present for purposes of attendance.

Absence from Three Consecutive Regular Meetings

If a commissioner is absent from three consecutive regular meetings their appointment to the commission will be automatically terminated. If a commissioner has been absent from two consecutive regular meetings, the secretary will advise the commissioner that absence from three consecutive

regular meetings of the body will result in automatic termination. Within one week of the third consecutive absence, the commission secretary will notify the City Clerk in writing of the dates of the three absences. The appointment expires on the date the fact of the third absence is reported to the City Clerk. Within one week, the City Clerk will notify the commissioner that they have been terminated and notify the Councilmember or Council, as appropriate, that a vacancy exists on the commission and that an appointment may be made to fill such vacancy (BMC 3.02.020). Attendance at special meetings (any meeting outside the standard meeting schedule) does not count toward attendance requirements.

Absence from 50% of All Regular Meetings

If a commissioner has been absent from 50% or more of all regular meetings held within the reporting period, their appointment to the commission will be terminated (BMC 3.02.020). The secretary of each commission shall report the full attendance record of each commissioner to the City Clerk at the end of each six-month period (June 30 and December 31) on a form provided by the City Clerk. The appointment of the commissioner will terminate on the date the attendance is reported to the City Clerk. Within one week of receiving such attendance report, the City Clerk will notify any commissioner whose appointment has been terminated and report to the appointing Councilmember, or Council, that a vacancy exists and that an appointment may be made to fill the vacancy.

NOTE: A commissioner appointed in January to a commission that held six regular meetings in the January to June reporting period must attend four regular meetings in order to comply with the attendance rules.

Newly appointed commissioners must attend more than half of all regular meetings held during the reporting period since being appointed in order to avoid termination.

Commissions That Meet on a Reduced Schedule

Some commissions may have a fewer number of meetings allowed in a year (less than the standard 10 meetings per year). Secretaries of commissions that meet on a reduced schedule will advise any commissioner who has been absent (as defined above) from one regular meeting that absence from two consecutive regular meetings of the body will result in automatic termination by the same mechanism described above.

The reporting period for a commission that meets on a reduced schedule is the full calendar year. Commissioners on these commissions will be terminated if they are absent from 50% or more of all regular meetings in the calendar year.

Commissions with Special Regulations

The FCPC was created by a ballot measure that was adopted prior to the addition of the automatic termination rules to the Municipal Code. Members of the FCPC are exempt from these provisions.

The ballot measure that created the PAB does provide for standard attendance and termination rules for members of the PAB.

The SSBPPE and SSCOC were created by a ballot measure adopted after the automatic termination provisions were added to the BMC and, thus, the rules for Council-created advisory commissions also apply to these two commissions.

No Quorum—Meeting Cancelled

When it is expected that there will be sufficient commissioners to hold a meeting but at the actual time of the meeting a quorum cannot be assembled and the meeting is cancelled, those commissioners who are absent will have an absence counted against them. Commissioners who have excused absences, or an approved leave of absence, or who attended will not be marked as absent.

If it is known that a quorum will not be achieved, the secretary will notify all commissioners that the meeting will be cancelled. No absence will be recorded against any commissioner. See Chapter IV, Section H for more details on procedures when lack of quorum occurs.

10) Excused Absences

An “excused absence” is only granted when a commissioner must miss a meeting due a religious or cultural holiday. To encourage full participation in commission meetings by all commissioners and the public, the Council encourages commissions to refrain from scheduling meetings on cultural and religious holidays. Commissioners may make a written request in advance of a meeting that an absence be excused due to a conflict between a scheduled commission meeting and a cultural or religious holiday. The excused absence can be granted before or after the scheduled meeting. The secretary will then excuse the absence and note the excused absence in the semi-annual attendance report sent to the City Clerk (BMC 3.02.030).

11) Leaves of Absence (BMC 3.02.030)

An appointing Councilmember may grant a leave of absence (LOA) for a specific meeting, or a period not to exceed three months. Written notice of the LOA must be filed by the Councilmember with the City Clerk prior to the actual absence. For meetings held after business hours, the notice of leave must be received by the City Clerk before 5:00 p.m. on the day of the commission meeting in order to count for that meeting. As per Ordinance No. 7,911-N.S., the Mayor can approve a Leave of Absence for a Commissioner appointed by the Council as a whole.

NOTE: A leave of absence may not be granted or applied retroactively.

Commissioners may seek to be reinstated prior to the end date of their LOA. This request must be made to the appointing Councilmember. If this request is granted, the Councilmember must submit a written request to the City Clerk to terminate the LOA. Once the leave is terminated, any temporary appointee shall have no further right to serve, and the regular commissioner

will resume their duties on the commission. The City Clerk will notify the secretary of these transactions.

As stated above, a LOA may be granted for a period not to exceed three months. A subsequent LOA may not be granted to the commissioner if it will extend the total uninterrupted leave beyond three months. The commissioner will be marked absent from any meetings missed beyond the end of the three-month maximum leave. A commissioner must attend at least one meeting in between LOAs.

Youth Commissioners and Peace & Justice Commissioners appointed by a School Board Director must request a LOA from their appointing Director.

Exception for Design Review Committee

Members of the Design Review Committee must request any LOA from the appointing commission. The request must be submitted through the agenda process by the commission secretary of the appointing commission.

Example: If a commissioner is a member of both the Zoning Adjustments Board (ZAB) and the Design Review Committee, that commissioner must obtain a LOA from their appointing Councilmember for ZAB and also have the ZAB grant a LOA for their position on the Design Review Committee.

Question:

If a commissioner is granted a LOA for June 1 through July 31 and the commission does not meet in August, may the commissioner request a LOA for the September meeting?

Answer:

No. A single LOA or consecutive leaves of absence may not extend longer than three months.

12) Temporary Appointments

During the commissioner's authorized LOA, the commission treats the absence as a vacancy; that is, the number required for a quorum drops accordingly (see Chapter V, Section A, page 53-54, for details). The appointing Councilmember or the Council may fill such vacancy by a temporary appointment for a period not to exceed the period of the temporary vacancy. Specific rules for temporary appointments include:

- A temporary appointee cannot obtain a LOA during their tenure.
- A temporary appointee can be terminated for missing three consecutive meetings.
- A temporary appointee can be terminated for non-filing of a required Form 700 within 30 days of appointment.
- If the commissioner on an approved LOA resigns or is terminated, the associated temporary appointee is automatically terminated.
- A temporary appointment may not be made to a vacant seat on any board or commission.

A temporary appointee does not assume any appointments of the regular commissioner such as chair, vice-chair, or seats on other committees.

13) Automatic Terminations

The importance of complying with the requirements of being a commissioner cannot be emphasized enough. Failure to recognize these requirements will result in automatic termination. The following are reasons why commissioners are automatically terminated.

- Absence from three consecutive regular meetings (see Section A.9, page 17, of this chapter for details).
- Absence from 50% or more of all regular meetings in a six-month period (see Section A.9, page 17, of this chapter for details).
- The non-filing of required Conflict of Interest Disclosure statements (see Section E.2, page 25, of this chapter for details).
- Failure to take the Oath of Office within 30 days of the appointment date (see Section A.5, page 15, of this chapter for details).
- Non-residency (see Section A.1, page 13, of this chapter for details).
- Failure to meet any eligibility requirements of the ordinance, resolution, or other law establishing the commission or regulating its membership.

NOTE: A commissioner may not be reappointed to any commission for a period of one year if they are terminated more than four times for any of the above reasons.

If a commissioner is terminated more than four times due to any of the above reasons or a combination of the above reasons, they are terminated from all commissions and committees and may not be appointed again to any commission for one year.

No commissioner may be appointed to any commission if there are outstanding Conflict of Interest statements or fines, and no commissioner may be appointed to any commission for a period of one year if terminated from any commission more than once for failure to file such statements.

14) Resignation Procedure

A commissioner wishing to resign shall submit a written resignation directly to the City Clerk and to the appointing Councilmember or the Council, as appropriate. Either an electronic or a hard copy resignation will be accepted.

Once submitted, a letter of resignation cannot be withdrawn. The effective date of the resignation is the date it is received by the City Clerk unless a future date is indicated. The City Clerk shall then notify the Councilmember, or Council, and the secretary of the commission that a vacancy exists.

B. ALTERNATE COMMISSIONERS

In 2015, Council amended Berkeley Municipal Code Chapter 3.02.035 to allow each Councilmember and the Mayor to appoint a pool of five Alternate Commissioners to serve on designated commissions when their regular appointee is on an approved leave of absence.

Per Resolution No. 71,206–N.S., the designated commissions on which Alternate Commissioners may serve are:

- Community Health Commission
- Environment and Climate Commission
- Housing Advisory Commission
- Landmarks Preservation Commission
- Parks, Recreation, and Waterfront Commission
- Planning Commission
- Sugar-Sweetened Beverage Product Panel of Experts
- Transportation and Infrastructure Commission
- Zero Waste Commission
- Zoning Adjustments Board

NOTE: Appointments of Alternate Commissioners to quasi-judicial commissions must be made at least two business days prior to the meeting.

The Council may add to or remove commissions from this list at its discretion.

All regulations and requirements of the BMC that apply to a Commissioner as defined in 3.02.010.A also apply to Alternate Commissioners except BMC Section 3.02.040 (term maximum).

For any commission with specific requirements for membership, the Alternate Commissioner must meet the same special category requirements in order to serve.

Alternate Commissioners are subject to the December 1 term minimum.

Alternate Commissioners must complete the Oath of Office and file a Form 700 at the time of their appointment as an Alternate Commissioner and not for each temporary appointment to one of the designated Commissions.

The appointment of an Alternate Commissioner to serve as a temporary appointee must be filed by the appointing Councilmember or Mayor with the City Clerk prior to the meeting at which the Alternate Commissioner is to serve. For meetings held after business hours, the temporary appointment must be received by the City Clerk before 5:00 p.m. on the day of the commission meeting in order to be effective for that meeting.

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 46 and in Appendix H.

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.

D. STIPEND INFORMATION

In order to remove economic hardship barriers from public participation, the City Council, by Resolution No. 69,739-N.S., authorized payment in lieu of certain expenses to commissioners of all Council-appointed boards, commissions, committees, task forces, and joint committees who meet certain household income criteria. Committees of commissions designated by the advisory body and not by Council appointment are not eligible for reimbursement.

Eligibility criteria for stipend and reimbursement

- Persons eligible to receive reimbursement in lieu of expenses are those board, commission, committee, task force or joint committee members whose household gross income as filed jointly for federal income tax purposes is below the Alameda County 50% AMI for a 3-person household per year (\$70,075 per year as of January 2024).
- Commissioners who are minors (under 18 years old) must have eligibility declaration forms co-signed by a parent or legal guardian attesting that the combined 3-person household income is under the Alameda County 50% AMI (\$70,075 per year as of January 2024).
- To establish eligibility, commissioners must file the Annual Declaration form in Appendix G with the secretary of their board, commission, or committee. Commissioners must file a new declaration form annually prior to May 31 in order to maintain eligibility.

An eligible commissioner is authorized to receive

- \$100 for each official meeting attended, not to exceed four meetings each month. This amount is indexed for inflation annually.
- Reimbursement for actual childcare expenses incurred while they attend meetings.
- Reimbursement for actual expenses paid to an attendant to provide care for a dependent elderly person while the commissioner attends meetings.
- Reimbursement for actual expenses incurred for disabled support services necessary to participate fully in board, commission, or committee meetings.

If a commissioner is paid \$600 or more in stipend payments in one calendar year, an IRS Form 1099 will be generated by the Finance Department.

It is the responsibility of the commission secretary to submit quarterly stipend forms to the Accounts Payable Division. Additional stipend policy and instructions are in Administrative Regulation 3.2, which is included in Appendix G.

Pursuant to the City Charter, PAB members shall receive \$100 per regular or special meeting attended, but in no case shall compensation for any one commissioner exceed \$300 per month.

E. CONFLICT OF INTEREST PROHIBITED

Members of Berkeley's commissions provide advice to the City Council, study various matters and, in the case of certain commissions, function in a quasi-judicial capacity. All members of commissions should be aware of the need to avoid any instances of conflict of interest. Conflict of interest standards are generally applicable to all commissions. Additional requirements may be applicable to particular boards and commissions.

Government Code Section 1090

Government Code Section 1090 prohibits public officers, acting in their official capacities, from making contracts in which they are financially interested. Violations of Section 1090 are felonies. A memo from the City Attorney regarding how to avoid conflicts of interest under Section 1090 is included as Appendix D. Making recommendations to Council regarding City contracts is considered part of making the contract.

State Political Reform Act and Berkeley Conflict of Interest Code

The state Political Reform Act, Government Code Sections 81000 et seq., and the Berkeley Conflict of Interest Code adopted pursuant to the Act prohibit a commissioner from making, participating in making, or attempting to influence the making of any City decision if the commissioner knows or has reason to know that it is reasonably foreseeable that the decision will have a material financial effect on specific interests of the commissioner or a member of the commissioner's family distinguishable from its effect on the public generally. The state Fair Political Practices Commission (FPPC) enforces these procedures, and the scope of these prohibitions is delineated in FPPC regulations and advice letters. Commissioners may seek the advice of the City Attorney as to whether they should disqualify themselves. However, only a formal advice letter from the FPPC will insulate a commissioner from enforcement actions by the FPPC. Commissioners must seek the advice of the City Attorney or FPPC well before they are required to participate in a matter that would create a possible conflict of interest.

NOTE: Contact the City Attorney's Office at Attorney@berkeleyca.gov or at 510-981-6950 at least two days in advance of a meeting if you think there may be a potential conflict on a matter under consideration by the commission. Contact the FPPC advice line at 1-866-ASK-FPPC for general questions.

In addition to filing required disclosure statements described below, any such conflict of interest must be publicly disclosed and noted in the official record of the commission meeting. In such cases, the commissioner completes the positive act of verbal disclosure, recuses themselves, and refrains from voting.

Recusal for Conflict of Interest

Recusal is the affirmative action of removing oneself from consideration, discussion, and voting on an issue in which a conflict of interest exists. Commissioners must make the required disclosure above and then physically

remove themselves from the proceedings. Recusal requires that the commissioner leave the room, or virtual meeting space, where commission discussion is occurring. The commissioner may not reenter the meeting space until after the consideration (including any votes taken) of the issue has concluded.

NOTE: The number of votes needed for action is not reduced when a commissioner who has a disqualifying conflict of interest is recused.

Scenario:

The Environment and Climate Commission has worked for over a year to develop a recommendation to Council to approve a low-cost contract with a solar panel company. One of the commissioners owns stock in the solar panel company but forgot about it, as it was just a small amount.

When the recommendation came before Council, the commissioner's relationship with the recommended vendor was discovered. Council was forced to disregard all of the work the commission did when considering the contract, thus wasting many hours of hard work.

1) Influencing the Making of Contracts and Affecting Other Financial Interests

Section 36 of the Berkeley City Charter and BMC Chapter 3.64 prohibit a commissioner on an advisory body from having an interest in any work or business of the City if the commission of which they are a member has had any role in influencing the making of the contract. These roles would include reviewing the contract itself, reviewing bid specifications, reviewing requests for proposals, discussing funding of the activity that is the subject of the contract, or making other kinds of policy recommendations that directly affect the making of the contract. A commissioner cannot satisfy the Berkeley City Charter and BMC Chapter 3.64 simply by disqualifying themselves when the vote or discussion on the contract is taking place. The law prohibits the contract itself.

However, some exceptions to this rule exist. For example, if the commissioner is an officer, member, director, or employee of a nonprofit corporation that is to receive the contract in question, the law does not prohibit the contract itself. The commissioner must disclose their interest, the minutes of the commission must reflect this disclosure, and the individual commissioner must disqualify themselves from participating in any manner, either directly or indirectly, in making or influencing any decision related to the contract.

2) Disclosure Statements Required (Form 700)

The Government Code of the State of California requires that designated commissioners file a Form 700 Statement of Economic Interests in which they disclose specified financial interests. The Berkeley Conflict of Interest Code specifies each commission that is subject to this requirement and the interests that must be disclosed.

NOTE: Failure to file Assuming Office and Annual Form 700s on time will result in termination from the commission. Failure to file any required Form 700 by the deadline (Assuming, Annual, Leaving) may result in the assessment of fines.

An Assuming Office Form 700 must be filed with the City Clerk Department within 30 days of appointment. Annual Form 700s must be filed by April 1 of each year. Finally, a Leaving Office Form 700 is required within 30 days of leaving office.

The City Clerk will routinely advise all commissioners affected of these requirements and deadlines. Not all commissioners are required to report at the same degree of disclosure. The Conflict of Interest Code is designed to require only that degree of disclosure needed to protect the public interest while balancing that need with an individual's right to privacy.

If a commissioner serving on a commission specified in the Code fails to file an Assuming Office Form 700 within 30 days of their appointment, their appointment will automatically terminate. Failure to file an Annual Form 700 within 30 days of the City Clerk issuing specific written notice of non-filing will also result in termination of a commissioner's term.

If a person has been terminated from a commission for any reason and a Councilmember wishes to appoint that person again, the commissioner must first file a Leaving Office statement prior to the new appointment. They are then required to file another Assuming Office statement within 30 days of the date of reappointment. If the commissioner is reappointed within 30 days of termination, there is no filing obligation.

No commissioner may be appointed to any commission if there are outstanding Conflict of Interest statements or fines, and no commissioner shall be appointed to any commission for a period of one year if terminated from any commission more than once for failure to file such statements.

Scenario:

A commissioner was terminated in January for failing to file their Assuming Office Form 700 within 30 days of appointment. The Clerk Department processed the termination, noting that they were terminated for the same issue a few months prior. In September of that year, a Councilmember wanted to appoint them to serve on another commission. The appointment was denied because they may not serve on any commission for one year after termination more than once due to non-filing of Form 700.

3) Incompatible Public Offices

The common law doctrine of incompatible public offices prohibits a public official from occupying two public offices that are incompatible in terms of their duties and/or the likelihood of divided loyalties. However, in Berkeley, serving on two or more City boards or commissions, including quasi-judicial bodies, is permitted (BMC Chapter 3.80). A commissioner who already occupies an elected or appointed office other than a City board or

commission and wants to apply for appointment to a City commission should seek the City Attorney's advice as to whether the two offices may be deemed incompatible.

4) Incompatible Activities for Compensation

Government Code Section 1126 prohibits a public official from engaging in activities for compensation that are incompatible with their public office. A commissioner engaged in compensated activities that may be incompatible with their duties as a commissioner should consult the City Attorney.

5) State-Mandated Ethics Training

State law (AB 1234) requires certain local agency officials to receive training in ethics. In Berkeley, the officials identified for this requirement are Mayor and City Council, City Auditor, Rent Stabilization Board Commissioners, Board of Library Trustees, and Police Accountability Board members.

These officials will receive a notice from the City Clerk advising them of the required training. The training may be completed on the FPPC website. The training must be completed within one year of the date of appointment and every two years thereafter. A certification of completion must be filed with the City Clerk. For more information, please contact the City Clerk Department.

F. COMMISSION ORGANIZATION

1) Election of Officers and Terms of Office

Unless otherwise provided by ordinance,¹ the chair and vice-chair are elected by the majority of the commission for a one-year term and hold office until their successors are elected or until their terms as members of the commission expire. No commissioner shall serve as chair for more than two consecutive years. There is no term limit for vice-chair.

Unless otherwise provided for in the enabling legislation, the annual election of commission officers should occur during the month of February. The election of officers must be listed as an item on the agenda.

Two meetings prior to the meeting at which officers will be elected, commissions are encouraged to list as an agenda item a discussion of the election, to inform all commissioners of the opportunity to seek nomination and election for the offices of chair and vice chair, to discuss and agree to the nomination process and timing for nominations (if no policy has been enacted by the commission), and to add clarity for commissioners and the public. In order to facilitate an orderly and fair nomination process, commissions may open nominations at the January meeting (or the meeting prior to the February meeting) and then hold the vote on officers at the February meeting. A commission may enact a policy on officer elections in conformance with the requirements stated below, specifying the timing for nominations, the order in which nominations will be voted upon, and any

¹ Election of officers to the Police Accountability Board is governed by the City Charter. Board of Library Trustees and Landmarks Preservation Commission officer elections are regulated by BMC Sections 3.04.040, and 3.24.030, respectively.

other details that support a fair, orderly and transparent process for election of officers.

If there are multiple nominees for chair or vice-chair, the commission may wish to use a process by which all nominations can be made prior to voting. Full discussion of nominations is recommended, including the ability of nominees to speak on behalf of their own candidacy.

Additional regulations for officer elections:

- Nominations for chair and vice-chair require a motion (with second).
- A commissioner may nominate themselves.
- Any member of the commission, regardless of length of tenure on the commission may be elected chair or vice-chair.
- There is no automatic succession from vice-chair to chair.
- Motions to nominate and elect must be voted on in the public forum, and no secret ballots are allowed.
- A roll call vote is recommended for votes on commission officers, and is required if any commissioner requests a roll call vote.
- The results of the vote must be publicly announced and the vote recorded in the minutes. (Resolution No. 63,876-N.S.).
- A commissioner may not be elected chair if they will not be able to finish the term due to the two-year limitation.

Terms of office for officers are determined by the date the election regularly occurs, not by the date it may have actually occurred. If there is a slight variation in the date of the election, the sitting chair may serve on an interim basis provided that they do not exceed the two-year limit.

Scenario:

The chair is elected in February 2024. The chair resigns in April 2024. A new chair is elected in May 2024. The newly elected chair will serve from May 2024 to February 2025, when the next regular election is held.

2) Mandatory Annual Training for Chairs and Vice-Chairs

Chairs and vice-chairs are required to complete mandatory annual training. Resolution Nos. 60,531-N.S. and 63,876-N.S. were adopted by the City Council to implement video training for commission officers.

The chair and vice-chair must view, in its entirety, a training video on commission procedures and legal requirements. Upon completion, the chair and vice-chair must file with the City Clerk an Affirmation of Completion.

This training video must be viewed and the Affirmation of Completion must be filed with the City Clerk no later than 60 calendar days from the date of election as chair or vice-chair. Failure to complete the video training and file the Affirmation of Completion within 60 days of election will result in the immediate forfeiture of the position of chair or vice-chair.

NOTE: Commission officers must file an Affirmation of Completion within 60 days from the date of election or forfeit their seat as chair or vice-chair.

While not mandatory for commissioners other than the chair and vice-chair, completion of this training is encouraged for all commissioners.

The required training video may be viewed online through the city website - <https://berkeleyca.gov/your-government/boards-commissions/serving-board-or-commission>

3) **Duties of Officers**

The “presiding officer” (chair or, in their absence, the vice-chair), performs the following duties.

- Presides at all meetings of the commission and ensures that the work of the commission is accomplished. To this end, the chair must exert sufficient control of the meeting to eliminate irrelevant, repetitious, or otherwise unproductive discussion. At the same time, the chair must ensure that all viewpoints are heard and are considered in a fair and impartial manner.
- Ensures that commission bylaws, if any, and procedures are followed. The chair cannot make rules related to the conduct of meetings; only the full commission may do so.
- Appoints commissioners to temporary committees subject to the approval of the full commission.
- Approves the agenda prior to distribution. This is limited to the structure and order of the agenda and does not grant the chair the authority to remove an item submitted by commissioners or staff if submitted by the established deadline.
- Signs correspondence on behalf of the commission.
- Represents the commission before the City Council. Other commissioners may be the representative with the formal approval of the commission by motion and vote.
- Approves commission reports to Council. The chair cannot modify content that was approved by the full commission.
- The chair or a quorum of the commission may call a special meeting.
- The chair and vice-chair have full rights to vote and to make or second motions.

4) **Transfer of Chair**

In the absence of the chair or their inability to act, the vice-chair presides in place of the chair, but does not assume the office of chair. In the event of the absence or the inability to act of both the chair and the vice-chair, the remaining commissioners elect one of their members to act as temporary chair.

If a chair is terminated from the commission for any reason, or resigns, the office is vacated, and a new election for chair must be held to fill the office. The vice-chair does not assume the office of chair, rather they preside over the meetings and execute the chair’s duties as the vice-chair. If a vice-chair is terminated, the office is vacated, and a new election would be held to fill the office. If an officer is terminated and subsequently reappointed to the commission, they shall not resume the office and must be reelected to the office by the majority of the membership.

NOTE: In the event a chair leaves the commission prior to the end of their term, the vice-chair performs the duties of chair but does not assume the office of chair. An election must be agendized and a new chair must be elected at a subsequent meeting. The vice-chair may be elected as chair, as may any other commissioner, but the commission must vote on the election.

5) **Temporary Ad Hoc Committees**

From time to time, the commission or the chair, with the confirmation of the commission, may appoint several of its members, but fewer than a quorum of the present body, to serve as a temporary ad hoc committee. Commissions are limited to the creation of ad hoc single purpose committees.

Ad hoc committees are defined by all of the following characteristics.

- Composed of less than a quorum of the parent body.
- Composed of only members of the parent body (no members of other commissions or any other persons may be included).
- Have a finite purview established by the parent body.
- Have a set target date to report back to the parent body.
- Terminate within one year, unless the parent body reviews and extends the timeline.
- Have no regular meeting schedule set by the parent body.
- Have no alternate commissioner assigned to attend meetings, even as an observer, if their presence would create a quorum of the parent body.

Ad hoc committees are advisory only to their parent commission, not to Council and are tasked with the study of a specific issue and with making a recommendation to their parent commission. The parent commission has the opportunity for input when the ad hoc committee reports its findings and makes the recommendation(s). The parent commission has final decision-making authority on the disposition of the ad hoc committee's work.

The parent commission must adopt committee recommendations before they can be forwarded to Council. A committee may not represent the parent commission before the Council or other City legislative bodies unless it has first received the authorization of the parent commission to do so.

Only commissioners may become members of the committee; however, the committee should seek input and advice from the public, commissions with relevant subject matter jurisdiction, and other groups. Committees must be reviewed annually by the commission to determine if they should continue their work. The commission secretary should track the creation of committees and notify the commission of the pending expiration a committee. The commission may request that renewal be agendized at a future meeting.

Extensive collaboration between commissions can be accomplished through concurrent meetings of ad hoc committees, meaning committees meet in the same place at the same time. In almost every case, concurrent meetings facilitate collaborative goals. Rarely, the City Council may choose to approve a joint committee with the members designated by the City Council in accordance with the Fair Representation Ordinance, BMC Sections 2.04.030–2.04.130.

The secretary is not required to attend or take minutes of meetings of committees. City staff may attend and participate in committee meetings. Depending on the desires of the committee members, City staff may participate or may be asked to offer insights or provide information during discussion.

Committees must be comprised of at least two commissioners. If only two commissioners are appointed, then both must be present in order for the committee meeting to be held. In other words, the quorum for a two-member committee is always two.

A temporary appointee does not assume the committee membership(s) of the commissioner for whom they are substituting on the full commission. A committee member who is terminated from the parent commission and subsequently reappointed to the parent commission does not automatically resume membership on the committee; they may, however, be reappointed to the committee by action of the parent commission.

CHAPTER III. COORDINATION WITH COUNCIL, STAFF, AND OTHERS

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A. COORDINATION WITH CITY COUNCIL

1) Relationship to City Council

The role of a commission is to advise the City Council. The exception is for quasi-judicial commissions that can act under their authorized ordinances or advise the City Council as appropriate. The City Council is responsible for accepting, rejecting, or modifying commission recommendations. The Council relies on the various commissions to increase the variety of viewpoints and talents brought to bear on City problems. By concentrating on specific areas, commissioners use their expertise and conduct detailed analyses that the Council itself may not have the time to pursue. It is expected that commissions will adopt positions of advocacy within their specific purview. However, the City Council's role is to take into consideration the many varied and sometimes conflicting public needs and render its judgment of what will best serve the public good. The Council must weigh the effect of any given recommendation, not only on the particular area of interest but on all other City goals and programs.

Just as the commissions advise the City Council concerning policy but do not create policy, the commissions advise the City Council concerning various programs run by the City but do not themselves operate programs. It is the responsibility of the City Manager and the City staff to operate programs authorized by the City Council. The exception to this rule is the Board of Library Trustees.

2) Referrals from the City Council

The Council may transmit referrals for information or action through formal action on an agenda item. These actions are recorded in the minutes of the Council meeting. The secretary notifies the commission of any such referrals from the Council. When appropriate, the Council may indicate a desired date for response and specify which commissions will be consulted.

Each referral response presented to the City Council on the Council agenda, shall indicate to whom the item was referred, the date of referral, and any other responses. Each commission may elect to respond by means of a separate report or communication.

3) Communicating to the City Council

A commission transmits its findings, responses to referrals, and other recommendations to the Council through the Council agenda. Upon the final vote of a commission to send an item to Council, the secretary submits a completed commission report for the Council agenda to the agenda process no later than three weeks after receiving the final text from the commission. The commission is responsible for providing the content of the report to the

secretary. The report will be placed on an upcoming Council agenda based on City Manager timelines and the Council Rules of Procedure for scheduling matters on the agenda. All reports are due to the City Clerk Department 33 days prior to the meeting date. Departments may have internal deadlines that require reports to be processed earlier.

Commissions may also transmit their findings or recommendations to the Council in the form of a letter. This type of communication is more timely; however, the Council cannot take any official action based solely on a written communication from a commission. Sending a letter to the City Council requires the authorization of the commission. Once approved by the commission, the secretary submits the letter to the City Clerk.

The chair, or an authorized representative of the commission, may officially speak on behalf of the commission at public comment on an issue before the City Council. Other commissioners may speak on the item as private persons. As is the case with a written communication, the Council cannot take an official action based solely on verbal comments from the commission.

For more information on commission reports to Council, see Chapter VI.

4) Council Meeting Procedures and Commission Participation

Regular City Council meetings are generally held twice monthly on Tuesdays. The schedule is established annually, taking into consideration holidays and election dates. Chapter VI has detailed information about how to place items on the agenda.

Council meeting agendas have a specific order: Consent, Public Hearings, and then Action. Information items are not usually discussed or acted on but can be commented on during Public Comment. Many circumstances can change the order in which an item is heard. Council may move items from Consent to Action or from Action to Consent, or they may even move Information items to Action for the purposes of discussion.

Question:

If a commission report appears on the Council agenda as a Consent item, will it be heard at the beginning of the meeting?

Answer:

Not necessarily. The Consent Calendar is heard toward the beginning of meetings, right after procedural and ceremonial items. However, items can be moved from the Consent Calendar to the Action Calendar by Council to be discussed and acted on later in the meeting.

For items on the Action Calendar, the chair, or an authorized representative of the commission, has the right to address the City Council at the time the commission's item is heard. The Chair or the commission's designated representative may address Council from the staff table. Commissioners not delegated to speak as the official representative may utilize the Public Comment period to present information to Councilmembers.

Scenario:

A commission placed an item on the Consent Calendar for a Council meeting. The commission assumed that since the item was on Consent, there would be no discussion or questions and did not send a representative. At the meeting, a Councilmember had some questions and moved the item to Action. Because there was no one from the commission present and no subject matter expert, the Council ended up holding the item over to a future meeting.

B. COORDINATION WITH STAFF**1) Duties of Secretary**

The commission secretary is a City employee designated by the City Manager (except for BOLT, FCPC, and PAB). The secretary represents the City Manager and assists the commission in its functions and advises the commission of staff's recommendations. Secretaries perform technical and basic administrative functions as outlined below and do not vote. In addition, as City professionals, they have the responsibility to ensure that the commission is apprised of laws and administrative processes affecting proposed policy recommendations and operational recommendations.

While other staff members may assist the commission from time to time, clerical staff will not be assigned to attend meetings without approval of the City Manager. The commission secretary's presence is only required at commission meetings. Secretaries are not required to attend ad hoc committee meetings.

It is a secretary's responsibility to:

- Prepare commission agenda packets and minutes pursuant to the Brown Act and City procedures.
- Post draft minutes within seven days after the commission meets.
- Notify commissioners of meetings.
- Maintain an accurate subscription mailing list for agendas.
- Attend commission meetings. City staff are not required to attend ad hoc committee meetings.
- Follow the established Council agenda process to submit reports to Council based on the text approved by the commission.
- Advise the City Manager or department director of any requests for extensive staff work or report preparation.
- Notify other commission secretaries regarding items of shared purview.
- Report commissioner attendance to the City Clerk.
- File Commissioner's Annual Declaration Reimbursement (stipend) forms with the Finance Department.
- Submit annual stipend forms and quarterly payment requests.
- Administer the oath to newly appointed commissioners if needed and file completed oath forms with the Clerk.
- Post agendas in hard copy and to the web per Brown Act requirements.
- Post commission meetings to the online Events Calendar.

- Forward final, adopted versions of the minutes to the Records e-mail inbox.
- Submit an information report to the City Council whenever a commission cancels two consecutive meetings for lack of quorum, per Resolution No. 65,127-N.S. (and its successors).
- Retain all documents related to the functions of the commission in accordance with the Citywide Records Retention Schedule. Of primary importance is the proper retention of minutes. Secretaries must sign the hard copy of the final adopted minutes and retain these records permanently. Secretaries may also consult with the Records Coordinator in their department for guidance on records retention.
- Advise the commission of staff's recommendations regarding matters before the commission, and represent council priorities and administrative policies of the City.
- Consider the policy and fiscal impacts of proposals and provide commissioners with early and timely information about the fiscal and policy impacts of proposals and their relationship to department and Citywide priorities.
- Compile and distribute communications from the public.
- Inform the commission of ad hoc committee expiration as needed.

The list of duties above is representative of the requirements placed upon commission secretaries. It is not intended to be exhaustive. Requirements change over time and vary from commission to commission. Secretaries must familiarize themselves with the Brown Act, the enabling legislation, and relevant City policies to ensure they are properly fulfilling their duties.

The City may also post information that is of particular interest to the commission web page including the commission work plan, specific projects, vacancies, and other general information. When posting additional information, it is important that the information be timely and relevant to commission business.

Secretaries should inform commissioners about activities, projects, and work taking place within the organization and among other commissions when the information is available and relevant. This information may be obtained by reviewing agendas or minutes from other commissions and maintaining contact with other secretaries.

Secretaries are encouraged to work with their supervisors or department heads to identify and train an alternate to ensure the critical work continues if they are on vacation or leave.

2) Relationship Between Secretary and Commission

The two main responsibilities of the commission secretary are to assist the commission in its functions and to represent the City Manager.

Generally, the commission secretary is appointed from the department that most nearly encompasses the commission's activities. As a representative of the City Manager, the commission secretary also advises the commission

of staff's recommendations. In this sense, the secretary is an active participant with the commission, although without a vote, rather than merely a passive transmitter of information.

NOTE: While the secretary's role is to assist the commission, the secretary and other staff assistants are not employees of the commission. At all times, the staff is directly responsible to the department director and City Manager.

The following are some ways to avoid misunderstandings and to keep the channels of communication open. Commissioners must adhere to the following rules for communication with staff.

- Ensure all contacts from the commission to any member of the staff, including those to a higher-level employee (e.g., the City Manager), are transmitted through the secretary. Conversely, all contacts from staff to the commission go through the secretary.
- Keep all contacts with staff members clearly in the framework of the commission assignment.
- Do not ask for individual reports, favors, or special considerations.
- Direct complaints from the public directly to the secretary, who will respond on behalf of the City.
- Realize that the assigned secretary reports directly to a supervisor and may not be able to carry out every request that the commission may have.

The Commission secretary must also follow the guidelines below to ensure clear communication.

- Keep the commissioners informed of the purpose and goals of the commission.
- Take the initiative to inform commissioners about relevant activities, projects, and work that is taking place elsewhere in the city government and among other commissions.

If a commission desires information, analysis, or other work that will require an excessive amount of staff time, the commission should present the request to the Council for approval in the form of a report. The Council may then consider the request in the context of the citywide work plan and determine the urgency and priority of the request. Following this procedure will prevent staff from being diverted from priority projects.

All appearances by staff before the commission are scheduled through the secretary so that they may be placed on the agenda. A staff person appearing before, or communicating with, a commission as a private individual must advise the commission that they are not acting in an official capacity.

Staff secretaries are professionals who are required to provide their best technical and professional advice both to the commission and to the City Manager. Staff is there to provide information and expertise, not to make

decisions or judgments. Occasionally, this will result in staff making an alternate recommendation to that of the commission or suggesting that additional information is needed when communicating with the Council. In these situations, staff prepares a City Manager Companion Report capturing the alternative recommendation or additional information. Please see Chapter VI, Section C for more information.

3) Relationship with the City Manager

The City Manager has a direct interest in the work of all commissions as they often advise the City Council on issues that will affect the use of staff time and City resources. Commission secretaries are responsible to the City Manager as well as the commission, and they keep the City Manager informed of significant topics that come before their commissions.

For the commissions that are advisory to the City Council, the City Manager is not able to alter commission reports and recommendations, however, the City Manager may propose an alternative to the commission report if they believe that the Council needs additional information or to pursue a different course. Please see Chapter VI, Section C for more information.

As a partner in the public process, the City Manager seeks to work cooperatively with commissions to achieve the best outcome for the community.

C. EXTERNAL RELATIONSHIPS

1) Meetings with Other City Commissions

In order to develop a useful liaison between commissions, each commission should determine which other bodies regularly deal with overlapping subject matter. Commissions with issues that regularly overlap should request agenda, minutes, and relevant reports from each other through the commission secretaries. Where an issue arises that is of concern to two (or more) commissions, they should review the issue with each other before submitting a report to Council as outlined above.

Occasionally, two or more commissions may consider an issue that is within the purview of both. One of the secretary's duties is to collaborate with the other secretaries to ensure they are abreast of potential crossover subject matters. It's important that secretaries are aware of these situations in time for the commissions to address them as outlined below.

Commissions may hold concurrent meetings with other Council-created commissions. This is often referred to as a "joint meeting" between two commissions, but in reality, it is a *concurrent* meeting. Both commissions will publish separate agendas, take separate votes, and produce separate minutes. However, the concurrent meeting allows them to hold a joint discussion about the matter at hand.

The secretaries of the involved commissions should work together to ensure both commissions can communicate with Council as needed. If one commission is going to recommend action regarding an item of interest to

another commission, the secretaries must collaborate to ensure both commissions have the opportunity to submit reports to Council representing their purview.

Requests for information or review of proposals from one commission to another are transmitted through the respective secretaries of each commission.

2) Outside Agencies

Commissions function in an advisory capacity and, in the absence of an explicit delegation of the role to act on the City's behalf by the Council on a particular issue, they may not directly communicate with outside agencies.

NOTE: Unless specifically authorized by the Council, commissions may not represent the City or its policies or positions to outside agencies either on their own behalf or on behalf of the City.

If a commission wishes to support or object to a particular policy or program run by an outside agency, it should frame this action as a motion and a recommendation to the City Council. If adopted, the communication to the outside agency will be from the City Council.

When a commission requests that the City Council support or oppose legislation, policies, or actions, the position of the City is generally contained in a letter. The commission must attach the text of the letter to the report to Council. Resolutions are not needed for this type of action. However, should a resolution be requested of Council, such resolution must be in the proper format and attached to the Council report, ready for Council action.

If a request for an official policy statement is received from an outside jurisdiction, the commission may analyze and study the request. It can then make a recommendation to the Council for a response. All communications from outside agencies are transmitted through the secretary.

Furthermore, commissions may not take any action that commits or indicates an intention to commit the City without authorization by the Council and coordination with the City Manager, such as endorsing grant applications, receiving donations and gifts, sponsoring community events, or approving use of City property, facilities, or other resources.

The commission may not act as a sponsor of or participate in (such as having an information booth) community events without the authorization of the City Council.

Commissions cannot hold a joint meeting or joint event with an outside agency. If information from an outside agency is desired, the commission may request that the secretary invite the outside agency to make a presentation and field questions at a regular commission meeting.

3) General Public

The most direct way for the general public to communicate with commissions/commissioners is to attend commission meetings.

Members of the public may also communicate with commissions by sending a letter or an e-mail to the secretary, who will forward the e-mail to the commission in the agenda packet. If the communication is submitted after the packet is published, copies may be distributed to the commissioners and placed in the public viewing binder.

All communications from the commission to members of the public are transmitted through the commission secretary. Similarly, arriving communications are received by the secretary and relayed to the commission through the agenda packet. The secretary is responsible for including all communications received in the agenda packet according to publication deadlines. If the commission wishes to recommend Council action in response to a public comment or communication, the topic must be agendized at a future meeting for commission discussion and action.

Commissioners may interact with the public; however, if commissioners are contacted by the public outside of a meeting, commissioners should encourage them to send their comments to the secretary for distribution to all commissioners or come to a commission meeting and speak at public comment. This will allow the full commission to hear and consider all pertinent information and points of view.

Commissions may not, without approval of Council, represent City policy or communicate in an official manner outside of Commission meetings. This prohibition includes any type of public surveys and/or polling of the public, distributing informational flyers, newsletters, mass e-mails, or other similar media.

4) Individual Commissioners

Commissioners may not represent their Commission or the City to the general public or the media unless the Council authorizes the commission to authorize the individual commissioner to do so. Similarly, commissioners may not use City logos, branding, or collateral to represent themselves externally. Please see Chapter V, Section G for more detail. A commission may authorize one of its members to appear before another City commission without Council approval.

Any time a commissioner uses their commission title or references their membership on a City commission when speaking publicly, they must state the following:

“I am speaking in an individual capacity and not representing the [Commission Name] or the City of Berkeley.”

Each commissioner also has the obligation to work cooperatively with other commissioners. Commissioners should exercise self-discipline and strive always to be objective, fair, and courteous with each other as well as with

staff and the public. A healthy respect for the time of other commissioners, staff, and the public is of critical importance.

5) Press and Other Media

Inquiries from the media should be handled only by the chair or a representative designated by the commission, who may clarify actions taken by the commission, fairly and accurately recap commission conversations, or outline next steps. The Chair or designee must not editorialize, offer personal opinions, or speculate on future actions when speaking in an official capacity. Any commissioner may recite commission actions taken and state factual accounts of those actions.

6) Election-Related Activity

While potential ballot measures are under consideration for inclusion on the ballot, commissioners may communicate with Council, but they should limit themselves to advisory comments only. If a commission wishes to recommend a ballot item to Council, they should discuss it at a commission meeting, which offers the public a chance to participate, and then make their recommendation to Council via normal channels. Once a measure is placed on the ballot, Council has already taken action, so a commission, as an advisory body to Council, may not endorse or oppose the measure.

Commissions may not take official positions or host a public forum or debate for measures or candidates. Commissioners may engage in election-related activity as community members, and may use their commission title(s), current or former, for identification purposes, so long as they affirmatively declare that they do not represent the City or any legislative body of the City.

7) Summary

When considering the appropriateness of communicating publicly as a commissioner, remember these simple guidelines.

- The City Council speaks for the City
- Commissions speak to the Council
- Commissioners speak as private individuals

CHAPTER IV. PUBLIC MEETINGS

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This chapter describes the key steps necessary for complying with the Brown Act and City policy for public meetings of boards and commissions.

The Brown Act (Government Code Sections 54950 et seq.²) is the state's open meetings act. It is intended to ensure that the public has adequate notice of what actions its elected and appointed local decision makers may take and that those decisions and the deliberations leading to them occur in public.

A. LEGISLATIVE BODIES

The Brown Act applies to any legislative body. This includes all City of Berkeley boards and commissions.

City of Berkeley commissions can only create ad hoc (or temporary) committees. Ad hoc committees are not legislative bodies under the Brown Act.

B. MEETINGS

Any contact between a quorum of the legislative body, either directly or through intermediaries, to hear, discuss, deliberate, or take action “on any matter within the subject matter jurisdiction” of the City or commission is a meeting. All meetings must be conducted in compliance with the Brown Act. Meetings include retreats, forums, workshops, and similar types of events. A meeting can be in person, by telephonic or other electronic medium, or through intermediaries. With a few narrow exceptions not applicable to most commissions, all meetings of legislative bodies must be open to the public (Government Code Section 54953).

1) Types of Meetings

Regular Meetings

Regular Meetings occur at the dates, times, and locations set by formal action of the commission at the beginning of each year to follow for the next 12 months. Regular meetings require 72-hour notice that includes the time and location of the meeting. Commissions may change the meeting schedule by formal action. Council sets the maximum number of meetings the commission may have during a calendar year.

² All statutory references in this Chapter are to the Government Code unless otherwise noted.

If a commission needs to change the meeting schedule after it is approved, it must agendaize and readopt the new schedule at a meeting.

Special Meetings

Special Meetings are called by the chair or a quorum of the commission to hear a specific item or items. Special meetings require 24-hour notice. Council establishes the number of meetings each commission is allowed to have in a given year. Special meetings count against that total. Absences from special meetings do not, however, affect commissioner attendance records. Any meeting not on the regular meeting schedule is a special meeting.

Public Hearings

Public hearings are held when required by law. Generally, the need for a public hearing is limited to the quasi-judicial commissions: Zoning Adjustments Board, Landmarks Preservation Commission, Housing Advisory Commission, Fair Campaign Practices Commission, Open Government Commission, Police Accountability Board, and Planning Commission. Advisory commissions do not generally require public hearings.

Public hearing noticing practices are specified by law and must be adhered to. Noticing beyond the legal requirements is permitted but is not required.

Please see Chapter V, Section D, for proper public hearing procedures. If needed, the City Attorney's Office or the City Clerk Department can work with a commission secretary determine if a public hearing is required.

NOTE: In the event that a public hearing is continued to a later meeting date, a commissioner who missed the first meeting should review the transcript or video of the previous meeting prior to voting.

Concurrent Meetings of Commissions

Two or more commissions may hold concurrent meetings to discuss an issue that falls under their purview. Such meetings should not be noticed as "Joint Meetings," but as two separate meetings occurring at the same place and time. The secretaries of the commissions must each prepare and post separate agendas. During the meeting, each commission must vote independently on each agenda item. The secretary for each commission must prepare separate minutes for the meeting of their commission as well. Also refer to Chapter III, Section C.

2) Exceptions

Gatherings That Are Not Meetings

Certain gatherings of a quorum of a legislative body are not considered meetings under the Brown Act.

- *Attendance by One Legislative Body at a Meeting of Another*
Attendance at a meeting of another commission or the City Council does not need to be separately noticed, provided that a quorum of the attending body does not discuss privately among themselves, other than

as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of that body (Government Code Section 54952.2(c)(4)). This exception includes noticed meetings of legislative bodies of other public agencies, not just those of City commissions or the Council.

- *Attendance at Conferences and Other Gatherings Open to Members of the Public*
Attendance at a public conference is permissible as long as a quorum of the body do not discuss among themselves specific business that is within the subject matter jurisdiction of the City.
- *Purely Social or Ceremonial Occasions*
Attendance at purely social or ceremonial occasions are not considered meetings as long as the participants do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the City (Government Code Section 54952.2(c)(5)).
- *Open and Public Community Meeting Organized by An Entity Other Than the City to Address a Topic of Local Community Concern*
Attendance at a meeting organized by persons or groups other than the City to address a subject of local community concern may be attended without noticing the meeting as long as members of the legislative body only participate in the public program and do not discuss among themselves matters of specific business within the jurisdiction of the City.

NOTE: Any activity that involves a quorum discussing commission business is a meeting and must be compliant with all Brown Act requirements.

3) **Violations and Danger Areas**

Serial Meetings

One type of illegal meeting is a “serial meeting.” A serial meeting is one in which a quorum of a legislative body communicates with each other, directly or indirectly, through whatever medium, to develop collective concurrence.

There are many types of serial meetings, all of which are prohibited.

A literal serial meeting is one in which members of a legislative body constituting a quorum meet in smaller groups, serially, or a single member meets with enough other members to constitute a quorum individually, one after the other.

A communication from staff asking a quorum of a legislative body for comment can lead to a serial meeting if feedback from commissioners assists staff in developing a policy or taking an action that takes into account their points of view.

However, a staff member may have separate conversations or communications with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the commission if that staff person does not

communicate to members of the legislative body the comments or position of any other member or members of the legislative body.

Special Note:

It is acceptable for staff to provide information to commissioners, communicate meeting information, and answer questions as long as staff does not share commissioners' opinions with other commissioners.

Another type of serial meeting can result—sometimes unintentionally—from improper use of e-mail. E-mail communication between a quorum of a legislative body to develop a collective concurrence constitutes an illegal serial meeting (Government Code Section 54952.2(b)). To avoid this problem, members of legislative bodies should never use the “reply to all” function to an e-mail that may be addressed (even via “bcc”) to a quorum of the legislative body. Since it is not always possible to know who might receive a “reply to all,” it is better to simply never use the function. Of course, a serial meeting can occur from forwarding an e-mail as well.

Amendments to the Brown Act now include prohibitions on members of a legislative body “liking” or commenting on the social media posts of other members.

Question:

If a commission secretary sends an e-mail to a quorum of their commissioners requesting feedback on a subject under the commission's purview, is it a violation of the Brown Act?

Answer:

It could be. If the secretary shares answers among the commissioners, it could be construed as a serial meeting. If the feedback from the commission assists staff in developing a policy or taking an action, it could be considered collective concurrence.

Question:

If a commissioner is unable to attend a commission meeting but has valuable information for the commission to consider, may they send an e-mail to the full commission?

Answer:

E-mail communication between a quorum of a legislative body can constitute an illegal serial meeting (Government Code Section 54952.2(b)). In this case, it would be best for the commissioner to share their information with the secretary, who can then disseminate it to the full commission and the public.

Retreats, Forums, Workshops

Retreats, forums, study sessions, workshops, and similar are considered meetings. Any such activity, where a quorum of the commission is present and is hearing, deliberating, or discussing commission business, *is a meeting*. It must meet all the requirements for notice, public participation,

location, and accessibility. Any such meeting would count toward the limit on the number of meetings set by Council.

Lobbying

Serial lobbying by members of the public of all commission members is not prohibited *as long as they are not acting as intermediaries between members of the legislative body* (Govt. Code Section 54952.2 (c)(1)).

Question:

A member of the public who is not a member of the commission contacts the chair and advocates for an item the commission will hear at the next meeting. The member of the public states that he already has the support of four out of nine commissioners and asks if he can count on the chair's vote. Is this a Brown Act violation?

Answer:

It is not illegal for a member of the public to advocate for an agenda item. However, when this person tells commissioners about other commissioners' intentions, they may be considered as acting as an intermediary. In this scenario, the chair should suggest the member of the public send an e-mail through the secretary for all the commissioners and the public to read.

C. PUBLIC COMMENT AT MEETINGS

Every agenda for a regular meeting must allow the public to speak on any item in the commission's purview as well as on each specific item of business before the commission. Per the Brown Act, no member of the public can be required to give their name in order to attend or speak at a meeting.

1) Public Comment on Items Not on the Agenda

Members of the public must be allowed to speak on any item under the commission's purview, even if it is not on the agenda. The time allowed for these comments is the same as that for Action or Discussion items (generally two or three minutes per speaker). Non-agenda comments may be at the beginning or end of the meeting depending on the preferred agenda sequence of the commission.

2) No Discussion of Items Raised at Public Comment

Public comment on items that are not on the agenda cannot be used to start a discussion between commissioners or to take action in response to comments. Government Code Section 54954.2 does allow members of the legislative body or its staff to make brief responses to comments made during non-agenda public comment. It is also permissible for a member of a legislative body to ask a question for clarification, make a brief report on their own activities, and make a referral to staff or ask that an item be placed on a future agenda.

3) Public Comment Must be Allowed Prior to the Vote

For items on the agenda, the Brown Act requires that public comment be permitted prior to the commission voting on the item. The procedure for public comment should be the same for all meetings and adopted as a

commission policy or in the commission bylaws, if any. Generally, two or three minutes per speaker is allowed.

4) Limiting the Time for Public Speaking

Government Code Section 54954.3(b) allows a commission to adopt reasonable regulations to govern public comments. Typical of such rules are time limits on individual speakers and overall time limit on public comment. The commission should decide whether to set an overall time limit and/or limit per speaker and are encouraged to adopt it in the bylaws, if any, or as a commission policy, to be followed consistently.

5) Distinction Between Public Comment at Regular Meetings Versus Special Meetings

Government Code Section 54954.3(a) requires public comment at special meetings as well as regular meetings. At special meetings, the comment must be confined to the subject matter to be considered at the special meeting. There is no non-agenda public comment at special meetings.

6) Formal Participation by the Public/Presentations

An individual wishing to formally address the commission or make a presentation should prepare a written request to the secretary to be scheduled on a future agenda. The request is discussed at the next meeting, and the commission may grant or deny the request.

7) Recording Meetings

Audio or video recording of the meeting must be allowed except when the legislative body finds that the recording is performed in a manner that constitutes “a persistent disruption of the proceedings” (Government Code Section 54953.5(a)).

D. MEETING LOCATION AND ACCESSIBILITY

Location

Meetings of legislative bodies are generally held in public buildings. Meetings may be held in a privately-owned building or facility provided that all Brown Act requirements for noticing and accessibility are met. In addition, no member of the public shall be required to make a purchase or meet any other requirement of the private establishment as a condition of attending and participating in the meeting.

Meetings must be held within City limits unless a meeting falls within one of the exceptions in Government Code Section 54954(b).

Consult the City Clerk or City Attorney if there is some special reason to have a meeting outside City limits.

Accessibility

The Americans with Disabilities Act (ADA) has always been applicable to the manner in which the City conducts its public meetings, and provisions of the ADA have been expressly incorporated into the Brown Act.

In addition, Council policy requires that all meetings be held in accessible facilities. This includes the approach to the facility, entry, path of travel within the facility, and restrooms. Secretaries should contact the Disability Compliance Program manager for recommended locations or for a location assessment, if necessary. Secretaries should be aware of commission items related to accessibility or persons with disabilities to prepare for accessible participation needs in advance of the meeting.

Pursuant to City of Berkeley Administrative Regulation 1.12 - Communication Access Policy, all boards and commissions must provide communication access in the form of accommodation to members of the public who have disabilities so that they may have an equal opportunity to participate in and benefit from board and commission meetings. This particularly affects members of the public who are vision or hearing impaired and may involve requests for such accommodations as providing meeting agendas in large print or braille, utilizing assistive listening devices, or the provision of a sign language interpreter at the meeting itself.

Upon request, it is the responsibility of the Disability Compliance Program to arrange for reasonable accommodation at no cost to the requesting individual. Although A.R 1.12 states that three working days advance notice will ensure accommodation availability, every attempt will be made to arrange accommodation even on short notice. Although primary consideration should go to the disabled individual's preferred type of accommodation, when a particular type of accommodation is not available on short notice, an alternative type of accommodation may be considered. For example, if braille or large print isn't available on short notice, staff may read the document to the vision-impaired person as an alternative.

Commissioners with disabilities will receive accommodation through the Disability Compliance Program upon request. Review Appendix H for more information.

E. AGENDA AND NOTICE REQUIREMENTS

The agenda for all regular and special meetings shall specify the time and location of the meeting, the business to be transacted, and shall be posted in the following locations:

1. On the bulletin board at Maudelle Shirek Building at 2134 Martin Luther King Jr. Way.
2. On the City of Berkeley website.
3. At the remote location, by the commissioner, if required pursuant to the City's teleconference policy.
4. At the physical meeting location if required by statute.

Commission Secretaries must also ensure that commission meetings are posted to the online Events Calendar.

No business, other than that included on the agenda, can be considered by the commission at any type of meeting.

1) Regular Meetings

At least 72 hours before a regular meeting, the commission secretary shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words.

2) Special Meetings

Special meetings may be called by the chair or a majority of commissioners. The agendas must be posted no less than 24 hours prior the meeting.

3) Media List for Meetings

In order to give proper notice of a meeting, it is important to ensure that the commission secretary maintain a current list of media. The City Clerk has developed a list of media that is used to give notice of City Council meetings. This list may be used along with any other media outlet that may have requested notice of a particular commission's meetings.

4) Agenda Titles/Purpose

The purpose of the agenda is to inform the public regarding the issues to be discussed. Government Code Section 54954.2 of the Brown Act requires that agenda item titles fully describe the issue or action to be discussed and/or taken. This requirement, therefore, precludes such agenda titles as "University Avenue Improvements" or listing a topic on every meeting agenda to cover the "possibility" of discussion.

In preparing the agenda, consider the position of a member of the public and determine if a reasonable person could determine from the agenda title what the commission is discussing and what action is being proposed.

For example: "University Avenue Improvements" listed on an agenda by itself does not provide enough information. An appropriate title might be:

"Adopt a Recommendation to the City Council to Proceed with the Proposed \$5 million University Avenue Landscaping Improvements"

Another example: "Earth Day" listed on an agenda by itself is too vague. An appropriate title might be:

"Discussion of Recommendation to Council to Sponsor Earth Day Parade"

The agenda must be clear on what action, if any, may be taken on an item. The agenda should list the recommendation or action proposed using the 20-word guideline. By using a full explanation in the item title (never use acronyms), members of the public who may be in favor of or opposed to such an issue will know to be present at the commission meeting to discuss their views.

5) **Agenda Format/Headings**

Prior to each meeting of the commission, the secretary prepares and distributes an agenda, which usually includes but is not limited to the following: Roll Call, Public Comment, Approval of Minutes, Public Hearings, Old Business, New Business (with appropriate description of the item under the headings of Public Hearings, Old Business, and New Business), Information Items, Communications, and Adjournment. The agenda must be approved by the chair prior to distribution.

Commission agendas may vary to suit commission needs, but the Council agendas provide a good guideline.

Every regular and special meeting agenda must include the following.

- Name of the commission
- Type of Meeting (regular or special)
- Day, date, time, and location of the meeting
- A brief, general description of each item of business, including the recommended action
- Public comment period
- Communication access information (A.R. 1.12) and ADA disclaimer:



“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 ada@berkeleyca.gov, (510) 981-6418 (V), or (510) 981-6347 (TDD) at least three business days before the meeting date. Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.”

- 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 _____ Department located at _____.”

- Communications Disclaimer:

“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.”

Agendas may include the following if applicable:

- **Accessibility of Meeting Facilities**
All meeting facilities must be accessible. If, however, the accessible entry or path of travel is other than the main or common entrance or path to the meeting location, such information and directions must be so noted on the agenda.
- **Use of Dates**
Items for which material was included in the past and which are not duplicated again as part of the agenda packet should contain the date of the previous agenda packet for reference.
- **Identification of Written Reports**
It is always best practice to have complete reports published when the agenda packet is distributed. If reports on agenda items will be delivered at the meeting, they should be identified in the following way: “(to be delivered).”
- **Oral Reports**
Agenda items for which there will only be an oral report will be identified in the following way: “(oral report)”

F. SUBMISSION OF COMMISSION AGENDA REPORTS

Any commissioner may submit items to appear on the commission agenda. Commissions should formally adopt procedures and guidelines in their bylaws, if any, or through adoption of a policy, for submitting items to the commission agenda that include, at a minimum these requirements:

- Items will be published as is – commissioners are responsible for typing their own items.
- The subject of the item must be within the commission’s purview.
- The item must be submitted at least 10-14 days prior to the meeting in order to provide adequate time to compile and distribute the agenda packet seven days prior to the meeting.

Commissions may adopt procedures for late submissions if desired. The Chair approves the agenda prior to distribution. This authority is limited to the structure and order of the agenda and does not grant the chair the authority to remove any items submitted by commissioners or staff by the established deadline.

G. DISTRIBUTION OF COMMISSION AGENDA PACKETS

When all necessary documents are submitted from the commissioners by the deadlines noted above, the secretary will send complete agenda packets to

commissioners no later than seven days before the meeting. The primary format for agenda packets is electronic. All written communications sent to the commission shall be distributed to all commissioners in the packet or at the next meeting. Any commissioner may opt to receive the agenda packet in hard copy format. This request must be made in writing to the secretary of the commission. Complete agenda packets must be available in the office of the secretary prior to the meeting and be available at the meeting for public perusal. Any supplemental items must also be included in the packet for public perusal at the meeting.

An agenda without supporting materials may be distributed to other commissions or City departments whose area of interest is complementary or whose work directly impinges on the subject to be discussed.

Secretaries must maintain a list of persons requesting mailed notice and agenda packets pursuant to Government Code Section 54954.1. These rules require that any person who requests a copy of the agenda and agenda packet in writing must be mailed a copy of the agenda and packet at the time that the agenda is posted or a distribution is made to a majority of the commission. Such a written request for agendas and packets is effective for the calendar year in which it is requested and must be renewed January 1 of each year. Failure to follow this requirement will not result in the invalidation of the action taken by the legislative body. Per City policy, a fee to cover the cost of mailing and such agendas and supporting documents should be charged. The Brown Act requires that the secretary maintain a continuously updated list of persons who have requested agendas and agenda materials in writing.

H. NOTICING FOR CANCELLED AND ADJOURNED MEETINGS

1) Cancellation of Meetings

When the Meeting Is Cancelled Prior to the Meeting Date

General practice is to post a notice of cancellation, stating that the meeting has been cancelled, in all the locations that the agenda is regularly posted (on the bulletin board at the Maudelle Shirek Building 2134 Martin Luther King Jr. Way, and on the commission web page). Any persons or members of the media on a subscription list for notices and agendas should be notified as soon as possible. This should be done as soon as it is known that the meeting will be cancelled.

The secretary may cancel a meeting if there is no quorum upon polling the commission, or no agenda was posted. In this instance, a notice of cancellation is not required.

When the Meeting Must Be Cancelled Due to Lack of a Quorum

When less than a quorum of a body appears at a noticed meeting, the body may meet as a committee of the parent body, adjourn to a future date pursuant to the provisions of Government Code Sections 54955 or 54954.2(b)(3), or simply consider the meeting to be cancelled. If no members of the legislative body appear at a noticed meeting, the secretary may adjourn the meeting to a future date, determined by the secretary, and provide notice to members of the legislative body and to the media in accordance with the special meeting notice provisions set

forth in Government Code Section 54956. The meeting may be cancelled for lack of quorum after waiting for 15 minutes past the noticed start time.

Although it is generally not advisable for the present commissioners to continue in the meeting as a committee because the committee cannot make recommendations to the Council, it may be advisable under some circumstances. For example, when members of the public are present and want to give their input on a policy matter pending before the commission, the commissioners present may wish to continue as a committee in order to obtain the input from the public so as to not inconvenience the members of the public who came to give testimony.

Per Resolution No. 65,127-N.S. (and its successors), commission secretaries must submit an Information Report to the City Council whenever a commission cancels two consecutive meetings for lack of a quorum.

When a Meeting Is Adjourned to a Subsequent Date

Notice of the adjournment, including the date to which the meeting is adjourned, must be conspicuously posted on or near the door of the place where the meeting was held within 24 hours after the time of the adjournment.

Rescheduling a Cancelled Meeting

In order to reschedule a meeting, the commission must act to modify the meeting schedule through the commission agenda. A special meeting called to replace a cancelled regular meeting counts toward the annual meetings per year limit set by Resolution No. 68,258-N.S. and its successors. Most commissions are limited to 10 meetings per year. Any meeting not on a regular meeting date is a special meeting unless the commission formally voted to amend the annual meeting schedule.

CHAPTER V. COMMISSION PROCEDURES

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Following proper procedures will ensure the validity and integrity of commission actions. It is essential that secretaries and commissioners remember that the standards of conduct and transparency are higher for public legislative bodies. These procedures ensure clear and efficient conduct of commission business and facilitates a productive public process.

A. POLLING, QUORUM, AND VOTING

1) Polling

The commission secretary should poll commissioners at least three days before the agenda is created to determine if there is a quorum for the meeting and communicate this information to the chair.

2) Polling for Special Meetings

In instances where the Council desires a prompt advisory recommendation and there is no time to consider the Council's request at a regular meeting, a special meeting should be called by the chair or a majority of the commission. If a quorum cannot be assembled for a special meeting, the commission secretary so advises the City Manager and indicates the date that the commission is expected to be able to consider the issue.

3) Quorum

A quorum is the minimum number of commission members who must be present for the valid transaction of business. In order to take any action, a quorum of commissioners must be present. For the purposes of these guidelines, a quorum means a majority of Actual Appointees. Thus, if a commission has nine Actual Appointees (out of a potential of nine), five commissioners constitute a quorum. If there are only five Actual Appointees (out of a potential of nine), three commissioners constitute a quorum.

Vacancies and commissioners who have been granted a Leave of Absence (LOA) are subtracted from the total number of seats to determine the number of Actual Appointees (see table on the last page). The number of Actual Appointees is not reduced when a temporary appointee is absent from a meeting or when a commissioner fails to attend and does not have a LOA.

4) **Voting**

The number of affirmative votes needed to pass a motion is the same number that constitutes a quorum—a majority of Actual Appointees. This ensures that a majority of those actually appointed to a commission endorse the action being taken. If one were to allow a majority of a quorum to take action (instead of a majority of those actually appointed), formal action could be taken by a very low percentage of those actually appointed (e.g., if there were five Actual Appointees to a nine-member body, a quorum would be three, and action could be taken by two appointees).

Occasionally, a particular enabling ordinance or resolution may create a different requirement. The enabling legislation that established the commission should be consulted for particular requirements.

The following chart indicates the numbers needed to take action.

Total Number of Seats*	Actual Appointees	Quorum**	Votes Needed for Action
9	9	5	5
9	8	5	5
9	7	4	4
9	6	4	4
9	5	3	3
9	4	3	3
9	3	2	2

**This refers to the authorized membership under the commission's enabling legislation.*

***Quorum rules apply to committees. If a commissioner on a committee of four is on an excused LOA, the actual appointees becomes three, and the quorum becomes two. No committee may operate with less than two Actual Appointees. Remember, a temporary appointee does not assume the committee memberships of the commissioner for which they are serving.*

Scenario 1

A commission with nine seats. Two commissioners have a LOA, and one seat is vacant. For one seat, a temporary appointment has been made for the commissioner on leave. The number of Actual Appointees is seven, the quorum is four, and the number of votes needed for action is four.

Scenario 2

A commission with nine seats. Three commissioners do not attend and do *not* have leaves of absence. One seat is vacant. The number of Actual Appointees is eight. The quorum is five. The number of votes needed for action is five.

In Scenario 2, there are five commissioners in attendance, and the votes needed for action is five. All votes must be unanimous in order

to complete commission business. This highlights the importance of requesting a LOA in advance of a meeting. Had the three absent commissioners obtained a LOA, the number of Actual Appointees would have dropped, thus lowering the quorum and the votes needed to take action.

B. BASIC RULES AND PROCEDURES OF COMMISSION MEETINGS

With a few narrow exceptions not applicable to most commissions, all meetings of legislative bodies must be open to the public (Government Code Section 54953).

No one can be required to give their name in order to attend or speak at a meeting.

Audio or video recording of the meeting must be allowed except when the legislative body finds that the recording is performed in a manner that constitutes “a persistent disruption of the proceedings” (Government Code Section 54953.5(a)).

1) Teleconferencing

Teleconferencing by commissioners is permitted only under the circumstances described below.

Teleconferencing as an Accommodation

First, teleconferencing is permitted when provided as a reasonable accommodation under the American with Disabilities Act (ADA) as determined by the ADA Program Coordinator. Teleconferencing accommodations are considered on a case-by-case basis.

Pursuant to the Brown Act, the address from which the commissioner is teleconferencing must be included on the relevant meeting agenda and the meeting agenda must be posted at the teleconferencing location. Additionally, a commissioner appearing by teleconference must publicly disclose whether any other individuals 18 years of age or older are present in the room at the remote location with them, and the general nature of the member’s relationship with any such individuals. However, commissioners with disabilities may request a waiver of these requirements by self-attesting to their need for an exemption.

More details on the accommodation process are available in Appendix H.

Teleconferencing for Just Cause or Due to Emergency Circumstances

Second, if resources are available at the meeting location, commissioners may attend meetings of the full commission via teleconference for “just cause” or “emergency circumstances” for up to two (2) meetings per calendar year combined. Regardless of whether the reason for the remote appearance constitutes “just cause” or is an “emergency circumstance” the total number of allowable teleconference uses per year is two. Commissioners may only appear for “just cause” or “emergency circumstances” if the commission secretary ensures, by stating on the

record or recording in the meeting minutes, that all of the following requirements are met:

- At least a quorum of the members of the commission or board are participating in person from a singular physical location clearly identified on the agenda.
- Resources available at the meeting are sufficient to allow the public to participate via a two-way digital platform in which the public may remotely hear and visually observe the meeting, and remotely address the commission or board.
- The agenda identifies the means by which the public may access the meeting and offer public comment remotely and at the in-person location.

If these requirements are met, commissioners may teleconference for “just cause” if they notify the commission (through the secretary) at the earliest opportunity possible of their need to participate remotely, and include a general description of the circumstances relating to their need. “Just cause” can include (a) a childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner; (b) a contagious illness that prevents a member from attending in person; or (c) a need related to a physical or mental disability not otherwise accommodated through the ADA accommodations process.

If a commissioner’s reason for needing to participate remotely does not fall into one of the “just cause” categories, but the commissioner needs to participate remotely due to a physical or family medical emergency that prevents the commissioner from attending in person, the commissioner may teleconference into a meeting due to “emergency circumstances.” Commissioners intending to teleconference due to “emergency circumstances” must notify all the other members of the commission, through the commission secretary, as soon as possible of their need to participate remotely, including by providing a general description of the circumstances relating to the emergency. The description need not exceed 20 words and need not disclose any particular medical diagnosis, disability, or personal medical information. If a commission receives a request to participate remotely due to emergency circumstances, it shall take action at the meeting to approve or deny the request. If a commissioner’s request is denied, the commission secretary shall promptly disconnect the commissioner from the remote meeting.

Commissioners participating via teleconference for “just cause” or “emergency circumstances” do not need to make a formal request for accommodations through the ADA accommodations process, regardless of whether the reason for the need to teleconference relates to a disability. Such commissioners also need not include the address from which they are teleconferencing on the agenda, post the agenda at the teleconferencing location, or open the teleconferencing location to the public. However, such commissioners must participate through both audio and visual technology, and must 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 with the commissioner at the remote location, and the general nature of the commissioner’s relationship with any such individuals.

The ability of commissioners to participate remotely for just cause or emergency circumstances is dependent on the resources available at the meeting location and is not guaranteed. Additionally, teleconferencing for more than two (2) meetings

per calendar year, regardless of whether the remote participation is for just cause or for emergency circumstances, is not permitted unless authorized through the reasonable accommodation process described in Appendix H.

2) Establishment of Meeting Rules

The chair will control the debate among commissioners so that everyone has a chance to speak before others speak for a second time and to expedite the business at hand. To this end, commissions may establish their own rules to limit debate.

3) Motions

A motion is required in order for the commission to take action. If public comment is taken on each item as it is heard, a motion on an agenda item typically takes place after public comment and during the commission's deliberation.

Step One: Make the Motion

Any member of the commission, including the chair and vice-chair, may make a motion by stating, "I move to ..." and then clearly explaining the action.

Step Two: Second the Motion

Before any debate or conversation regarding the proposed motion, another member of the commission must clearly state that they second the motion. If no commissioner seconds the motion, then the motion dies. If seconded, a motion may not be withdrawn or revised by the mover without the consent of the commissioner seconding it.

Step Three: Debate

The chair should read the motion prior to debate to ensure the motion is understood by the commission and the public. The commission is then free to debate the motion.

Step Four: Amend If Needed, and Restate

Sometimes the motion may be amended during debate. Amendments may be "friendly" or made by motion. A friendly amendment is an amendment that is proposed by a commissioner and then accepted by the maker and seconder of the motion without the need for a vote. If the maker and seconder do not accept the friendly amendment, the amendment may be proposed in the form of a motion, then must be seconded, and then voted upon. If passed, the amendment becomes part of the main motion.

The motion, whether amended or not, should be restated by the chair prior to the vote.

Step Five: Vote

After discussion has ended and immediately prior to the vote, the secretary or the chair should clearly state the full motion (with any amendments). The commission is then free to vote on the matter. Motions may be adopted by the "no objection" method unless any commissioner prefers voice or roll call vote. A roll call vote is required if any member is participating remotely. A roll call may be required if it is in the commission's bylaws, or if a commissioner requests a roll call vote. While the "no objection" method may expedite a long agenda, a roll call vote may be preferable to provide greater clarity and understanding on commission proceedings for the commissioners, the secretary, and the public in attendance.

If a roll call vote is used, the secretary then calls the roll (always calling the names in the same order). A commissioner may "pass" and vote last after the first time through the roll. The record must identify those voting ayes, those voting no, those abstaining, and those absent, including any member absent for recusal and the reason for the recusal. After all commissioners have voted, the secretary announces the vote totals and whether or not the motion passes.

If the motion is adopted, the maker's written version of the motion, if any, should be given to the secretary for reference in preparation of the meeting minutes.

4) Motion to Reconsider a Vote

A commission may reconsider their action on a vote taken earlier in the meeting if the meeting is still in session. To reconsider a vote, a commissioner from the prevailing side of the original vote must make a motion to reconsider. Any commissioner may second the motion to reconsider. If the motion to reconsider passes, another motion restating the original motion, and any revisions, must be made, seconded, and voted on.

Once the meeting is adjourned, an agenda item must be resubmitted for a future meeting for it to be reconsidered by the commission.

Scenario:

Commissioner Bob moved, and Commissioner Frank seconded, a motion to recommend the City Council approve a proposal for a new park. The vote was, Ayes: Bob, Frank, Millie, Anna, Ralph, Lee; Noes: Ally, Michael, Bradley. Commissioner Bradley wants to reconsider their vote. Commissioner Bob, Frank, Millie, Anna, Ralph, or Lee are able, if they choose, to make a motion to reconsider the vote. Any commissioner may second the motion. If the motion to reconsider passes, any commissioner may propose the new motion.

5) Parliamentary Procedure and Robert's Rules of Order

More detailed information on parliamentary procedure for chairs and commissioners, the precedence of motions, and voting procedures is contained in informational materials provided by the City Clerk Department. Parliamentary rules derive from Robert's Rules of Order.

C. ORDER AND DECORUM

1) Conduct of Public in Attendance

Persons attending the meeting must observe the rules and procedures of the commission and shall not disrupt commission business, for example, by shouting; making disruptive noises, such as boos or hisses; creating or participating in a physical disturbance; speaking out of turn or in violation of the commission's procedures or rules; preventing or attempting to prevent others who have the floor from speaking; preventing others from observing the meeting; entering into or remaining in an area of the meeting room that is not open to the public; or approaching the commission without consent. Any request to communicate with the commission while it is in session (outside of public comment) should be through the commission secretary.

Members of the public who do not follow the rules for decorum may be asked to leave the meeting by the chair. If a member of the public creates a significant physical disruption to the conduct of the meeting or acts in a threatening manner toward another member of the public, staff, or commissioners, law enforcement personnel should be called by the staff or the chair to remove the individual from the premises. The Chair may call a short recess and commissioners and staff may leave the room while waiting for an individual to leave the meeting, or for law enforcement personnel to arrive.

Although not required, each person addressing the commission may give their name and city of residence. All remarks should be addressed to the commission as a body and not to any specific commissioner. Only comments from persons recognized by the chair are in order.

Any question asked of a commissioner must be asked through the chair. After being recognized by the chair, a commissioner may briefly respond to comments made during the public comment period or may pose a question to the person speaking at public comment or during a public hearing. See Chapter IV, Section C for public comment regulations and guidelines.

2) Commission Conduct

While the commission is in session, the commissioners should not interrupt the proceedings or any commissioner or member of the public who has the floor.

The chair or the vice-chair may participate in the debate, subject only to such limitations of debate as are imposed on all commissioners. The chair should not be deprived of any of the rights and privileges enjoyed by a commissioner by reason of their acting as the presiding officer.

Every commissioner desiring to speak should address the chair and, upon recognition by the chair, should confine themselves to the question under debate.

A commissioner, once recognized, should not be interrupted when speaking unless it is to call them to order or for a point of personal privilege. If a

commissioner, while speaking, is called to order, they should cease speaking until the question of order can be determined, and, if in order, they should be permitted to proceed.

D. SPECIAL PROCEDURES

1) Public Hearings

Public hearings are held only when required by law. When a hearing is required by law, the procedure for that hearing may also be specified by that law. In public hearings held by quasi-judicial commissions such as the ZAB, LPC, HAC, OGC, or FCPC, special rules apply.

Notice of Hearing

Where a public hearing is mandated by law, the form and timing of the advance notice is specified by City or state law. The commission's secretary will handle all such requirements. Noticing beyond legal requirements is permitted but not required.

Certain public hearings require a posting in the area affected by the subject matter. Again, all legal notice requirements are properly handled by the commission's secretary.

Conduct of Hearing

The procedure to be followed for a public hearing varies depending on the governing law or regulation. In the instances where a commission acts in quasi-judicial fashion, certain minimum standards of receiving testimony must be met. These may include, but are not necessarily limited to, an introduction of the subject by either the secretary or the chair, testimony from affected persons or interested members of the public, an opportunity for the parties to the hearing to rebut, disclosure of ex-parte communications by the commission, and receipt of any pertinent documentation. No testimony can be heard after the hearing is closed. However, commissioners may ask specific questions to the parties involved or members of the public and receive a response.

At public hearings, commissions have the responsibility to hear all viewpoints of any subject. In order to ensure that all parties are adequately heard, commissions shall follow the rules below. The commission may adopt its own procedures for public hearings in addition to those listed below, and may adopt alternate time limits for presentations by representatives and comments from the public.

1. If any commissioner must be recused for a conflict of interest, they must do so immediately when the item is taken up.
2. Commissioners shall verbally disclose all ex parte contacts concerning the subject of the hearing. Commissioners shall also submit a report of such contacts to the secretary in writing prior to the commencement of the hearing. Ex parte contacts includes any contact between a commissioner and a person that is a party to the public hearing regarding the subject matter of the hearing.

3. Staff shall introduce the public hearing item and present their comments.
4. The hearing is formally declared open by the chair.
5. Five-minute presentations each by representatives of both sides of the issue. In the case of an appeal, or a single interested party, the representative shall have five minutes to present.
6. Equal rebuttal time may be afforded to both sides.
7. General public comment related to the subject of the public hearing. A speaker that spoke during the five-minute period may not speak again at the public comment portion.
8. The hearing is formally closed by commission motion and vote.
9. The commission deliberation begins after the public hearing is closed.

Action

Any action resulting from the hearing must be clearly stated in the form of a motion, properly seconded, and voted upon. The record must identify those voting ayes, those voting no, those abstaining, and those absent, including any members absent for recusal and the reason for the recusal. A roll call vote is the best voting method to ensure clarity for the public and the secretary. If findings are required as a part of the commission action, such findings should be clearly stated for the record. All potential conflicts of interest, whether they require recusal or not, should be stated at the commencement of the public hearing item.

Action must be by an affirmative vote of at least a quorum of Actual Appointees. See Chapter V, Section A for more information regarding quorums.

Under state law, action is prohibited on any matters that have not been properly noticed.

If no action is to be taken at that meeting, the chair should announce this fact and continue the item, and, if possible, advise the public of the date when action may be expected.

Recording of Hearings and Minutes

In certain quasi-adjudicating hearings, there is a legal requirement for a public hearing to be recorded. In addition, the secretary will provide a written set of action minutes, which, when adopted by the commission, constitute the legal record.

Impartiality and Standards of "Fair Play"

Commissions should be aware of the need to maintain basic standards of fair play, impartiality, and the need to avoid the appearance of bias. The chair has the primary responsibility to ensure that the varying points of view are heard, that the hearing proceeds in a timely and fair manner, and that the options for future action by the commission are clearly stated.

Awareness of the varying interests within the Berkeley community is essential because the City Council depends on its boards and commissions to provide thoughtful advice based on the fullest possible study of the subject and input from all relevant segments of the community.

2) Closed Sessions

Closed sessions are rarely permissible for commissions. They are authorized by the Brown Act for certain specified reasons generally only applicable to the City Council. The most common reasons for closed sessions are to discuss pending or threatened litigation with legal counsel, give instructions to a labor negotiator, and to appoint, evaluate, hear charges against, or dismiss an employee. Please contact the City Attorney for advice well in advance of any proposed closed session to ascertain whether, under the particular facts, the commission is authorized to conduct a closed session and, if so, how such a closed session must be noticed and conducted.

E. ADMINISTRATIVE PROCEDURES

1) Commission and Board Documents

The agenda packet for a commission or board meeting contains the agenda, reports related to agenda items, and communications from the public received prior to the distribution of the agenda packet.

All writings or documents, including communications from the public, Commissioners, and Board Members, that are related to any item on an agenda and distributed to a majority of the commission or board members after the agenda packet is distributed, but before or at the meeting, must be made available for public inspection at the time the writing or document is distributed to a majority of the commission or board at a designated location identified on the agenda. The commission or board secretary maintains a public viewing binder for these documents.

All writings or documents, including communications from the public, that are distributed to a majority of the commission or board members at the commission or board meeting must be made available for public inspection as quickly as possible. Members of the public and commissioners and board members submitting written communications at commission or board meetings should be encouraged to bring enough copies for all commissioners and board members, staff and at least five additional copies for members of the public (15 copies total, for most commissions and boards). The secretary is not required to immediately make copies of documents provided at the meeting when adequate copies are not provided by the submitting individual. Documents distributed at the meeting will be available in the public viewing binder the next business day.

2) Minutes

Although the Brown Act does not require minutes, except for closed sessions, the Commissioners' Manual does require minutes of commission

meetings. When required, minutes are limited to *action minutes only*. The draft minutes must be converted to PDF and posted on the City's website within seven days after the meeting. Minutes are unofficial until approved by the commission.

The secretary shall keep an accurate record of the commission's proceedings and transactions. The secretary shall provide action minutes similar to those provided to the Council by the City Clerk. Action minutes list the date, time, and place of the meetings; the staff in attendance; the commissioners present and absent; and a clear and concise description of final actions taken. Approved motions are indicated by "moved, seconded, and carried" and include a breakdown of the vote. The vote breakdown includes the commissioners voting yes, no, abstain, absent, recused, and reason for recusal. Reasons for making a motion, debate, content of public comments, and audience reaction are not to be included.

In quasi-judicial proceedings, if no recording is made, more detailed minutes are needed that summarize debate, list findings, tally speakers for and against, and note testimony offered by the appellant, witnesses, and other relevant information.

The secretary will present draft minutes to the commission for approval at the next regular meeting. Minutes are approved by motion with corrections noted, if any, or if the changes are significant, the corrected minutes may be included in the agenda packet for adoption at the next regular meeting.

Commissioners not present at a meeting may vote on the approval of minutes from the meeting at which they were absent if they believe they are informed and able to consider the item.

Courtesy copies of the minutes may be distributed via email to other commissions or City departments whose area of interest is complementary or whose work directly relates to the subject that was discussed.

Hard copies of commission minutes must be signed by the secretary. These records are retained permanently. Official, signed commission minutes must also be e-mailed to the City Clerk Department Records Inbox once they have become official.

3) Recording Meetings

Audio or video recordings of meetings are not required. A commission and a secretary may decide to audio or video record their meetings, if resources permit; in this case all meetings should consistently be recorded. This is particularly important if the audio is to be posted to the web. Audio should be posted within two weeks after each meeting and must be posted for every meeting once the practice is started. Recordings must be maintained in accordance with the City's Records Retention Schedule.

4) **Official Commission Records**

All agendas, minutes, reports, communications, audio recordings (if retained), and any other related material should be kept in an organized manner by the secretary and in such a way that these records can be easily transferred to another staff person in the event of a change in duties or termination with the City.

The secretary is responsible for maintaining all commission records pursuant to the City's Records Retention Schedule, this Manual, and applicable Administrative Regulations.

F. **BERKELEY OPEN GOVERNMENT ORDINANCE**

Adopted in 2011, the Berkeley Open Government Ordinance (BMC Chapter 2.06) provides greater access to the public than is provided by state law with regard to City business and documents. The portions of the ordinance that are specific to commissions are listed below:

- Meetings of the ZAB are recorded, televised, and video streamed live as well as archived for replay. The ordinance also states the intent to add Planning Commission, Housing Advisory Commission, and Landmarks Preservation Commission meetings to the broadcast requirement when resources permit (BMC 2.06.100).
- Disclosure of ex-parte contacts prior to certain hearings as described in Chapter V. Section D (BMC 2.06.110).
- Donations to the City that may be accepted by any legislative body must be approved by the City Council at a regular meeting (BMC 2.06.150).
- Delegation of oversight functions to the Open Government Commission (OGC). The members of the FCPC also sit as members of OGC (BMC 2.06.190).

G. **USE OF THE CITY LOGO AND BUSINESS CARD POLICY**

Use of the City logo, branding, or collateral is restricted to communications generated from a City department. The logo may not be used for any other purposes. Commissioners may not use the City logo for any purpose that may imply or give the impression of City approval, sponsorship, representation, or coordination of any communication or activity.

Official City stationery may be used only for official commission correspondence such as memos authored by the secretary or a commission-approved letter or report to the City Council.

The City of Berkeley does not provide business cards for members of appointed boards and commissions. Commissioners are prohibited from using the city logo, branding, or collateral to create their own business cards.

CHAPTER VI. COUNCIL REPORTS AND REPORTS TO COUNCIL

CHAPTER VI. INDEX

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The City Council values commissions, and commission recommendations are an important part of Council's consideration of issues. Reports are how Council reviews and considers commission recommendations and these reports should reflect the care, analysis, and effort commissions put into studying and discussing the topic. High quality reports are an essential element of providing recommendations and information to Council. Following these guidelines will help commissioners create better reports.

A. AGENDA PROCESS (OPEN GOVERNMENT ORDINANCE AND A.R. 5.1)

Each year the Council adopts a schedule establishing the specific dates of all regular meetings and recess periods. The agenda schedule is structured to provide the City Council with copies of their agenda packet 12 days prior to the Council meeting. This allows Councilmembers and the public time to review the agenda material in order to be fully prepared to discuss and consider the agenda items.

The City Clerk is the coordinator for the agenda process. The City Clerk routes commission reports and the accompanying City Manager report, if any, to reviewers in the City Manager and City Attorney departments. The City Manager cannot prevent a commission report from going to the Council, but the review process may result in a request that the commission clarify some portion of its report in order to provide the Council with the best information possible.

The City Clerk posts City Council agendas, annotated agendas, and all reports including proposed resolutions and ordinances on the City's website. The City Clerk also provides live captioned webcast and video archives of Council meetings. The City offers e-mail subscription notification for newly posted Council information. Commissioners who wish to be notified when new electronic copies of agendas and annotated agendas are posted may subscribe to the City's e-mail subscription service.

B. COUNCIL AGENDA SCHEDULE

Coordinating, organizing, and assembling the large volume of information and reports that comprise the agenda packet is a complex task. The City Manager establishes an agenda schedule setting forth the various deadlines for submittal of agenda items based on meeting dates of the Council Agenda & Rules Committee and the City Council.

Commissions must comply with the agenda submission deadlines when planning to make a recommendation to the City Council. Reports to the City Council are due to the City Clerk 33 days prior to the meeting. Reports not submitted in accordance with this schedule will be delayed to a later meeting date.

C. COMMISSION REPORTS TO COUNCIL

1) Method of Communication

A commission transmits its findings and responds to referrals and other communications to the City Council through a report on the City Council agenda. Commissions must stay within their purview when making recommendations to Council.

When the City Manager differs with the recommendations of a commission or wishes to include additional or different information, the City Manager may present a City Manager Companion Report to the Council highlighting alternate recommendations or additional information. Otherwise, the City Manager section of the report should state “City Manager [concur with/takes no position on] the content and recommendations of the commission’s report.”

Alternately, commissions may relay their position on an issue to the Council in the form of a letter. These communications to Council must be approved by the full commission. The letter is then signed by the chair, and the secretary submits it to the City Clerk as a communication as soon as practicable. Commission letters are published in the regular communications packets that are distributed directly to the Council, available through the online records portal, and available at the meeting. These are less formal documents that do not carry the weight of an officially adopted recommendation by Council. This type of communication is typically used when, for example, an item on the Council agenda is of interest to the commission and under their purview, but the timeline doesn’t allow the commission an adequate opportunity to prepare a formal report.

For reports on the Council agenda, commissions may prepare the types of reports described below. These reports go through the agenda review process described below and will ultimately be distributed to Council as part of an agenda packet. All three types of commission reports to Council shall state the full commission motion and the listing of how each commissioner voted. It must also state whether or not any commissioner was recused and the reason for recusal.

EXAMPLE:

At the [date of commission meeting] meeting, the commission took the following action:

Action: M/S/C (Fernandez/Jones) to [input text of the motion...].

Vote: Ayes – Nguyen, Okafor, Garcia, Lee, Fernandez; Noes - Wong, Jones; Abstain – Stein; Absent – Smith (Recused: lives within 300 feet of project).

Information Reports

This type of report should be used when the subject matter seeks to advise or inform the Council on a subject but does not request any action by

Council. Information reports do not include formal recommendations. Commissions typically submit their annual workplan to council through an Information Report.

Consent Calendar Reports

This type of report must include a specific recommendation for Council approval, adoption, or authorization. All items on the Consent Calendar are approved with a single vote of the Council. Items that are controversial or complex should not be submitted for the Consent Calendar. This type of report should be used when an item needs to be acted on by Council but is routine in nature. In a Consent item, the City Manager section of the report should state "City Manager [concur with/takes no position on] the content and recommendations of the commission's report."

Action Calendar Reports

This type of report is for items that require a full dialogue with Council, have particularly high public interest, or are complex in nature. These reports must include a specific recommendation for Council approval, adoption, or authorization. If the City Manager submits a companion report to a commission report, typically with an alternative recommendation, both reports must be submitted for the Action Calendar and will appear together as items (a) and (b) under the same item number.

2) Basic Steps for Communicating to Council

1. An item is placed before the commission by Council referral, staff, or a commissioner.
2. The commission agendas the topic.
3. The commission discusses the agenda item and votes to send its recommendation or findings to Council.
4. The commission drafts a report, approving the text by motion and vote, and sends it to the secretary (it may take several commission meetings to fully discuss an item and agree on findings).
5. The secretary enters the report into the agenda review process.

3) Creating Council Reports

The commission is responsible for drafting the text of the report and providing the final text to the secretary. With the permission of the full commission, final editing duties may be assigned to specific commissioners.

4) Formatting and Submitting Council Reports

The secretary of the commission is responsible for formatting and submitting the commission report as approved by the commission and upon final review by the commission chair or their designee. The chair of the commission is listed on the report on the "Submitted by:" line in the heading. The City Manager may ask the commission for additional information and/or clarification before placing the report on the agenda.

5) Timeline

Once the commission provides the complete text of the report to the secretary, the secretary ensures that it is in the proper format and submits it through the department director to the City Clerk. The secretary must submit the commission report into the agenda process no later than three weeks following receipt of the final report text.

Once the commission report has been placed on a draft City Council agenda, the Agenda & Rules Committee has the following options with regards to scheduling the commission item:

1. For a commission item that does not require a companion report from the City Manager, the Agenda & Rules Committee may 1) move a commission report from the Consent Calendar to the Action Calendar or from the Action Calendar to the Consent Calendar; 2) re-schedule the commission report to appear on one of the next three regular Council meeting agendas that occur after the regular meeting under consideration. Commission reports submitted in response to a Council referral shall receive higher priority for scheduling; 3) refer the item to a policy committee; or 4) allow the item to proceed as submitted.
2. For any commission report that requires a City Manager companion report, the Agenda & Rules Committee will schedule the item on a Council agenda for a meeting occurring not sooner than 60 days and not later than 120 days from the date of the meeting under consideration by the Agenda & Rules Committee. A commission report submitted with a complete companion report may be scheduled pursuant to the paragraph above.

As stated above, the deadline to submit reports for the Council agenda is 33 days prior to the meeting. Departments may have additional deadline requirements. As a general guideline, a commission should allow at least three months for an item or recommendation to be considered and adopted by the commission, then entered into the Council agenda process, and ultimately be heard at a City Council meeting.

6) Votes Needed to Take Action

On rare occasions, a commission may be unable to achieve the number of votes needed to take official action in time for consideration of an issue by the City Council. In such cases, a commission may communicate the opinion of fewer commissioners than the officially required majority. Nothing in this section shall be construed to prevent the City Manager from reporting what occurred at the commission meeting.

Scenario:

A commission of nine Actual Appointees, where there are only five commissioners present at the meeting (thus achieving the required quorum of five). These five commissioners disagree: three voting for a proposal and two against. If time permits, the matter would be held until all commissioners were present and a definitive recommendation voted

upon. If, however, the matter is time sensitive, the commission could take action to communicate the facts to the Council and indicate those voting for each of the opposing viewpoints.

7) **Reports to Council: Structure/Content/Format**

It is the commission's responsibility to provide complete, concise, and accurate reports to the Council so that the City Council fully understands the issue and what action, if any, it is being asked to take.

It is the responsibility of the commission to ensure that each report includes:

- A clear recommendation on what action the commission is asking the Council to take.
- A realistic evaluation of the financial implications of the recommendation and, if possible, potential funding sources.
- The reason(s) for making the recommendation.
- The facts on which the recommendation was made.
- The resolution or ordinance in proper format, if needed.

High quality commission reports and recommendations take into account the Council's need to view an issue from as many perspectives as possible. The Council must fully understand the relevant background and implications, including costs, if possible, of each action it is asked to take. Submission of high-quality reports will enable the City Council to act knowledgeably and expeditiously on commission recommendations and will reduce the likelihood of the Council referring the report back to the commission for clarification.

High quality reports entail the following key procedural aspects:

- Review by other affected commissions, if any, prior to submission to the City Council.
- Proper report format and preparation.
- Legal review by the City Attorney, when appropriate.
- Consideration of potential monetary costs.

The format requirements for reports to the Council are the same for commissions as for staff. It is the secretary's responsibility to follow format requirements when finalizing a commission report. Format templates and examples are available to secretaries through the City's intranet.

Commission reports may be considered incomplete in one or more of the following instances.

- When the discussion and evaluation of the financial implications and, if possible, funding sources are not included.
- When the report has not been reviewed by another commission(s) whose review is essential if the Council is to make an informed decision.
- When an improper format has been used.

- When the recommendation or implications of the recommendation are unclear because of inadequate information.
- If any attachments such as resolutions, letters, or supporting documentation are missing.

The secretary must ensure that the City Manager companion report is submitted in accordance with established timelines so that it does not delay the commission item.

8) Review by Other Commissions

Often the spheres of interest of various commissions overlap, depending on the specific issue. Before a commission recommends action on an issue, it should invite other commissions with an interest in the topic to review the subject and offer a response, whether or not the Council specifically requested such coordination.

Scenario 1

The Parks, Recreation, and Waterfront Commission (PRWC) is working on a recommendation regarding a children's cycling program. The PRWC should have their recommendation reviewed by the Transportation & Infrastructure Commission to determine if there are any safety, policy, or infrastructure improvements that might need to be considered.

Scenario 2

The Commission on Aging is planning to recommend the funding of a health care clinic for seniors. It should refer the proposal to the Community Health Commission and the Mental Health Commission.

If a referral to another commission has been made, the commission writing the report indicates at the beginning of the report the fact that it made a referral and what the response to the referral was, if any.

A typical process for commission coordination would be for Commission A to develop a draft report, pass a motion to refer the draft report to Commission B and others as necessary to review the report and submit comments back to Commission A, which incorporates comments, revises the report as necessary, and submits it to Council. All of the information sharing in this sample process is conducted exclusively through the commission secretaries.

D. DISTRIBUTION WITH COUNCIL AGENDA PACKET

Reports that have completed the legislative review process will be distributed by the City Clerk to the City Council as part of an agenda packet.

E. RESOLUTIONS/ORDINANCES ACCOMPANYING REPORTS

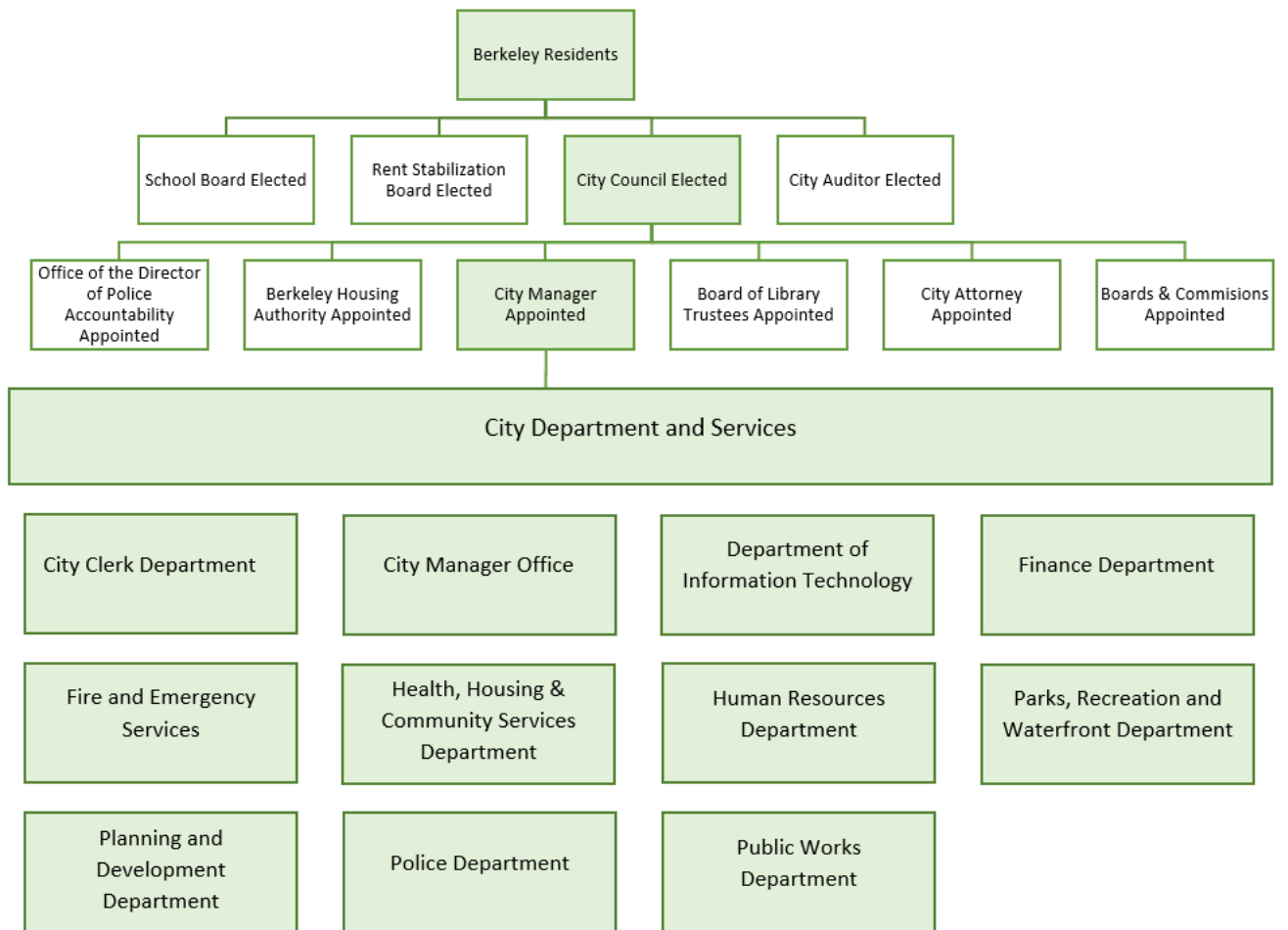
Most actions taken by the Council do not require a resolution or ordinance. When a resolution or ordinance is absolutely necessary and required for legal or financial reasons, commission secretaries should obtain the proper template from the City Clerk for inclusion with a commission's report. These guidelines should be followed.

- The secretary will ensure that all resolutions and ordinances follow the format provided in the City Clerk Department templates posted on the intranet.
- If the Commission is proposing an ordinance for adoption that will be codified in the BMC, they must follow the formatting procedures provided by the City Clerk Department on the intranet. In addition, the ordinance must be forwarded to the City Attorney and City Clerk for review prior to submitting the final report to the City Clerk for the agenda process.
- Resolutions and ordinances must be carefully proofread for accuracy.

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APPENDIX A. BERKELEY MUNICIPAL ORGANIZATION CHART



APPENDIX B. BERKELEY CITY CHARTER SECTION 36

Charter of the City of Berkeley

BMC Chapter 3.64

Section 36. Officers not to be interested in contracts or franchises.

No officer or employee shall be directly or indirectly interested in any contract, work or business of the City, or in the sale of any article, the expense, price or consideration of which is paid for from the treasury or by assessment levied by any act or ordinance; nor in the purchase or lease of any real estate or other property belonging to the City or which shall be sold for taxes or assessments or by virtue of legal process at the suit of the City. No officer shall be in the employ of any public service corporation in the City or of any person having any contract with the City or of any grantee of a franchise granted by the City.

Provided, however, the prohibitions in this Section contained shall not apply to the following:

- (a) Members of advisory Boards, Commissions, or Committees of the City, who serve without salary or other compensation; provided, however members of Boards, Commissions or Committees which perform functions other than advisory functions shall not be included within this exception.
- (b) Officers or employees of the State of California or of any department, division, or constitutionally created agency thereof.

Any contract or agreement made in contravention of this Section shall be void.

Any violation of the provisions of this Section shall be deemed a misdemeanor.

The Council shall enforce the provisions of this Section by appropriate legislation.

APPENDIX C. BMC CHAPTER 3.64 INTERPRETING CITY CHARTER SECTION 36 CONCERNING MEMBERSHIP ON BOARDS AND COMMISSIONS

3.64.010 Findings.

- A. For many years the Berkeley City Council has relied on an extensive system of advisory boards and commissions in the formulation of public policy, and approximately thirty commissions, with more than two hundred fifty members meet on a regular basis to reflect and express a broad spectrum of citizen opinion on civic issues.
- B. The City benefits from this network of democratic participation because it provides a structured setting within which the viewpoints and experience of citizens can supplement the technical expertise of City staff professionals. In addition, this system allows the City to benefit from the wide variety of experience and specialized knowledge of selected citizens--in Berkeley, often at the cutting edge of their fields--that are sources of innovation and sensitive response to public needs.
- C. The citizens on Berkeley's boards and commissions serve out of the desire to discharge civic responsibility. They are not (with the exception of the Police Review Commission and the Rent Stabilization Board) paid for their services and, in most cases, are not reimbursed for expenses they incur.
- D. A commissioners' responsibilities are substantial, and entail a significant expenditure of time. Often, they are called upon to make difficult judgments and arrive at unpopular conclusions.
- E. For this system of democratic participation to continue to function effectively, it is essential that citizens who volunteer their services to the City not incur unwarranted personal risk as they participate on boards and commissions.
- F. Charter Section 36 prohibits an officer from being directly or indirectly interested in any contract, work, or business of the City. Although this section exempts members of advisory boards, commissions, or committees who serve without salary or other compensation, members of boards, commissions, or committees which perform functions other than advisory functions are subject to this prohibition.
- G. Conflict of interest legal issues, especially those raised under the City Charter Section 36, are extremely complex, turn on subtle nuances of fact, and the legal terms used often have meanings different from their commonsense construction.
- H. The ambiguities in Section 36 deter many qualified citizens from serving as commissioners for fear that they may inadvertently violate the Charter.
- I. There is therefore a need to clarify the provisions of the City Charter and to balance the City's interests in preventing the use of public office for private gain against the City's need for diverse community representation on its boards and commissions.
- J. City Charter Section 36 (b) authorizes the council to enact appropriate legislation to implement the provisions of City Charter Section 36 and Charter Section 118 authorizes the council to enact legislation which may be necessary and proper to carry out any of the provisions of the Charter.

- K. Enactment of legislation clarifying and implementing Section 36 is necessary and proper for the reasons set forth above. (Ord. 5694-NS § 1, 1985)

3.64.020 Definitions.

For purposes of determining whether a member of a board and commission has a prohibited interest in a contract, work or business of the City within the meaning of Charter Section 36 and this chapter, the following definitions shall apply:

- A. "Advisory board" or "commission." All boards and commissions of the City shall be deemed advisory except in instances when the board or commission is performing other than an advisory function as defined in subsection B below.
- B. "Performance of other than advisory functions." A board or commission will be deemed to perform other than an advisory function and to be subject to this chapter and Section 36 only with respect to any contract, work or business of the City, the making or securing of which is influenced either directly or indirectly by the board or commission. A board or commission directly or indirectly influences the making or securing of a contract, work or business of the City whenever it engages in actions, including but not limited to, formally or informally reviewing a contract, reviewing a bid specification or request for proposal, discussing funding of an activity, discussing priorities for funding, or making general policy, implementation of which results in the making or securing of a contract, work or business for the City.
- C. "Interested; Exclusions." A City employee or member of a board or commission shall not be deemed to be "interested" in a contract, work or business of the City if their relationship with the contracting party or entity constitutes a "remote interest" within the meaning of Government Code Sections 1091 and 1091.5, the fact of such interest is disclosed to the department, board or commission of which they are a member and noted in its official records, and the employee or member with such interest disqualifies themselves from participating in any manner, either directly or indirectly, in making or influencing any decision related to the contract, work or business of the City in which they have a remote interest. (Ord. 5694-NS § 2, 1985)

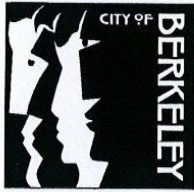
3.64.030 Contract, work or business of City--Prohibitions.

No member of a board or commission shall be directly or indirectly interested in any contract, work or business of the City as defined in 3.64.020C herein if the board or commission of which they are a member has performed other than advisory functions as defined in Section 3.64.020B herein, with respect to such contract, work, or business of the City. (Ord. 5694-NS § 3, 1985)

3.64.040 Chapter declaratory of existing law.

This chapter is declaratory of and does not constitute any change in existing law. (Ord. 5694-NS § 4, 1985)

APPENDIX D. CITY ATTORNEY MEMO REGARDING CONFLICT OF INTEREST



Office of the City Attorney

June 4, 2015

To: Boards and Commissions

From: Zach Cowan, City Attorney 

Re: Avoiding Conflicts of Interest Under Section 1090 in the Context of Funding Recommendations

This office has been asked for advice as to the process for a board or commission should use to ensure compliance with Government Code section 1090 in making recommendations about funding community agencies or other potential recipients of City funds, including state and federal funds.

Government Code section 1090 states:

The Government Code prohibits public officers, acting in their official capacities, from making contracts in which they are financially interested. Government Code Section 1090 provides in relevant part:

Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.

If the officer is a member of a legislative body that executes or finally approves the contract, this prohibition extends to the entire body on which he or she serves. *Thomson v. Call* (1985) 38 Cal.3d 633, 649, cert denied (1986) 474 US 1057. Section 1090 "also applies to members of advisory bodies, if they participate in the making of a contract through their advisory function." (Conflicts of Interest (Cal. Dept. of Justice, pamph. 2010), p. 57, See *City Council (San Diego) v. McKinley* (1978) 80 Cal.App.3d 204; 82 Ops.Cal.Atty.Gen. 126 (1999).) The word "made" is used in "the broad sense to encompass such embodiments in the making of a contract as preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications and solicitation for bids." *Millbrae Ass'n for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237.

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"[S]ection 1090 is to be 'strictly enforced'." 88 Cal. Op. Att'y Gen. 106 (2005). "The consequences of a violation of section 1090 can be quite harsh: Where a prohibited interest is found, the affected contract is void from its inception and the official who engaged in its making is subject to a host of civil and (if the violation was willful) criminal penalties, including imprisonment and disqualification from holding public office in perpetuity..."

Eden Twp. Healthcare Dist. v. Sutter Health (2011) 202 Cal. App. 4th 208, 219-20; See 89 Cal. Op. Att'y Gen. 121 (2006).

The California Attorney General's Office has opined that an officer or employee of a nonprofit corporation that is a contracting party qualifies as a "financial interest". *Conflicts of Interest* (Cal. Dept. of Justice, pamph. 2010), p. 62. However, state law has excepted two categories of "financial interests" from the reach of Section 1090, generally referred to as "remote interests" and "noninterests." Section 1091, subdivision (b), defines a series of remote interests, including "(1) That of an officer or employee of a nonprofit entity exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)),..." Both of the organizations at issue, BFHP and YEAH, are 501(c)(3) organizations, and the commissioners, respectively, fall into employee and board member roles with the two non-profits.

Government Code section 1091(a) provides a specific process for handling situations falling within the remote interest:

An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract **and** if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.

Government Code section 1091(c) further conditions the remote interest exception as follows: "This section is not applicable to any officer interested in a contract who influences or attempts to influence another member of the body or board of which he or she is a member to enter into the contract." (Cal. Gov't Code § 1091.) See *Eden Twp. Healthcare Dist.*, *supra*, 202 Cal. App. 4th at p. 219-20 [Where an interest is remote, a board member may comply with section 1090 by (1) making full disclosure of the interest, noted in the entity's official records, and (2) abstaining from voting on the affected contract or influencing other board members in any way.]

The California Attorney General's Office has interpreted Section 1091 as requiring a full recusal process.

Avoiding Conflicts of Interest Under Section 1090 in the Context of Funding Recommendations
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It is to be noted that section 1091 of the Government Code speaks in terms of a board authorizing, approving or ratifying a contract 'in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.

This office has characterized the requirements of section 1091 as meaning that the member **must not only disclose his interest in the proposed contract and refrain from attempting to influence other members, but that the member should completely abstain from any participation in the matter.** (See 65 Ops.Cal.Atty.Gen. 305, 307 (1982).)

Such complete abstention would also appear to be required to insure compliance with the PRA if the remote interest also falls within the purview of the act as a financial interest. (See Gov. Code, § 87100; FPPC Reg. § 18702.)

67 Cal. Op. Atty Gen. 369, at p. 377, fn. 8 (1984); See 78 Cal. Op. Att'y Gen. 230 (1995) Under this process, simply voting to abstain is not sufficient. The officer must identify the scope of the contract "matter", and recuse him or herself from ***all*** discussions and actions that relate to the contract matter.

Section 36 of the City's Charter contains a prohibition that is similar to Section 1090:

No officer... shall be directly or indirectly interested in any contract, work or business of the City... No officer shall be in the employ of any public service corporation in the City or of any person having any contract with the City or of any grantee of a franchise granted by the City.

The City implemented Section 36 through BMC Chapter 3.64. Section 3.64.020.C further defines the recusal process for commissioners with a remote interest. "A ... member of a board or commission shall not be deemed to be 'interested' in a contract, work or business of the City if his or her relationship with the contracting party or entity constitutes a 'remote interest' within the meaning of Government Code Sections 1091 and 1091.5, the fact of such interest is disclosed to the department, board or commission of which he or she is a member and noted in its official records, **and the employee or member with such interest disqualifies himself or herself from participating in any manner, either directly or indirectly, in making or influencing any decision related to the contract, work or business of the City in which he or she has a remote interest.**"

What steps are required to comply with Section 1090 in any given case will depend on the potential conflicts that may exist. Some relevant factors are:

- Whether a commissioner is an employee of an agency that has applied for or might be a recipient of funding;

Avoiding Conflicts of Interest Under Section 1090 in the Context of Funding Recommendations
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- Whether a commissioner is a non-compensated board member of an agency that has applied for or might be a recipient of funding;
- Whether a commissioner is a bob-compensated board member of an agency that has applied for or might be a recipient of funding;
- Whether in any instance the agency with which a commissioner is affiliated is a 501(c)(3) nonprofit agency;
- Whether the agency with which the commissioner is affiliated is competing with other agencies for the same pot of funds or whether the funds have been divided up into sub-groups for different purposes before the commissioner becomes involved;
- Other, less foreseeable issues.

In order to avoid conflicts under Section 1090, the following rules should be observed. In addition, we strongly encourage commission staff to consult with this office before beginning any funding allocation process to evaluate the best way to avoid conflicts of interest under Section 1090.

1. If an agency with which a commissioner is affiliated is identified as a potential recipient of funds, either directly or as a subrecipient, the commissioner must disclose his or her affiliation for the record (it will be noted in the minutes) and recuse his or herself before any discussion. Recusal involves announcing the potential conflict, and then leaving the room until the discussion of and any action on the commission recommendations is concluded. A commissioner is affiliated with an agency if the commissioner is a board member, officer, or employee of the agency, or a family member is an employee of the agency.
2. If an agency with which a commissioner is affiliated provides services within a funding category recommended by the commission, and the recommendation implicitly suggests an allocation of funds for that agency or could reasonably be read to do so, the commissioner must recuse his or herself, as described in paragraph 1.
3. In discussing commission recommendations that do not fall within paragraphs 1 or 2 above, if an agency with which a commissioner is affiliated provides services that could be funded by a recommendation, the commissioner should be careful not to propose or mention his or her affiliated agency. If the commissioner does mention the agency, it will be disqualified from receiving any funds.

APPENDIX E. BMC 3.02.050 COUNCIL DETERMINATION AS TO INCOMPATIBILITY; RECUSAL; AUTOMATIC VACANCY

A. The Council finds and declares that:

1. Citizen advisory boards and commissions (collectively "commissions") bring to bear significant expertise on issues that come before the City.
2. Sitting on a volunteer advisory commission is a significant commitment of time and energy, which prevents many qualified individuals from sitting on commissions.
3. Individuals who are particularly qualified in a particular area will often have employment that is in some way related to the issues that come before the advisory commissions on which they sit.
4. Although the Council has provided that advisory commissions are subject to the City's Conflict of Interest resolution, in light of their advisory status and the need to attract qualified commissioners, advisory commissions should not be subject to every possible prohibition related to conflicts of interest.
5. It is the purpose of this section to establish a fair and workable standard for determining when outside activities for compensation are incompatible with membership on an advisory commission, to establish the obligations of members of advisory commissions with respect to outside activities for compensation, to provide a process for determinations relating to incompatibility of outside activities for compensation and to establish remedies.

B. Pursuant to its authority under Government Code Section 1126(b), the City Council establishes and declares that outside activities for compensation shall not be considered incompatible with membership on City commissions other than those listed in subsection (I), but members of such commissions shall recuse themselves with respect to commission actions relating to any outside activity for compensation to the extent the action involves any specific employment responsibilities for which they receive compensation.

C. The City Attorney shall employ the standards set forth in the preceding subsection in making determinations under Government Code Section 1126 with respect to members of commissions other than those listed in subsection (I). Whenever the City Attorney issues a written opinion under Government Code Section 1126, that opinion shall be immediately transmitted to the City Clerk and the affected commissioner.

D. If the affected commissioner notifies the City Clerk in writing of their disagreement with the City Attorney's opinion within 14 days after the opinion is transmitted to them, the City Clerk shall place the matter on the Council's agenda at the earliest possible time and shall notify the

affected commissioner of the date and time of the meeting at which the Council will consider the matter.

E. The Council shall allow the affected commissioner an opportunity to address it, shall determine whether to affirm or overrule the City Attorney's opinion and may make any order consistent with this section and Government Code Section 1126.

F. If the commissioner fails to comply with the City Attorney's opinion or, on appeal, the order of the City Council, the commissioner's seat shall be deemed automatically vacated as of the date of the Council's order.

G. From the date the City Attorney's opinion is issued and transmitted to the board or commissioner who is its subject, until completion of Council proceedings under this section, that commissioner shall comply with the incompatibility standard set forth in subsection (B) as applied in the City Attorney's opinion. Thereafter, the commissioner member shall comply with the order of the Council.

H. Prior to accepting any appointment to any commission, the nominee shall disclose to the appointing Councilmember every employment, activity or enterprise for compensation that falls within the scope of the authority of the board or commission for which they have been nominated.

I. The standard set forth in subsection (B) of this section applies to commissioners appointed by the Council to all City boards and commissions except the Board of Library Trustees, the Fair Campaign Practices Commission, Homeless Commission, Housing Advisory Commission, Human Welfare and Community Action Commission, Landmarks Preservation Commission, Planning Commission, Police Review Commission, and Zoning Adjustments Board.

J. Nothing in this section affects any disclosure, disqualification or eligibility requirement of under any provision of federal, state or local law other than Government Code Section 1126(b).

APPENDIX F. RESOLUTION NO. 53,989-N.S. NOTICE TO POTENTIAL CANDIDATES FOR BERKELEY ELECTIVE OFFICE AND INDIVIDUALS INTERESTED IN SERVING AS MEMBERS OF CITY BOARDS AND COMMISSIONS

RESOLUTION NO. 53,989 —N.S.

NOTICE TO POTENTIAL CANDIDATES FOR BERKELEY ELECTIVE OFFICE AND INDIVIDUALS INTERESTED IN SERVING AS MEMBERS OF CITY BOARDS AND COMMISSIONS

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

WHEREAS, conflict of interest issues are often complex, creating ambiguities which may deter many qualified and interested citizens from serving as elected officials or members of the City's boards and commissions; and

WHEREAS, there is a need to alert potential candidates for office and prospective appointees to boards and commissions of the existence of such conflict of interest laws and to encourage such individuals to seek out advice when questions arise pertaining to their particular situation.

NOW, THEREFORE, Be It Resolved by the Council of the City of Berkeley that the City Clerk be instructed to provide the following notice to individuals expressing interest in candidacy for Berkeley elective office and for appointment to the City's boards and commissions:

"The purpose of this notice is to alert you to State and local conflict of interest provisions. These provisions may prohibit you, members of your family, or your employer, from having any financial relationship - - such as a contract or consultant position -- with the City, the Berkeley Housing Authority, and the Berkeley Redevelopment Agency, during the term of your office; for members of the City Council such prohibition can extend in certain instances for a one-year period following the conclusion of the term of office.

If a prohibited interest exists, the financial relationship may have to be terminated; for example, a contract may not be renewed or created, a consultant position may have to be withdrawn, your employer or a family member may be required to cease conducting business with the City.

Statements of Economic Interest are required to be filed by elected officials and appointed members of boards and commissions. The information disclosed in such statements provides the public with information concerning the financial interests of those serving in a public or official capacity, as well as assisting in the determination of whether certain of the interests disclosed require appropriate further action. The specific prohibitions applicable to potential conflicts of interest are not deemed "satisfied" or "cured" simply by filing the economic interest statements and disclosing the relevant financial interests; such a filing is a state-mandated requirement and is separate and distinct from any prohibitions that may be imposed as a result of an existing or future financial relationship with the City.

If you are uncertain as to whether existing or future financial interests you, your family, or your employer may have with the City constitute a potential conflict which would require termination or other remedial action upon your assuming elective office or upon your appointment to a City board or commission, you are encouraged to seek further information from the City Attorney's Office by providing a written description of your financial interest or relationship with the City and the elective or appointive position which you are seeking. It is your obligation to seek such advice and to bring any such potential conflicts to the City's attention. The City will not independently investigate the background or financial statements of candidates for elective or appointive office in order to detect potential conflicts of interest."

In effect: November 3, 1987

APPENDIX G. ADMINISTRATIVE REGULATION 3.2 GOVERNING STIPENDS FOR COMMISSIONERS

A.R. NUMBER:	3.2
ORIGINAL DATE:	7/01/94
POSTING DATE:	3/1/2024
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CITY OF BERKELEY ADMINISTRATIVE REGULATIONS

SUBJECT: Stipend and Reimbursement in Lieu of Expenses for Members of Certain Boards, Commissions, Committees, Task Forces, and Joint Subcommittees

PURPOSE

The purpose of this Administrative Regulation is to establish procedures for reimbursing expenses to certain board, commission, committee, task force, and joint subcommittee members (including temporary appointees) who might otherwise incur an economic hardship.

POLICY

The City Council, by Resolution No. 69,739-N.S. (known as the Stipend Resolution March 9, 2021), authorizes payment in lieu of expenses to members of all Council-appointed boards, commissions, committees, task forces and joint subcommittees who meet certain household income criteria in order to remove economic hardship barriers from citizen participation. Subcommittees of commissions, which are designated by the advisory body and not by Council appointment, are not eligible for reimbursement.

An eligible member is authorized to receive:

- a) \$100 for each official meeting attended, not to exceed four (4) meetings each month;
- b) reimbursement for actual child care expenses incurred while he/she attends meetings;
- c) reimbursement for actual expenses paid to an attendant to provide care for a dependent elderly person while he/she attends meetings; and
- d) reimbursement for actual expenses incurred for disabled support services in order to participate fully in board, commission, or committee meetings.

The \$100 stipend amount shall be annually adjusted by the Bay Area Consumer Price Index.

DEFINITIONS AND REGULATIONS

An "official meeting" is defined as a duly noticed, properly agenzized, regular meeting or special meeting of the full board or commission at which a quorum of the full membership must be present in order for the meeting to be held.

For a meeting that is cancelled, claims may only be submitted if it is for an official meeting where the attendees and staff Secretary believed that the meeting would proceed as scheduled, and for which Commissioners and the Secretary actually showed up and waited a reasonable period beyond the meeting start time for the quorum to be met before canceling.

A receipt or invoice signed by the person providing such child care, elderly dependent care or disabled support services must accompany a request for reimbursement. Invoices must include date, services provided, vendor contact information, and dollar amount.

The Human Welfare and Community Action Commission provides for alternate representatives of the poor to be elected or to be appointed when a vacancy occurs. Alternate representatives of the poor shall be eligible for stipend payments when serving in place of the principal member.

The City Clerk Department is responsible for keeping this Administrative Regulation up-to-date and shall include notification of this policy with each appointment letter mailed.

COMMISSIONER'S CRITERIA AND RESPONSIBILITIES

1. Eligibility criteria for stipend and reimbursement:
 - a) Persons eligible to receive reimbursement in lieu of expenses are those board, commission, committee, task force or joint subcommittee members whose household gross income as filed jointly for federal income tax purposes is below the Alameda County 50% AMI 3-person household (\$58,750 as of July 2021) per year.
 - b) Commissioners who are minors (under 18 years old) must have eligibility declaration forms co-signed by a parent or legal guardian attesting that the combined 3-person household income is under the Alameda County 50% AMI (\$58,750 as of July 2021) per year.
 - c) If a commissioner is paid \$600 or more in stipend payments in one calendar year, an IRS Form 1099 will be generated by the Finance Department for the commissioner's tax filing purposes.
2. To establish eligibility, Commissioners must file the Annual Declaration Form (attached) with the secretary of their board, commission, committee, task force or joint subcommittee. Commissioners must file a new declaration form annually prior to May 31st in order to maintain eligibility.
3. In order to pay a Commissioner's attendant directly, a completed IRS Form W-9 must be on file in the Finance Department's Accounts Payable Division. If an attendant, support service, or child care provider is paid \$600 or more in one calendar year, a Form 1099 will be generated by Finance. In order to be reimbursed for payments made to an attendant, support service, or child care provider, a Commissioner must be set up as a vendor by Finance - General Services.
4. Eligible members who are disabled and are seeking reimbursement for support services must also complete the support services statement portion on the Annual Declaration Form. If the member's needs change, he/she must immediately notify the secretary. Otherwise, the statement certifying the need for support services will continue to be in effect for the duration of the member's term of appointment.
5. Pursuant to Berkeley Municipal Code Section 3.66.040, low-income status for members of the Commission on Disability is not a prerequisite for reimbursement of attendant care expenses.

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6. Additionally, eligible recipients requesting reimbursement for child care expenses, paid attendant services for elderly care, and support services as a disabled member for meeting participation are subject to AB 1234. State law AB 1234 requires completion of an online ethics training course within one year of the first day of service, and every two years thereafter. The ethics course is available online at no cost. Upon completion of the course, a printed and signed certificate of participation must be on file with the secretary in order to be eligible for reimbursement.

RESPONSIBILITIES OF SECRETARY

1. It is the responsibility of the secretary of each board, commission, committee, task force or joint subcommittee to submit quarterly payment forms to the Finance Department, by the 10th of each month (January, April, July, and October). Payment forms for stipends paid for attendance at meetings held pursuant to the Mental Health Services Act are filed monthly. Every submission must include the following:
 - a) A.R. 3.2 Payment Form
 - b) Invoices for support services, dependent care, and/or child care, if applicable.
 - c) Verification that each meeting for which reimbursement or stipend is claimed actually occurred.
 - d) A copy of the Annual Declaration Form
 - e) A spreadsheet showing the year-to-date payments for each commissioner.
2. The completed forms must be attached to the request for check entry in ERMA and released for review to the Finance Department by the 10th of each specific month so payment can be made. A separate request for check and supporting documentation must be submitted individually for each member.
3. The secretary shall keep copies of all Annual Declaration Forms on file and attach a copy each time a request for check is submitted to the Finance Department, and when submitting quarterly statements.
4. Each secretary will advise the board, commission, committee, task force and joint subcommittee members of this policy and respond promptly to commissioner inquiries regarding payment status. Commissioners should not contact the Finance Department or City Clerk Department for payment status.

RESPONSIBLE DEPARTMENT: City Clerk	Approved by:  Department Director
TO BE REVIEWED/REVISED: Every year	 City Manager

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**ANNUAL DECLARATION FORM RESPECTING ELIGIBILITY FOR
REIMBURSEMENT OF EXPENSES AS A MEMBER OF THE**

(Board/Commission/Committee/Task Force/Joint Subcommittee)

Inasmuch as it is in the public interest to remove barriers, particularly those creating economic hardships for citizens participating on boards, commissions, committees, task forces, and joint subcommittees the City Council has determined that it is in the public interest to alleviate this hardship by authorizing payments in lieu of expenses for certain meetings and under certain conditions as indicated in Stipend Resolution No. 69,739-N.S.

I, _____ certify to the following:

- 1) That my adjusted gross income reported individually, or as part of a household joint Federal Income Tax Return, was less than the Alameda County 50% AMI 3-person household (\$58,750 as of July 2021) per year.
- 2) I will file this declaration form every year no later than May 31st with the Secretary who will forward copies to the Finance Department; and
- 3) I will notify the Secretary as soon as I am aware that my household current year income exceeds the Alameda County 50% AMI 3-person household (\$58,750 as of July 2021) per year and request that my eligibility be canceled:

Signature

Date

Signature of Parent or Legal Guardian if Member is a Minor

Date

Signature of Secretary

Date

* * *

SUPPORT SERVICES STATEMENT

I, _____, certify I am disabled and require the following support services in order to participate fully in commission meetings:

Signature

Date

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A.R. 3.2 PAYMENT FORM

Name of Commission: _____

Name of Commissioner: _____

Address of Commissioner: _____

Name of Secretary: _____ Phone: _____

Quarter Covered: Year ____ ☐ Jan - Mar ☐ April - June ☐ July - Sept ☐ Oct - Dec

Date of Meeting	Payment Type*	Amount Due
		\$
		\$
		\$
		\$
		\$
		\$
	Total (this qtr.)**	\$

* Stipend, Support Services, Dependent Care, or Child Care

** Attach Year-to-Date Spreadsheet to this Form

☐ Please hold check for pick up: _____
 (Commissioner's Signature)

 Prepared by: _____ Date: _____
 (Preparer's Signature)

 Reviewed by: _____ Date: _____
 (Commission Secretary Signature)

CERTIFICATION AND AUTHORIZATION FOR PAYMENT: I hereby certify that the payments for all persons whose names appear herein have been properly authorized; and that the amounts indicated as due said persons are actually due and payable. Payment is approved against the appropriation indicated under delegated authority of the City Manager.

 Authorized by: _____ Date _____
 Authorized Department Signature (must be on file with AP)

COMMISSIONER STIPEND CHECKLIST

This checklist is provided to expedite the processing of commissioner stipends. The Finance Department requires that all forms are completed and information is accurately prepared and submitted before stipends can be paid. Review the checklist prior to submitting stipend requests.

For Initial Payment to a Commissioner or Service Provider:

- ☐ Set up the Commissioner as a vendor with Finance - General Services
 - * Use a W-9 form to set up the Commissioner as a vendor (available on Groupware)
- ☐ Set up the Vendor (support services, dependent care, or child care) as a vendor with Finance - General Services
 - * Use a W-9 form to set up the service provider as a vendor

Required Documentation for Every Payment Submission (compile submission in this order):

- ☐ Request for Check
 - * In both description areas of the Request for Check screen, list the type of stipend being paid and the period covered (quarterly or monthly)
 - * Provide the full account code and/or project string (consult your department budget analyst)
 - * Verify in ERMA that adequate funds are available in the account to pay the voucher
 - * Clearly document the payment amount
 - * Obtain all required signatures
- ☐ A.R. 3.2 Payment Form
 - * Complete all fields
 - * Obtain all required signatures
- ☐ Invoices for Support Service, Dependent Care, and/or Child Care Providers
 - * Must include date, services provided, vendor contact information, and dollar amount
- ☐ Attendance Verification
 - * A copy of the meeting minutes
 - * Requests for reimbursement for cancelled meetings require written representation from the Commission Secretary
- ☐ Annual Declaration Form
 - * The form is completed and signed and dated yearly by the commissioner and the Commission Secretary
 - * A copy of the form is submitted with each reimbursement voucher
- ☐ Year-to-Date Summary Spreadsheet
 - * Documents the fiscal year (year to date) expenditures of the individual commissioner
 - * Remember that payments of \$600 or more result in the issuance of a Form 1099 from the Finance Department and may have tax implications

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 and 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 committees 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))

APPENDIX I. GENERAL INFORMATION FOR NEWLY APPOINTED COMMISSIONERS

APPOINTMENT OF NEW COMMISSIONER

All new appointments and temporary appointments are processed pursuant to the filing of an appointment form and Affidavit of Residency with the City Clerk by a City Councilmember. The City Clerk then verifies the eligibility of the appointee to serve. A person may not be eligible to serve on a particular commission if any of the following apply.

- The ordinance, resolution, or other law establishing the commission or regulating its membership has specific eligibility requirements that the appointee cannot meet.
- The person has served eight consecutive years on the commission and has not been off the commission for a period of two years (those established by initiative may not be subject to this requirement).
- The person has failed to file Conflict of Interest statements and has outstanding statements and/or has been removed from office more than once for failure to file statements.
- The person has been administratively terminated more than four times.
- There is no open commission seat.

The City Clerk Department prepares the official appointment letter and provides the commissioner with a packet of general information. If the commissioner is designated in the City's Conflict of Interest Code, the appointment package will include instructions on how to file Assuming Office Form 700 electronically via NetFile, or via the state portal, if required. The Assuming Office must be filed with the City Clerk within thirty days of the date of the appointment. The new appointee must also take the Oath of Office before attending the commission meeting or within thirty days of the date of the appointment.

Failure to take the oath within thirty days of the date of the appointment and/or failure to file required Conflict of Interest statements within 30 days of appointment will result in automatic termination from the commission.

PRIOR TO SERVING AND PARTICIPATING AT A COMMISSION MEETING

Commissioners must be fully eligible prior to serving at a meeting. Commission secretaries have been instructed to not permit a newly appointed commissioner to participate at a meeting unless the secretary has received notice from the City Clerk Department.

The secretary will officially swear the new commissioner in at the start of their first meeting, or within thirty days, whichever comes first if the commissioner has not already taken the oath. The secretary is also required to immediately forward the completed oath to the City Clerk.

LEAVES OF ABSENCE

Regular attendance at commission meetings is important to enable the commission to proceed with business. If a commissioner has advance notice of potential problems regarding attendance at meetings, they should notify the commission secretary and may wish to consider requesting a Leave of Absence (LOA) from the appointing councilmember. Failure to obtain a LOA may result in automatic termination for absence. See Chapter II, Part A, for more information.

A commissioner may also request to be “excused” from a regular commission meeting due to a conflict between the date of the meeting and a religious or cultural holiday. Such a request must be made in writing and submitted to the commission secretary prior to the meeting for which the commissioner is to be excused. The request is not subject to commission approval but shall be accepted upon request. The definition of a religious or cultural holiday is left to the discretion of the individual commissioner.

STIPEND/EXPENSES

In order to remove barriers from public participation on commissions, the Council has authorized payment of \$100 per meeting, in lieu of expenses, to Council-appointed members of commissions whose annual family income as filed jointly is below the Alameda County 50% AMI for a 3-person household per year (\$70,075 per year as of January 2024). If a commissioner desires to establish stipend eligibility, they must file a statement with the commission secretary. It is the secretary’s responsibility to forward statements and meeting information to the Finance Department in a timely manner to ensure proper payment. Specific information related to this is contained in the Stipend Resolution and A.R. 3.2.

TERMINATION FROM A COMMISSION

Commissioners, with a few exceptions, are appointed for terms ending November 30 of the first year of appointment. Commissioners may continue to serve at will for a period up to eight consecutive years unless replaced by a councilmember any time after the initial term has ended. See Chapter II, Part A, for more information.

RESIGNATIONS BY COMMISSIONERS

Written resignations by commissioners shall be forwarded directly to the City Clerk Department. Resignation letters should state the effective date of the resignation. Verbal resignations and backdated resignations are not considered resignations. The effective date of the resignation is the date it is received by the City Clerk unless a future date is indicated. The City Clerk Department will send instructions to the resigning commissioner on how to file Leaving Office Form 700 electronically via NetFile, and if requested will provide the commissioner with a paper Form 700 (except 87200 Filers). Furthermore, the City Clerk Department will inform both the appointing Councilmember or Mayor and the commission secretary about the resignation.

QUESTIONS REGARDING APPOINTMENT

For questions regarding an appointment or termination or basic rules contained within the Commissioners’ Manual, please contact the commission secretary.

GLOSSARY

Definitions pertain to City of Berkeley Commissions

TERM	DEFINITION
Absence	A commissioner is absent if they do not attend at least one hour or 50% of the entire meeting.
Accessible	Members of the community must be able to attend all commission meetings and the meetings must be noticed in accordance with the Brown Act.
Action Calendar	Items are placed on the Action Calendar when the Commission expects to take or request a specific action by motion.
Action Minutes	A concise record of the commission's proceedings, which contains the date, time, and place of the meeting, members/staff in attendance, and final actions taken.
Actual Appointees	The total seats on a commission minus vacancies and leaves of absence (for the purpose of determining quorum).
ADA (Americans with Disabilities Act)	Federal law that mandates provisions for access and accommodations for persons with disabilities.
Affidavit of Residency	A form that is submitted with the appointment paperwork confirming the appointee is a resident of Berkeley.
Agenda	The list of business to be conducted by the commission.
Alternate Commissioners	Councilmembers and the Mayor may each appoint a pool of five Alternate Commissioners to serve on designated commissions when their regular appointee is on an approved leave of absence.
Application	Form provided by the City Clerk Department for completion by an individual who wishes to be appointed to a board or commission.
Appointment	Appointment occurs when an individual who has been selected by a Councilmember (or the Council) to serve on a commission, is deemed fully eligible to serve by the Clerk Department.
Brown Act	State law that sets requirements for meeting noticing, agendas, and public participation.
Chair	Presides at commission meetings and ensures the work of the commission is accomplished.
Charter	The document that established the City of Berkeley.
City Attorney	Local official who ensures that the City operates within legal constraints and minimizes its legal liability

TERM	DEFINITION
City Clerk	Local official who administers democratic processes such as elections, access to city records, and all legislative actions ensuring transparency to the public. The City Clerk administers the commission appointment process, maintains the information regarding the commission rules and regulations, and serves as an advisor for commission secretaries.
City Manager	Local official appointed by the City Council to direct the administration of the City.
Communication to Council	Written letter of which the content is approved by action of the full commission, and submitted by the commission secretary in accordance with the Council's guidelines for submission of communications.
Committee, including "Temporary" and "ad hoc"	Commissions may establish ad hoc committees, which have a single purpose, be composed of less than a quorum, and a target date to report back to the parent commission.
Companion Report, City Manager	The City Manager may present a City Manager Companion Report to the Council highlighting alternate recommendations or additional information to a Commission Report.
Conflict of Interest	A situation in which a person is in a position to derive personal benefit from actions or decisions made in their official capacity.
Consent Calendar	Section of the agenda listing items that do not require discussion prior to adoption.
Disability	A person with a disability is someone who has a physical or mental impairment that substantially limits one or more major life activities, has a history or record of such an impairment (such as cancer that is in remission), or is perceived by others as having such an impairment (such as a person who has scars from a severe burn).
Disclosure Statements/Form 700	The Statement of Economic Interests, Form 700, provides required information about public officials' financial interests to ensure they are making decisions in the best interest of the public.
Election	The selection by vote of a person or persons from among candidates for a position.
Election of Officers	Formal action of the commission to select one member as chairperson and another member as vice-chairperson. Generally, action is taken annually in February.
Enabling Legislation	The charter, ordinance, or resolution that establishes the commission and confers certain specified authority and responsibility.

TERM	DEFINITION
Ex Parte Contacts	Contacts in a quasi-judicial proceeding outside the public hearing process, including letters, emails, telephone messages, in-person conversations and meetings.
Excused Absence	A commissioner is deemed to have an “excused absence” if the commission secretary receives a written request from the commissioner in advance of a meeting that the absence be excused due to a conflict between a scheduled commission meeting and a cultural or religious holiday.
Fair Representation Ordinance (FRO)	A City of Berkeley ordinance requiring commissions of nine, or multiples of nine, and allows each individual Councilmember to make an equal number of appointments.
Form 700/Disclosure Statements	The Statement of Economic Interests, Form 700, provides required information about public officials’ financial interests to ensure they are making decisions in the best interest of the public.
Information Item	An item on the commission’s agenda for which there is no discussion and no action is taken. It is a report or update on an item of interest to the commission.
Leave of Absence	A commissioner is deemed to have a “leave of absence” when the City Clerk Department receives written approval of the commissioner’s absence from the appointing Councilmember prior to 5:00 p.m. the day of the meeting or prior to the beginning of the meeting if occurring before 5:00 p.m. This allows the commissioner to be absent from a commission meeting(s) without an attendance penalty.
Media	Outlets/organizations that deliver information or data to the public.
Meeting, Concurrent (“Joint”)	Two or more commissions hold meetings in the same place at the same time and hold a coordinated discussion.
Meeting, Regular	A meeting held periodically according to the time/day/location stated in the meeting schedule adopted by formal action of the commission.
Meeting, Special	Any meeting of the commission not on the regular meeting schedule.
Motion	A formal proposal put to the commission for consideration by a commissioner.
Oath of Office	The City Charter requires all commissioners to take an Oath of Office for every appointment they accept. The Oath may be completed by the commission secretary or a City Clerk representative prior to the commissioner serving the first meeting of their term.

TERM	DEFINITION
Point of Personal Privilege	A motion related to matters affecting commissioners during the meeting such as personal comfort, noise in the meeting room, or safety.
Poll	A sampling or collection of opinions – typically used to determine when to hold a special meeting or if all commissioners will be present at a regular meeting.
Presiding Officer	The officer presiding over the conduct of the meeting, the chair, or in their absence, the vice-chair, or temporary chair.
Press	See media.
Public	Any individual who is not a member of the convening commission or a City of Berkeley staff person acting in their official capacity.
Public Comment	The public must be allowed to speak on any item in the committee's purview as well as on each specific item of business before the committee.
Public Hearing	An agenda item that has additional noticing requirements and some legal constraints specific to the item. Public Hearings are held when required by law.
Quasi-judicial	Quasi-judicial commissions have the authority to make binding decisions that require or restrict the action of individuals.
Quorum	The minimum number of commissioners who must be present for the valid transaction of business.
Recommendation	A brief description appearing on the meeting agenda and describing what action, if any, may be taken on the item.
Residency	Refers to the status of an individual who lives in the City of Berkeley permanently or on a long-term basis and thereby satisfies an eligibility requirement for membership on a commission.
Resident	A person who lives in the City of Berkeley permanently or on a long-term basis.
Resignation	The formal process for a commissioner stepping down from their position.
Secretary	An employee of the City designated by the City Manager to represent the City Manager and provide administrative support to a commission.
Statement of Economic Interests	The Statement of Economic Interests, Form 700, provides required information about public officials' financial interests to ensure they are making decisions in the best interest of the public.
Stipend	Payment in lieu of expenses to remove economic hardship barriers.
Subcommittee	See "Committee" above.

TERM	DEFINITION
Temporary Appointment	The appointing Councilmember or the Council may fill a vacancy created by a leave of absence by a temporary appointment for a period not to exceed the period of the leave of absence.
Term Maximum	Commissioners who have served the maximum of eight years on a certain commission shall not be eligible to serve on that same commission until a two-year break in service has occurred (BMC 3.02.040).
Term Minimum	A commissioner cannot be replaced by a Councilmember prior to the first day of December in the year in which they were appointed.
Termination	Termination is the term used when a commissioner resigns or is removed from office.
Termination, Automatic	An automatic termination takes place when a commissioner fails to meet appointment qualifications.
Vacancy	A seat with no appointed commissioner is considered a vacant seat. Vacancies are not created when commissioners are absent or on leaves of absence.
Vice-chair	Assumes the duties of the chair in their absence.

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MOTION TABLE

	Interrupt the Speaker	Requires a Second	Debatable	Amendable	Vote Needed	Reconsiderable
Adjourn	No	Yes	No	No	Majority	No
Recess	No	Yes	No	Yes	Majority	No
Question of Privilege	Yes	No	No	No	No Vote	No
Call for the Orders of the Day	Yes	No	No	No	No Vote (Enforcement is required unless 2/3 vote to continue with current business.)	No
Lay on the Table	No	Yes	No	No	Majority	No
Previous Question or Call the Question	No	Yes	No	No	2/3	Yes (unless voting on the question has begun)
Limit or Extend Limits of Debate	No	Yes	No	Yes (Amendment s are not debatable.)	2/3	Yes
Postpone to a Certain Time	No	Yes	Yes	Yes	Majority	Yes
Refer	No	Yes	Yes	Yes	Majority	Yes
Amend	No	Yes	Yes	Yes	Majority	Yes
Substitute	No	Yes	Yes	Yes	Majority	Yes
Postpone Indefinitely	No	Yes	Yes	Yes	Majority	Yes
Main Motion	No	Yes	Yes	Yes	Majority	Yes
Reconsider	Yes (Prior to the speaker beginning to speak)	Yes	Yes (Unless the motion to be reconsidered is not debatable)	No	Majority	No

QUORUM CHART

The following is a chart indicating the numbers needed to take action.

Total Number of Seats*	Actual Appointees	Quorum	Votes Needed for Action
9	9	5	5
9	8	5	5
9	7	4	4
9	6	4	4
9	5	3	3
9	4	3	3
9	3	2	2

**This refers to the authorized membership under the commission's enabling legislation.*

***Quorum rules apply to committees. If a commissioner on a committee of four is on an excused LOA, the actual appointees becomes three, and the quorum becomes two. No committee may operate with less than two actual appointees. Remember, a temporary appointee does not assume the committee memberships of the commissioner for which they are serving.*

Vacancies and commissioners who have been granted a Leave of Absence (LOA) are subtracted from the total number of seats to determine the number of Actual Appointees (see table). The number of Actual Appointees is not reduced when a temporary appointee is absent from a meeting or when a commissioner fails to attend and does not have a LOA.