

Department of Fire and Emergency Services

**Agenda  
For the Regular Meeting of the  
Disaster and Fire Safety Commission**

**DATE: Wednesday, December 4, 2019**  
**TIME: 7:00 PM**  
**PLACE: Fire Department Training Facility - 997 Cedar Street**

**Preliminary Matters**

Call to Order.

Approval of the Agenda

Public Comment on Non-Agenda Matters

1. Fire Department and Office of Emergency Services Staff Report

**Consent Items**

2. Approval of Draft Minutes of Meeting of September 25, 2019\*
3. Approval of Draft Minutes of Meeting of October 23, 2019\*

**Action Items**

4. Commission Meeting Schedule for 2020

**Discussion Items**

5. Special Tax Assessment for Wildfire Prevention Possible Future Action\*
6. October's Public Safety Power Shutoff (PSPS) and Plans for Future PSPS's\*
7. Report from Community Disaster Prep Fair
8. Public Outreach on Emergency Preparedness
9. Phase 3 Study to Underground Utilities Wires in Berkeley\*

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10. Referral from City Council: Amending Chapter 19.34 of the Berkeley Municipal Code to Expand Automatic Gas Shut-Off Valve Requirements in Multifamily, Condominium and Commercial Buildings Undergoing Renovations and to All Existing Buildings Prior to Execution of a Contract for Sale or Close of Escrow\*
11. Updates on Outdoor Alerting (Sirens) and Weather Radios
12. Future Agenda Items

## Adjournment

(\*Material attached for Commissioners for this month's meeting)

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Disaster & Fire Safety Commission  
Regular Meeting  
Wednesday, September 25, 2019  
997 Cedar Street, Berkeley, CA 94710

Present: Ruth Grimes, Gradiva Couzin, Jose Luis Bedolla, Annie Bailey, Toby Simmons, Shirley Dean, Paul Degenkolb, Jennifer Lombardi, Toni Stein

Absent:

Staff: Khin Chin, Keith May

Public: Sarah Jones, Chris Cullander, Mike Hoey, Greg Crutsinger

**Preliminary Matters**

Call to Order

G. Couzin called meeting to order at 7:00 pm

Approval of the Agenda

Move Item 4 and 5 forward of Item 3.

Approved by Acclimation

Public Comment on Non-Agenda Items

Mike Hoey from Berkeley Disaster Preparedness Neighborhood Network announced the East Bay Community Emergency Prep Fair on October 12, 10am-3pm at James Kenney Park.

1. Fire Department and Office of Emergency Services Staff Report

9/14 Small grass fire on Grizzly Peak Blvd. Area of burn was contained to 100'x50' area. Cause of the discharging of fireworks. Incident received a response from Berkeley, Moraga-Orinda, and Alameda County Fire Departments.

9/12 Two pedestrians were struck by an Amtrak train. Both victims were deceased – investigation turned over to Union Pacific Railroad.

A total of 5 fatalities within the City of Berkeley response area during a four day period.

Kino, Captain Wong's Search & Rescue canine, passed away on September 11<sup>th</sup>. Kino was able to deploy and work at multiple incidents and exercises. Katherine Hawn has been hired as an Emergency Services Coordinator. Her start date will be October 21.

The Berkeley Fire Department Accredited Local Academy (ALA) received unanimous Re-Accreditation approval at the September 12, 2019 State Board of Fire Services meeting. The ALA Re-Accreditation will be recognized for another five-year period.

Recruit Academy #109 is scheduled to begin October 21 and run for 20 weeks.

After Action reports for the evacuation exercises are currently being written.

### **Consent Items**

2. Approval of Draft Minutes for Meeting of August 7, 2019\*

Hold over to the next meeting due to discussion.

### **Action Items**

3. Recommendation for City Council Action on Ensuring Fire Equipment Access\*

Motion to Recommend to Immediately Fund and Implement the Safe Passages Program and Additional Actions to Ensure Emergency Equipment Access to All Parts of the City: Dean

Second: Stein

Vote: 9 Ayes: Grimes, Stein, Lombardi, Bailey, Couzin, Degenkolb, Simmons, Dean, Bedolla; 0 Noes; 0 Absent; 0Abstain:

### **Discussion Items**

4. Safe Passages Project Update
5. Vegetation Management Update
6. Wildfire Priority Issues: Parking and Prevention\*
7. Public Outreach on Emergency Preparedness

8. Update on Sirens Recommendation\*
9. Public Safety Power Shut-offs Possible Actions\*
10. Special Tax Assessment for Wildfire Prevention Possible Future Action\*
11. Drone Technology for Disaster Management
12. Future Agenda Items

### **Adjournment**

Adjourn

Motion adjourn: Couzin

Second: Simmons

Vote: 9 Ayes: Grimes, Stein, Lombardi, Bailey, Couzin, Degenkolb, Simmons, Dean, Bedolla; 0 Noes; 0 Absent; 0 Abstain:

Adjourned at 9:16pm

Disaster & Fire Safety Commission  
Regular Meeting  
Wednesday, September 25, 2019  
997 Cedar Street, Berkeley, CA 94710

Present: Ruth Grimes, Gradiva Couzin, Jose Luis Bedolla, Annie Bailey, Shirley Dean, Paul Degenkolb, Toni Stein, Robert Flasher

Absent: Toby Simmons

Staff: Khin Chin, David Brannigan, Stacie Clarke, Rachel Rodriguez, Katie Van Dyke, Katie Hawn, Jaime Albrecht

Public: Sarah Jones, Chris Cullander, Susan St. George, Eli Kaplan

**Preliminary Matters**

Call to Order

G. Couzin called meeting to order at 7:00 pm

Approval of the Agenda

Move Item 5 forward of Item 2.

Approved by Acclimation

Public Comment on Non-Agenda Items

Susan St. George said Berkeley Disaster Preparedness Neighborhood Network hosted the East Bay Community Emergency Prep Fair on October 12 with help from Berkeley Fire Department and Office of Emergency Services. Thank you to all involved and special thanks to Gradiva Couzin, Sarah Jones and the Fire Department. They felt like it was successful in reaching new audiences and hope to have an even larger event next year. The next project is to get go kits to seniors and people with disabilities.

Chris Cullander reported on the NALCO Fire Patrols during the last fire weather event on October 9<sup>th</sup> and 10<sup>th</sup>. He also reported on the Berkeley Path Wanderers work on pathways. Additional Information: Handout NALCO Fire Patrols and Path Status.

Stacie Clarke provided an update on the Measure GG Budget. Additional Information: Handout – Measure GG Fund Forecast. FY 2019 Year End Budget Update.

1. Fire Department and Office of Emergency Services Staff Report Including Measure GG Budget Update

Thank you to BDPNN for the East Bay Community Prep Fair.

Katie Hawn was introduced as the new Emergency Services Coordinator in the Office of Emergency Services.

109<sup>th</sup> Firefighter academy with 6 recruits for Berkeley.

3 Firefighter paramedics left Berkeley to work in Fremont.

The City responded to the PG&E Public Safety Power Shutoff with an EOC activation that included an overnight shift. The response, as a whole, went very well.

Captain Dan Green is putting together the Fire Department vegetation management program. Funding for this project runs out in the February and March time frame. Grants or additional funding from city council is being discussed.

### **Consent Items**

2. Approval of Draft Minutes for Meeting of August 7, 2019\*

Motion to approve minutes as revised: Couzin

Second: Bailey

Vote: 8 Ayes: Grimes, Stein, Flasher, Bailey, Couzin, Degenkolb, Simmons, Dean, Bedolla; 0 Noes; 1 Absent Simmons; 0 Abstain:

3. Approval of Draft Minutes for Meeting of September 25, 2019\*

Tabled to next meeting.

### **Action Items**

4. Council Referral to Update Seismic Transfer Tax Rebate Program for Sustainability Measures\*  
Presentation from Katie Van Dyke, Office of Energy and Sustainability.

R. Grimes left the meeting at 910p

5. 2019 Local Hazard Mitigation Plan Update\*

J. Bedolla Left the meeting at 755p.

J. Bedolla returned to the meeting at 756p.

Staff Recommendation to Disaster and Fire Safety Commission for adoption of the Final Draft of the 2019 Local Hazard Mitigation Plan

Motion to recommend that City Council adopt the 2019 Local Hazard Mitigation Plan (LHMP), and reminds Council of the LHMP's important role as part of the City's General Plan: to serve as a guiding document to ensure that hazard mitigation goals are integrated into all city planning decisions and activities, including land use decisions. This integration into the General Plan is described on page C-79 of the final draft 2019 Local Hazard Mitigation Plan: "As with prior LHMP updates, this Plan will be well-integrated into the City's existing and future plans and planning mechanisms.": Stein

Second: Dean

Vote: 8 Ayes: Stein, Flasher, Bailey, Couzin, Degenkolb, Dean, Bedolla, Grimes,; 0

Noes; Absent Simmons; 0 Abstain:

**Discussion Items**

6. Measure GG Public Outreach Update

Staff presentation on Berkeley Ready Outreach from Rachel Rodriguez.

P. Degenkolb left the meeting at 940p

S. Dean left the meeting at 941p

7. Special Tax Assessment for Wildfire Prevention Possible Future Actions\*

8. October's Public Safety Power Shutoff (PSPS) and Plans for Future PSPS's\*

9. Report from Community Disaster Prep Fair

10. Public Outreach on Emergency Preparedness

11. Future Agenda Items

**Adjournment**



Adjourn

Motion to adjourn: Bedolla

Second: Bailey

Vote: 5 Ayes: Stein, Flasher, Bailey, Couzin, Bedolla; 0 Noes; 4 Absent Grimes, Simmons, Degenkolb, Dean; 0 Abstain:

Adjourned at 9:45p

DRAFT

MEMO FOR DISCUSSION ON PUBLIC SAFETY POWER SHUTOFFS - OCTOBER MEETING - G COUZIN

To: Disaster and Fire Safety Commission  
From: Gradiva Couzin  
Date: 10/15/2019  
RE: PG&E Power Safety Power Shutoffs - Notes and possible actions

Greetings Fellow Commissioners,

In light of the recent PG&E Power Safety Power Shutoff (PSPS) that impacted Berkeley, I would like to discuss what steps the City of Berkeley needs to take to better support our vulnerable populations.

The shutdown took place during a high fire hazard period, and we can expect this will be the case with future shutdowns as well.

What can the city do in the event of a PSPS to make sure that seniors, people with disabilities, and all of our community is safe?

I would like to discuss possible ideas with the Commission, such as the following:

- \* Can Senior Centers offer temporary shelter for Berkeley seniors who do not feel safe in their homes due to a PSPS?
- \* Can Berkeley's public buildings offer free charging stations for phones & devices? {NOTE: This was provided at Berkeley Public Libraries}
- \* If Berkeley is forecasted to have a PSPS and has 7 days to prepare, what public outreach and other actions will the city take? Can the city distribute LED lights or other emergency supplies?
- \* Does Berkeley (perhaps in combination with other cities or the state) have any ability to pressure PG&E to provide MORE power charging stations or other support in the event of a PSPS? {NOTE: Only a single location in Alameda County, located in Oakland Lake Merrit, was provided}
- \* Can the City set up generators at key locations such as the senior centers?

I look forward to your thoughts and suggestions.

Thank you,

Gradiva

## 2019 DISASTER PREP FAIR - AFTER-EVENT NOTES FROM GRADIVA

East Bay Community Emergency Prep Fair on October 12, 10am-3pm at James Kenney Park (1720 8th St.) in Berkeley.

Primarily organized by BPDNN and CERT volunteers

Funding from Berkeley FD and Councilmembers – Approximate cost to city \$8500  
Additional funding from BDPNN and donors

Attending: Estimated 1,000

Volunteers: 76 on the day of the fair

Exhibitors: 25 exhibitors

Trainings: roughly 200 people attended 12 trainings including fire extinguisher practice, stop the bleed, how to use a radio, basic disaster prep, home hardening for wildfire and more

Located in West Berkeley, some of the fair features included:

Kid friendly (bouncy house, face painting, music and storytelling)

Elder & wheelchair friendly, ADA accessible

Gentle on the earth and neighborhood, with a shuttle bus from BART, bike tune-ups, free food (compostable supplies), water station (no plastic bottles), extra parking at the adult school & door to door marketing in the neighborhood



2019 DISASTER PREP FAIR - AFTER-EVENT NOTES FROM GRADIVA



2019 DISASTER PREP FAIR - AFTER-EVENT NOTES FROM GRADIVA



**Draft for Review by Commissions**  
**11/7/19**

**PROGRESS REPORT FOR  
PHASE 3 STUDY TO**

**UNDERGROUND UTILITY WIRES IN  
BERKELEY**

# ACKNOWLEDGEMENTS

## Participating Commissions

The following Commissioners participated in the preparation of this Conceptual Study:

Public Works Commission

Sachu Constantine, Nicholas Dominguez, Shane Krpata, Ray Yep

Disaster and Fire Safety Commission

Paul Degenkolb, Bob Flasher

Transportation Commission

Tony Bruzzone

## City of Berkeley

Phil Harrington, Public Works Director

Andrew Brozyna, Deputy Public Works Director

Keith May, Berkeley Fire Department

Hamid Mostowfi, Transportation Department

## Other Participants

Victoria Legg, former Disaster and Fire Safety Commissioner

Charles Scawthorn, earthquake and fire risk mitigation specialist

Gordon Wozniak, former City Councilmember

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## *Section 1*

# INTRODUCTION AND BACKGROUND

## City Council Referral

The Berkeley City Council referred a request to “develop a comprehensive plan for the funding of the undergrounding of utility wires on all major arterial and collector streets in Berkeley” to the Public Works Commission, Disaster and Fire Safety Commission and the Transportation Commission on December 16, 2014.

## Reports to Council

The three commissions organized an Undergrounding Subcommittee to respond to the referral. This subcommittee structured the study into four phases, as follows.

- Phase 1:** Conduct a baseline study to summarize Berkeley’s current status of undergrounding utilities, cost to complete the undergrounding of arterial and collector streets, and examples of where undergrounding programs have been implemented.
- Phase 2:** Conduct a conceptual study to determine the feasibility of utility undergrounding and report back to the City Council. The work in this phase includes our synthesis of literature on undergrounding, guiding our two Goldman School Masters candidates’ thesis project on matters related to undergrounding, meetings with utility and communications service providers, and meetings with municipalities having robust undergrounding programs.
- Phase 3:** Prepare a financial and implementation plan for the recommended streets to be undergrounded. The work may include community input, refinement of cost estimates, financing plan, relationship with utility service providers, implementation program design and schedule and other related matters.
- Phase 4:** Organize the financing, design and construction and performance monitoring of the approved program.

The subcommittee presented progress reports to the City Council on September 29, 2015 and March 28, 2017. The 2017 report included an updated work plan, the Harris and Associates baseline study, a proposal for studies by U.C. Berkeley’s Goldman School of Public Policy graduate students, and notes from meetings held with utility and communications service providers. The Council authorized the Subcommittee to complete the work through Phase 2 and report back to them.

The subcommittee presented the Phase 2 report to the City Council on February 27, 2018. The comprehensive report was well received and Council provided direction to proceed with the Phase 3 study.

## Progress Report for Phase 3 Study

A recommended work scope for the Phase 3 study was included in the Phase 2 report. This work was planned as a shared responsibility between the participating commissions and Public Works Department (PWD) staff. PWD did not have staff available for the work and a funding request was made to hire temporary staff. That request was approved by Council in November 2018. The PWD made attempts to retain a temporary staff person, but it was not successful. The Phase 3 study began at the beginning of 2019 with limited staffing from the PWD, Fire Department, and participating commissions. Due to the limited staffing, not all of the Phase 3 work scope has been completed. This is a progress report with what has been accomplished to date. The following is a summary of the work scope and the parts underway.

Phase 3 Work Tasks
<p><b>Task 1 – Define the Phase 3 projects</b></p> <p>A. <u>Major and Collector Streets</u> – The original work scope was to identify the major east/west routes to be undergrounded that would facilitate the travel of first responders and evacuation of residents. This work was done with input from Berkeley’s fire department and transportation department. Also, we conducted a review of other fire mitigation measures underway in the Berkeley area.</p> <p>B. <u>Coordinate with Microgrid Development</u> – The original work scope was to evaluate microgrids as a way to increase power reliability after a major disaster. This work is in process.</p> <p>C. <u>Review code standards</u> – The original work scope was to evaluate codes that would limit the loads carried by utility poles. This work is in process.</p>
<p><b>Task 2 – Develop the financing plan</b></p> <p>1. <u>Refine cost estimate for undergrounding</u>. The original work scope was to refine the cost estimates previously prepared by Harris &amp; Associates. This work has been done with a consultant from the City’s pre-approved consultant list and from other references.</p> <p>2. <u>Participate in CPUC Rule 20 review</u> – The original work scope was to monitor activities with the CPUC regarding Rule 20 modifications. This work is in process.</p> <p>3. <u>Evaluate funding options</u>. The original work scope was to evaluate funding options for Phase 3 projects in Berkeley. This work has been done.</p>
<p><b>Task 3 – Conduct community input</b></p> <p>The original work scope was to conduct community outreach and workshops. This work will be done following Council input on this progress report.</p>
<p><b>Task 4 – Coordinate with utilities</b></p> <p>The original work scope was to meet with PG&amp;E and telecom companies regarding the phase 3 projects. This work will be done at the appropriate time.</p>
<p><b>Task 5 – Prepare an implementation plan</b></p> <p>The original work scope was to prepare an implementation plan. This work will be done in the remaining part of the Phase 3 study.</p>

## *Section 2*

### PROGRESS WITH PHASE 3 STUDY

A lot has happened since the Phase 2 undergrounding report regarding our understanding of the risks of wildland fires and actions being taken to mitigate the risks. Section 3 of this report summarizes the current information. Another important action is the Berkeley City Council's approval of a resolution declaring wildfire prevention and safety a top priority in the City of Berkeley (City). This occurred in October 2019 and the Council agenda item is in Appendix A.

This section provides information on the progress with the Phase 3 study.

#### Undergrounding Along Key Evacuation Routes

Given that our community has significant barriers to ensuring safe evacuation for our community because of our proximity to wildland, our narrow crowded roadways, a daily commuting population, and an aged electrical infrastructure that is outside of our control, we look to undergrounding utility poles on designated evacuation routes to ensure our community members can safely escape advancing fire and first responders can access areas where they can defend against advancing fire.

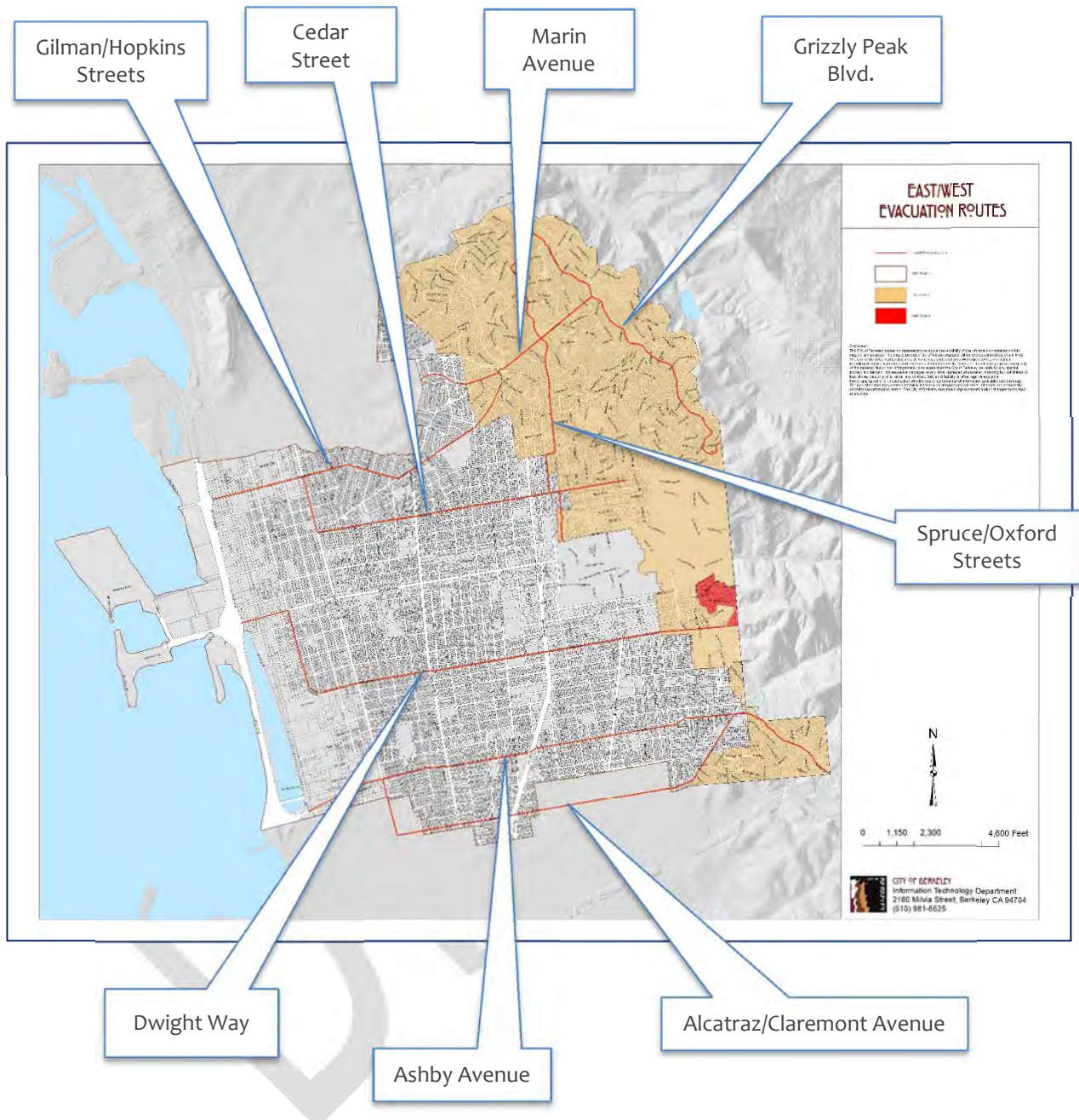
There are multiple cases of downed powerlines blocking critical escape routes. Images of persons trapped because of downed power lines in the Tunnel Fire are seared in our memory. One common cause of tragic death by wildfire is the inability to outrun fire because of downed power lines and poles blocking roadways. Supporting an undergrounding program for emergency routes is one tool we have to reduce the damage of wildfire by creating safer passage for community members and passage for first responders to protect our community.

Representatives from Berkeley's Fire Department, Transportation Department and participating commissions met to review the critical evacuation routes in the City. The evaluation included the following factors:

- A major wildland fire can affect all of Berkeley.
- Consider the criticality of the routes for ingress and egress, including movement of people north/south and east/west.
- Review any barriers to the use of these routes, including width of street, capacity or blockages.
- Review the presence of overhead utility wires and the potential to underground them.

The routes selected for this study are shown on Figure 1.

Figure 1 – Undergrounding Along Major Evacuation Routes



Berkeley’s Fire Department is planning to engage a consultant to review and refine the City’s evacuation plan. This will include evaluation of Berkeley’s narrow streets, the capacity for vehicles, the direction of travel, necessary signage, and other factors. This study will work with that consultant, the Fire Department, and others to prioritize the streets to underground utilities. We plan to use a multi-criteria process.

The history of undergrounding in Berkeley goes back at least to the 1970’s. Of the 25.6 miles of arterial streets, 12.5 miles have been undergrounded (49%). Of the 36.1 miles of collector streets, 11.3 miles have been undergrounded (31%). A map showing the undergrounding completed or scheduled to be completed in Berkeley is in Appendix B.

## Estimated Cost of Undergrounding

The project team researched the cost of undergrounding from many sources. During Phase 1 of this study, an estimate with prepared by Harris and Associates. This was supplemented with costs from Palo Alto, San Diego and published sources. The work scope of the Phase 3 study was to refine the cost estimates and the engineering firm Bellecci and Associates was retained to do the work. Their analysis is summarized on Table 1 and their report is included in Appendix C.

Table 1 – Estimated cost to underground overhead wires on evacuation routes

Street	Undergrounding length, miles	Total cost, \$
Alcatraz/Claremont Avenues	2.30	11,658,700
Ashby/Tunnel Road	2.81	22,724,880
Dwight Way	3.31	24,633,580
Cedar Street	1.87	12,637,460
Gilman/Hopkins Streets	1.97	14,589,210
Marin Avenue	1.24	9,427,720
Grizzly Peak Blvd.	1.35	7,982,550
Spruce/Oxford Streets	2.07	12,239,910
<b>Total</b>	<b>16.92</b>	<b>115,900,00</b>
<b>Average cost/mile</b>		<b>6,800,000</b>

The estimate includes the following factors:

- The cost estimates are inclusive of trenching, conduits, wiring, service conversions, and engineering. Street lighting is not included.
- The program starts in the year 2023 and inflation is included to that date.
- Undergrounding all of the routes will be done as an overall program to achieve economies of scale.
- The estimates have considered levels of complexity for undergrounding in the various streets.

The estimated cost in 2019 dollars is \$95.3 million. If the undergrounding is done as individual projects (not as a program), the estimated cost is \$135.2 million.

This cost estimate aligns with our other research. For a large undergrounding program, such as with the City of San Diego, the cost is about \$4 million/mile. For smaller individual projects, the cost can be up to \$10 million/mile.

## Funding Strategies

### City Revenues Sources

The City’s General Fund (GF) gets the majority of its money from: a) property taxes and property-based revenues; b) economically sensitive revenues such as sales taxes, business license tax,

transient occupancy tax, etc.; and c) interest and fees such as ambulance fees: and parking and traffic fines. The balance of the City budget is comprised of other funding sources such as grants, special tax revenue (e.g. parks, libraries and paramedic services), and fees for specific services (marina berth fees, garbage and sewer fees, building permits, etc.).

California property taxes are set at 1% of the assessed value of the property. The City receives about a third of every property tax dollar collected in Berkeley, and schools get 43% of every property tax dollar. Sales tax is 9.25 cents of every dollar and the City gets 1.00 cent. Other potential sources of revenue are General Obligation (GO) Bonds and Revenue bonds. In June of 2019, Moody’s Rating Agency upgraded the City’s GO bonds from Aa2 to Aa1, which is the 2<sup>nd</sup> highest for long-term debt. In its credit analysis report, Moody’s stated that *“The City of Berkeley, CA (AA1) has a robust tax base and economy benefiting from its central Bay Area location. The city’s assessed valuation (AV) is large and growing, supported by strong resident wealth indicators. The city has a very strong fiscal position, with growing revenues, high available fund balances and strong financial management policies and practices. The city’s debt level is moderately low, but the unfunded pension liability is high, which the city is proactively addressing through establishing and funding an irrevocable pension trust.”*

In summary, Berkeley has an exceptionally strong tax base and its economy benefits from its central Bay Area location. The City has a very strong financial profile, and in the last six years has significantly improved its reserve levels and liquidity.

## Financing Options for Undergrounding

### Rule 20 Funding

The California Public Utilities Commission (CPUC)’s Tariff Rule 20 is the vehicle for the implementation of the underground conversion programs. Rule 20 provides three levels, A, B, and C, of progressively diminishing ratepayer funding for the projects. There is also rule 20D adopted in 2014, which currently applies only to San Diego Gas & Electric utility for undergrounding and other fire hardening techniques in their state designated Very High Hazard Fire Zone. Under Rule 20, the CPUC requires the utility to allocate a certain amount of money each year for conversion projects. Upon completion of an undergrounding project, the utility records its cost in its electric plant account for inclusion in its rate base. Then the CPUC authorizes the utility to recover the cost from ratepayers until the project is fully depreciated. Rule 20 requires the utility to reallocate funds to communities having active undergrounding programs in amounts initially allocated to other municipalities but not spent. Cities may also commit to future 20A allocations for five years. The following table is a summary of the Rule 20 categories.

Table 2 -- Summary of Rule 20 Categories and Ratepayer Contribution

Rule 20 categories	California Ratepayer Contribution	Applicability
20 A	About 100%	Primarily ratepayer financed
20B	20%	Shared ratepayer and homeowner financed
20C	Minimal	Primarily homeowner financed
20D	About 80%	Used by San Diego Gas & Electric

Two existing Rule 20A funded undergrounding districts, formed in the early 1990s, are scheduled for completion in 2020 and 2025 respectively.

- Berkeley Grizzly Peak Summit, UUD #48 – in the engineering phase
- Berkeley Vistamont, UUD#35A - in the planning phase

Both undergrounding districts have paid their share for connection from the street to service boxes and for street light replacement.

Rule 20A is the preferred option for cities because the utility pays almost all of the cost for undergrounding. Unfortunately, the funds available are very small compared to the costs of undergrounding. Berkeley's current Rule 20A allotment is ~\$0.53 million/year. The account balance as of March 31, was \$9,009,095. Most of this, if not all of it, will be used on the UUD 48 project. A 5-year borrow amounts to about \$2,660,390.

For most cities, the annual 20A allotment is inadequate to sustain an ongoing undergrounding program. Because cities and counties are able to trade or sell unallocated Rule 20A credits, some cities have begun to sell their unused credits at a substantial discount of ~50%. If Berkeley could find willing sellers of unused 20A credits, it could use \$3 million/yr of GF monies to annually purchase \$6 million credits, which would allow it underground ~1 mile per year.

The City rolled out 20B project guidelines in 2000 for neighborhoods interested in forming Rule 20B districts. Although many neighborhoods have expressed interest and continue to do so, one neighborhood, Thousand Oaks Heights, formed and completed an undergrounding district. A good source of information on Rule 20B procedures is from Berkeley Citizens for Utility Undergrounding. Their website is: [www.berkeleyundergrounding.com](http://www.berkeleyundergrounding.com)

Eleven Cities in California are leading the way to appeal to the CPUC redefine eligibility for 20A funds to include and increase 20A fund allocations to communities in California's Very High Hazard Severity Fire Zones for the express purpose of fire safety. A resolution was presented by the League of California Cities at their annual conference in October 2019. The League took no action on the resolution and sent it back to the Committee on Environment for further review. Despite this action, the League continues to lobby the CPUC.

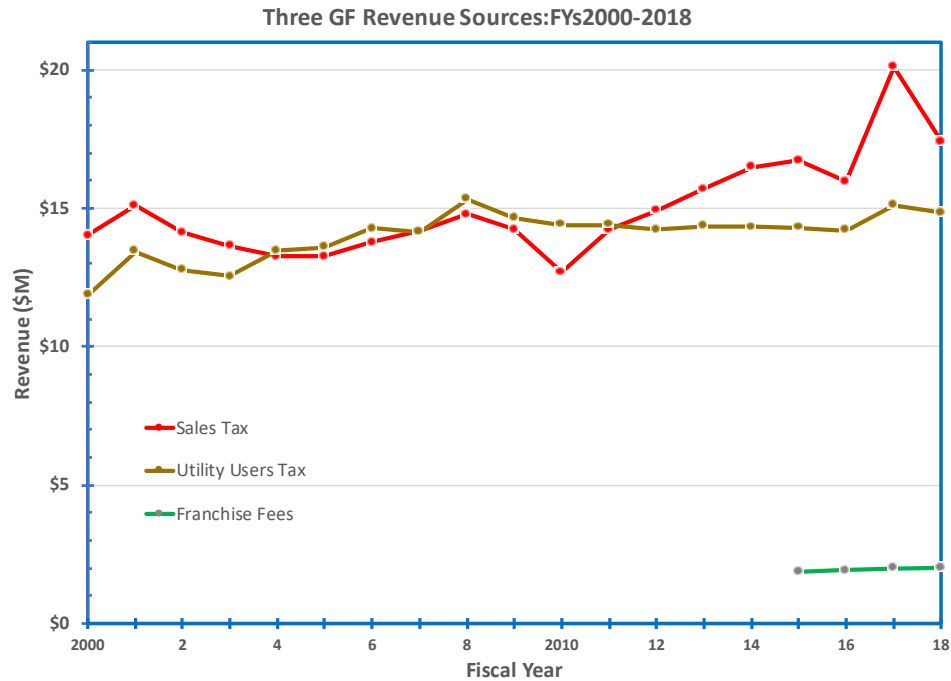
### **Adoption of Utility Tax or Local Sales Tax for Undergrounding**

Another strategy for funding local undergrounding projects would be the adoption of a local sales tax or Utility User's Tax that would be dedicated to funding utility undergrounding projects. Both of these would be a "special tax" as defined by Proposition 218 and Proposition 26 and require 2/3's voter approval for adoption. Bonds could be issued secured by the sales tax or utility user's tax to fund the costs of the undergrounding projects. One benefit of this approach is that it could be done on a citywide basis and it may spread the tax burden across a broader base of taxpayers beyond just property owners.

#### **1. Utility Users Tax (UUT)**

The UUT is the 4<sup>th</sup> largest source of GF revenue for the City of Berkeley. The annual revenue has been very stable between \$12 and \$15 million over the last two decades. See Figure 2. The UUT is charged at a rate of 7.5% to all users of a given utility (electricity, gas, telephone, cable, and cellular), other than the corporation providing the utility. The tax is not applicable to State, County, or City agencies, or to insurance companies and banks. About 60% of the UUT revenues are generated from gas and electric services and about 40% from telecommunications.

Figure 2 – Revenue from UUT, Sales Tax, and Franchise Fees for FY2000 - 2018



Because the UUT revenues have been very stable over the last two decades and the tax rate is relatively modest at 7.5%, raising the UUT rate could generate a substantial cash flow that could be used to issue revenue bonds for a large-scale project, such as utility undergrounding. For example, if the UUT was increased by 2.5, and 5.0 percentage points, additional annual revenue could be generated of \$5, and \$10 million. The additional cash flow could fund revenue bonds and pay-as-you-go funding to underground all of the emergency evacuation routes in Berkeley.

Since the General Fund is currently running an annual surplus of ~\$20 million/annum, another option that would reduce the rate-payer burden would be to assign \$5 million of the current UUT revenue to undergrounding and only implement a 2.5 percentage point increase in the UUT. This option would also generate \$10 million of revenue for undergrounding.

Table 3 shows the existing revenue and potential new revenue if the UUT was increased to 10.0%, and 12.5% percentage points.

Table 3 – Existing and Potential New Revenue from UUT

UUT	7.5%	10.0%	12.5%
Revenue (\$millions)	\$15	\$20	\$25
Additional Revenue (\$millions)	0	\$5	\$10

## 2. Sales Tax

The total sales tax rate for Alameda County is currently 9.25% and Berkeley receives 1.00%. Over the last twenty years, the sales tax revenue has increased from about \$14 million in 2000 to ~\$17 million in 2018. If Berkeley were to increase its sales tax rate from 1.0 to 1.5%, additional revenue



of ~\$8.5 million/year could be generated that could be used to finance the undergrounding of utilities along emergency exit routes.

### **Franchise Fees – Cable, Electric Gas**

Cable and Electric & Gas companies pay the City a franchise fee to use the public right-of-way. In 2018 franchise fees total ~\$2.0 million and are projected to increase slightly to \$2.1 million by 2021. The rate of the franchise fees is fixed by state law and cannot be changed by the City.

Currently, franchise fees accrue to the General Fund. However, as stated in the Moody's Rating Agency Report, the City's operating revenues to expenses is a strong 1.08 times. The City ended fiscal 2018 with general fund available balance of \$80 million or a very strong 41.8% of general fund revenue. This followed a \$20.2 million surplus for the year, resulting from strong revenue growth and strong expenditure management.

Since franchise fees are generated by private utilities that utilize the public right-of-way, it would be appropriate to consider assigning these funds to a public right-of-way account to finance revenue bonds for undergrounding utilities.

Unlike the City of Berkeley, San Barbara imposed a 1% franchise fee on its electric provider, after Proposition 13 had passed and before Propositions' 26 and 218 were passed. In 1999, Santa Barbara increased that fee to 2%. In 2001, the City of San Diego increased its franchise fee and imposed a franchise surcharge to pay for undergrounding its residential streets. These costs were then passed on to the utility users by the utility providers.

Santa Barbara was sued by a local businessman who argued that the imposition of this additional fee was an illegal tax because, contrary to Proposition 218, it was imposed without voter approval. A similar lawsuit was filed against San Diego whose surcharge fee was specifically earmarked for undergrounding residential streets, had an end date of 2065 and a provision that what was not spent in any given year would be deposited in the city's General Fund.

The trial court accepted the City of Santa Barbara's argument that the franchise fee increase was not a tax as defined by Propositions 26 and 218. This decision was later overturned by an Appeals Court but a California Supreme Court decision released in June 2017 ruled in favor of Santa Barbara. The decision was based on Proposition 13 law which preceded Propositions 26 and 218. The decision is briefly summarized as follows:

- Fees for use of government property are not taxes requiring voter approval as the fee payor gets something of value in return
- Such fees generate discretionary (General Fund) revenues to be used for any lawful purpose of the agency
- Standing to challenge a revenue measure is limited to those having a legal duty to pay it
- Fees must not exceed any reasonable value of the franchise but be reasonably relating to the value of the franchise
- The 2% franchise fee imposed by the municipality on Southern California Edison must recover cost of fee only from customers in the city imposing the fee and shown as a separate line item on the utility billing statement

The lawsuit filed against the City of San Diego alleging that the surcharge was an illegal tax imposed by the City without voter approval was dismissed by a Superior Court judge in August 2018, who agreed with the City that the surcharge is a fee paid to the City in exchange for the right to use the City's electric infrastructure.

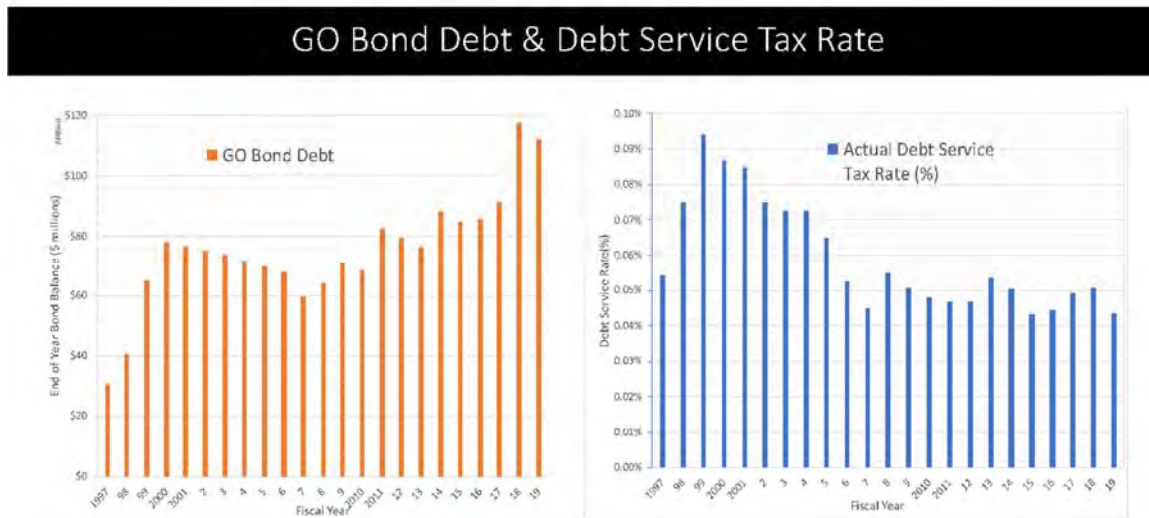
**General Obligation Bonds**

From 1997 to 2000, the City increased its GO bond debt from \$30 million to \$80 million. However, due to a strong increase in total property assessed values (AVs), the debt-service rate only doubled from 0.05% to 0.09%. Moreover, during the next six years, the debt-service rate decreased back to ~0.05%, as AVs of Berkeley property continued to increase and bond principal was paid down.

After the Financial Crisis of 2008, interest rates fell dramatically. The City took advantage of the lower rates to refinance old debt and to issue new debt: Measures FF, M & T1. From 2007 to 2019, the City doubled its bond debt, while keeping its debt service rate constant due to lower interest rates and the strong appreciation in property AVs.

Because of Berkeley's robust tax base and strong economy which benefits from its central Bay Area location, it should be able to issue additional GO bonds during the coming decade, while keeping the debt-service rates within the historic range.

Figure 3 -- GO Bond Debt & Debt Service Tax Rate for FYs1997-2019



Funding alternatives for the City to consider include:

**Option 1 – 15-year plan, Pay-as-you Go**

- Increase of the Utility User Tax (UUT) from 7.5% to 10% - generates ~\$5M/yr cash flow of undergrounding
- Use ~\$2 Million in Franchise Fees to purchase discounted 20A credits – generates \$4 million in credits

**Option 2 – 15-year plan, Front loaded**

- Increase UUT from 7.5% to 10% - generates ~\$5M/year cash flow
- Use \$2 million in Franchise Fees to issue ~\$35 million revenue bond

**Option 3 – 15-year plan, Pay-as-you-Go**

- Increase sales tax from 1.0 to 1.5% - generates ~\$8.5 million/year

**Option 4 – 10-year plan, Front loaded**

- Increase sales tax from 1.0 to 1.5% - generates ~\$8.5 million/year
- Use \$2 million in Franchise Fees to issue ~\$35 million revenue bond

DRAFT

## Section 3

# FIRE RISKS AND MITIGATION MEASURES

This section describes the potential for a major Wildland Urban Interface fire in Berkeley. It also presents the range of actions that can be taking by Berkeley and other agencies to reduce the risk of having a fire and to mitigate the impacts from a fire.

## Fire History and Environmental Risk Factors

### Fire Risk in California

2017 was the hottest year on record in California, following 5 years of drought that killed 129 million trees in California. Seven of the ten deadliest and most destructive fires in California's history took place during the last 10 years, each one worse than ever experienced before. The most destructive fires in California, in order were:

- Camp Fire, Butte Co., 86 deaths, 153,000 acres burned, 18,000 structures lost (November 2018)
- Tubbs Fire, Napa & Sonoma counties, 22 deaths, 36,800 acres burned, 5,600 structures lost (November 2017)
- Cedar Fire, San Diego county, 25 deaths, 273,000 acres burned, 2,900 structures lost (November 2003)
- Mendocino Complex, Mendocino, Lake, Colusa and Glenn counties, 1 death, 459,000 acres burned, 280 structures lost (July 2018)

2017 was a devastating fire year highlighted by the Tubbs Fire, 2018 was highlighted by the Camp Fire, and 2019 is another severe fire year in northern and southern California. The Tubbs Fire in Santa Rosa made it clear that the flatlands are not immune from catastrophic fires. Fire raced down from the hills and flying embers started multiple smaller fires.

The following is an excerpt from the State of California's Fourth Climate Change Assessment, 2018, regarding projections on wildfires:

*Impact: Climate change will make forests more susceptible to extreme wildfires. By 2100, if greenhouse gas emissions continue to rise, one study found that the frequency of extreme wildfires burning over approximately 25,000 acres would increase by nearly 50 percent, and that average area burned statewide would increase by 77 percent by the end of the century. In the areas that have the highest fire risk, wildfire insurance is estimated to see costs rise by 18 percent by 2055 and the fraction of property insured would decrease.*

### Fire Risk to Berkeley

The Berkeley and Oakland area has had a long history of wildland fires. The following is excerpted from the Hills Wildfire Working Group, Wildfire Problem Statement, as posted on the East Bay Regional Park District website:

Fire records for the East Bay Hills are sketchy, yet newspaper clips and old fire planning studies document an active and dangerous fire history. During the 75-year period between 1923 and 1998, eleven Diablo wind fires alone burned 9,840 acres, destroyed 3,542 homes, and took 26 lives, with over 2 billion dollars in financial loss. During the same period, three large west wind fires burned 1,230 acres of grass, brush, trees, and 4 homes.

News reports document the major fires that have threatened the East Bay Hills:

- **1923 Berkeley-** A Diablo wind fire that started East of the Main ridge at 12 noon on a Monday in September destroyed 584 homes North of the U.C. Campus. No conflagration was ever more out of control. None ever demonstrated more vividly its power to defy all defensive resources once it gained headway. It was extinguished only by an act of providence.



Figure 4 – 1923 Fire in Berkeley  
Photo by Cal Alumni Assoc.

- **1931 Leona-** 5 homes were lost and 1,800 acres burned by a Diablo wind fire that started at 7 a.m. on a Monday morning in November. "Splitting of the fire into two huge infernos left the hundreds of fire fighters almost helpless to combat the double conflagration."
- **1933 Redwood/Joaquin Miller-** 1 life and 5 homes were lost with 1,000 acres burned by a Diablo wind fire that started on the ridge at 7 a.m. on a Monday morning in November. "The fire traveled along the tops of the thick groves of trees for great distances, never reaching the ground until after the main blaze had passed."
- **1937 Broadway Terrace-** 4 homes were lost and 1,000 acres burned by a West wind fire that started at 3 p.m. on a hot Saturday afternoon in September. "Lack of water caused by exhaustion of reservoirs in the hills hampered fire fighters. The fire at times crept slowly through the brush and at other times leaped from treetop to treetop."
- **1946 Buckingham/Norfolk-** 1,000 acres were burned by a rekindled ridge top Diablo wind fire at 5:00 am on a Monday morning in September. "Sheer-walled canyons were quickly raging infernos. Flames raced so fast in the stiff wind they formed a fiery canopy over stands of pine and eucalyptus." In the ten years following this fire, at least 2 other large fires occurred in Claremont Canyon (Claremont above water tank to Stonewall) and Panoramic Hill (South of Panoramic to fire road) that did not involve structures because few existed at the time.
- **1960 Leona-** 2 homes were lost and 1200 acres were burned by a Diablo wind fire that started at 11 a.m. on Saturday morning in October. "The 84-degree temperature and low humidity aided

the flames which roared with express train speed up steep slopes. Flames roared 50 ft. into the air."

- **1970 Buckingham/Norfolk**- 37 homes lost, 36 damaged, and 204 acres burned in a Diablo wind fire that started near the ridge **at 10 a.m.** on a Tuesday morning in September. The wind was swirling in every direction. The heat was so great that some houses were exploding before the fire actually reached them.
- **1980 Berkeley/Wildcat**- 5 ridge top homes were lost in a Diablo wind fire that started at 2 p.m. on a Saturday afternoon in December. The blaze, fed by thick underbrush and tree (eucalyptus) debris, was so hot and fast that homes literally exploded.
- **1991 Oakland/Berkeley**- The fire was rekindled at 10:45 a.m. below Buckingham/Norfolk roads, on a Sunday morning in October by a ridge top Diablo wind. The firestorm burned over 3 square miles, killed 25 people, gutted 2,900 homes and caused \$1.68 billion in damage. It was the most destructive wildfire in California history.



Figure 5 – 1991 Oakland Hills fire  
Photo by SF Chronicle

- **1994 Castro Valley**- 3 homes were lost in a windy October afternoon near Lake Chabot Road when fireworks ignited a grass fire in a horse pasture below homes that provided no defensible space behind their residences.

If a fire occurs in Berkeley or the East Bay hills, how rapidly will it spread, and to where? While fires can occur under a wide variety of conditions, fires are most likely to rapidly spread and grow when high winds typically from the northeast direction coincide with hot dry conditions. This condition, winds descending the western slopes of the Coast range and known locally as a Mono or Diablo wind, is similar to the Santa Ana winds in southern California.

Given specified wind speed, fuel moisture and other data, fire spread can be computed using methods such as embodied in FlamMap (<https://www.firelab.org/project/flammap>). Such calculations are beyond the scope of this study. However, an estimate of how rapidly a fire might spread under Red Flag conditions can be gleaned by studying fire spread for events similar to those of concern. Such events include:

- The 1991 Oakland Hills fire began about 11 am during a Diablo wind – within 15 minutes it had run 2km (6,600 ft) downhill – six hours later it had run 4.5 km (15,000 ft). From Wildcat Canyon Road at Berkeley's border with Tilden Park, to the Marin Avenue intersection at the Marin Circle, is 2.2 km. In other words, the East Bay Hills fire would have spread from Tilden Park to Marin Circle in about 20 minutes.
- The 2017 Tubbs fire spread at a rate of about 2 miles per hour, meaning it would have spread from Tilden Park to Marin Circle in about 37 minutes.

The North Berkeley Hills are a Wildland Urban Intermix area with about 26,000 residents and 7,453 assessor parcels. The likelihood of a major fire in this area similar to the Oakland Hills fire affecting this area is about 0.002 per year, with Tilden Park itself having much higher likelihood (as much as 0.01 per year). Climate change may be increasing this likelihood, although how much is difficult to say. Diablo winds (“Red Flag” conditions) occur on average about 2.5 times each year, with about half those occurrences being in October to November when wildland fuels are very dry. **A fire occurring in Tilden Park or at the top of the East Bay hills under Diablo wind conditions would race down the hill and could reach Marin Circle in about 30 minutes.**

CalFire has expanded its designation of high and extreme hazard fire zones as a result, with the subsequent loss of home insurance by many who live in these hilly and windy areas of Berkeley. Cities that expect to rebuild after fires must develop a resilience strategy ahead of time to ensure that they don’t lose citizens and businesses.

## Reducing the Risk of a Fire

With the increasing risks of wildland fires from extreme climatic conditions, there are actions that the City of Berkeley, our residents, and local agencies can do to reduce the risk of a fire. The following summarizes the actions we can take through educating the public of the risks, reducing vegetation that fuels fires, and PG&E’s plans to shutoff power during high risk climatic conditions.

### Public Education

The National Weather Service issue Red Flag Warnings & Fire Weather Watches to alert fire departments of the onset, or possible onset, of critical weather and dry conditions that could lead to rapid or dramatic increases in wildfire activity. A Red Flag Warning is issued for weather events which may result in extreme fire behavior that will occur within 24 hours. During these times extreme caution is urged by all residents, because a simple spark can cause a major wildfire. The type of weather patterns that can cause a warning include low relative humidity, strong winds, dry fuels, the possibility of dry lightning strikes, or any combination of the above.

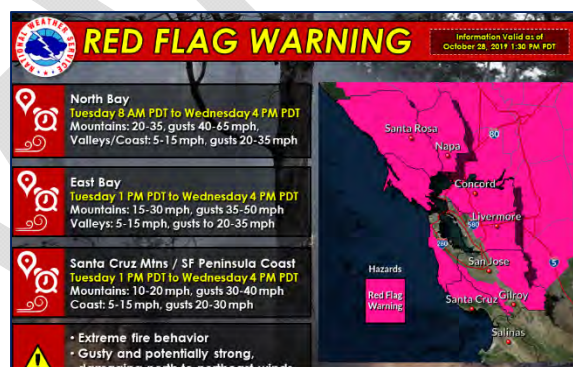


Figure 6 – AC Alert with Red Flag Warning

### East Bay Regional Parks District

The East Bay Regional Parks District issues the following restrictions to the danger of fires on Red Flag days:

- No open fires, campfires, wood burning or charcoal barbecues are permitted.
- Campground visitors must clear all flammable material for ten feet from their camp stove.
- Smoking is prohibited in ALL East Bay Regional Parks.
- No use of gasoline powered equipment (generators).
- Increased monitoring, patrol and strict enforcement of these restrictions.

## **City of Berkeley**

The public is notified of Red Flag conditions through AC Alert, City of Berkeley notifications, Mayor and Councilmember newsletters and local news broadcasts. Berkeley Councilmembers Susan Wengraf, Lori Droste, and Sophie Hahn held a Fire Safety Town Hall in May 2019. Representatives from the Berkeley Fire Department, the East Bay Regional Parks, the Orinda Fire Department, and UC Berkeley gave presentations about what their jurisdictions are doing to mitigate and prevent wildfires. Topics covered included:

- Safe Passages pilot program (vehicle access and egress)
- Evacuation routes
- Vegetation management
- Notification and warning systems
- East Bay Regional Parks fire mitigations
- New technologies
- State legislation
- What neighboring jurisdictions are doing

## **Vegetation Management**

Wildland fire behavior is controlled by three factors: fuels, weather and topography. Because it is impractical to control the weather and topography around us, the only practical way to modify fire is by managing its fuel source. Fire fuel refers to anything that has the ability to burn and spread fire, like trees, shrubs and dried grass.

## **State of California**

In March 2019, Governor Newsom proclaimed a state of emergency throughout California ahead of the coming fire season. The Governor directed his administration to immediately expedite forest management projects that will protect 200 of California's most wildfire-vulnerable communities. This action follows the release of a report earlier by the California Department of Forestry and Fire Protection (CAL FIRE), which identified 35 priority fuel-reduction projects that can be implemented immediately to help reduce the public safety risk for wildfire. The state of emergency provides time-saving waivers of administrative and regulatory requirements to protect public safety and allow for action to be taken in the next 12 months, which will begin to systematically address community vulnerability and wildfire fuel buildup through the rapid deployment of forest management resources.

## **Regional Agencies**

The East Bay Regional Park Fire Department uses several different methods to modify or reduce the amount or availability of wildland fuels for any fire that may occur. Ladder and surface fuels such as grass, brush, forest litter, and down logs and branches are modified or removed by hand crews, prescribed fire, mowing, weed-eating, masticating, or animal grazing. Dense tree stands are often thinned to remove some of the trees that typically contributes to fuel loading and to reduce the potential for wildfire to spread in the tree canopies. Visitors to the East Bay Regional Parks may encounter cattle, sheep or goats grazing on the grasslands. The District uses grazing animals as a practical and economic resource management tool. Grazing helps reduce fire hazards by controlling the amount and distribution of grasses and other potential fuel.



The Orinda-Moraga Fire District entered into an agreement with CAL FIRE in May 2019 to begin planning and work on the North Orinda Shaded Fuel Break (NOSFB) project. The project area encompasses 1,515 acres along 14 miles of open space in the East Bay between the eastern portions of Tilden Regional Park and Pleasant Hill Road. This project is being carried out to reduce dangerous wildfire fuels in a deliberate manner designed to minimize environmental impacts to wildlife and protected plants. This area receives seasonal “Diablo winds”, that were the dominant influence in several major nearby wildfires. These fuels are understory vegetation, dead/dying trees, and highly combustible brush. Reducing the quantities of these fuels will lower the intensity and speed of a wildfire. This fuel break will provide essential opportunities for firefighting success by providing areas of lower fire intensity and enhanced fire line production rates.



Figure 7 – North Orinda Fuel Break Map from SF Chronicle

**City of Berkeley**

Berkeley currently has an active vegetation management program both for its public space and for property owners in the Very High Hazard Fire Zone. Property owners can learn about appropriate vegetation management on its Wildfire Evacuation- City of Berkeley webpage. We know that effective vegetation management includes reducing fire laddering fuels, removing dead limbs, limbing up trees, regulating the height of hedges, and maintaining at least 5 feet of vegetation-free space next to homes. Currently, compliance is largely voluntary except for annual inspections of vacant properties in the Very High Hazard Fire Zone (VHHFZ) and all properties in the Extreme Hazard Fire Zone (EHFZ).

**PG&E**

PG&E also has a vegetation management program. The following is from the PG&E website:

*In response to the growing risk of wildfire in our state, we are enhancing our vegetation and safety work. Our focus will be on addressing vegetation that poses a higher potential for wildfire risk in high fire-threat areas as designated by the California Public Utilities Commission (CPUC). Our Enhanced Vegetation Management program involves multiple steps to help further reduce the risk of trees, limbs and branches from coming into contact with power lines in high fire-threat areas.*

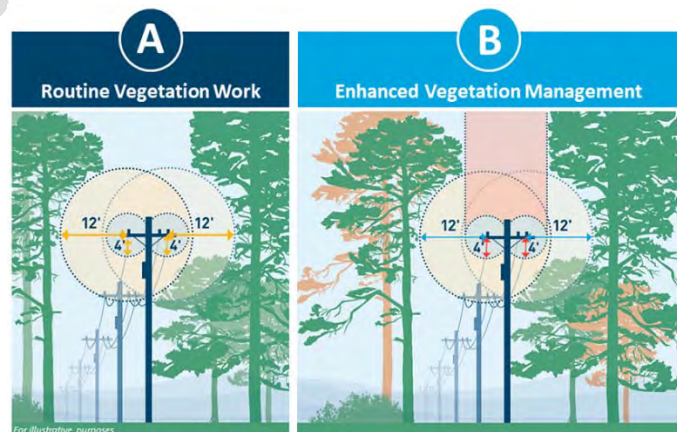


Figure 8 – PG&E Vegetation Management

The San Francisco Chronicle reported in October 2019 that PG&E was behind schedule in carrying out their vegetation management program. The following is an excerpt from their report:

*As the most dangerous part of California's wildfire season continues, Pacific Gas and Electric Co. says it has finished only about 31% of the aggressive tree-trimming work it planned this year to prevent vegetation from falling on power lines and starting more deadly infernos.*

*PG&E told a federal judge Tuesday that as of Sept. 21, the company had completed 760 miles out of the 2,455 miles of power lines where it intends to take extra steps to cut back vegetation. The company said its ability to meet the tree-trimming target by the end of the year depends on whether it can "significantly increase the number of qualified personnel engaged" in the effort.*

## **Electrical Power Service Curtailments**

The cause for some of the recent wildland fires has been traced back to faulty overhead electrical wires or equipment. As an extreme measure to help reduce the risk of a fire, PG&E has proposed shutting electricity to high risk areas under Red Flag conditions. This program, called Public Safety Power Shutoff (PSPS), has been approved by the CPUC.

### **CPUC**

The CPUC has reviewed the risks of wildfires and worked with the State's investor-owned utilities and determined the following:

*Wildfires are more destructive and deadlier than in the past, and the threat of wildfires is more prevalent throughout the state and calendar year. The overall pattern shows the emerging effects of climate change in our daily lives.*

*Throughout the year, the CPUC works with CalFire and the Office of Emergency Services to reduce the risk of utility infrastructure starting wildfires, to strengthen utility preparedness for emergencies, and to improve utility services during and after emergencies. Interagency coordination, and cooperation from the utilities is essential when the threat of wildfires is high.*

*The State's investor-owned electric utilities, notably Pacific Gas and Electric Company (PG&E), Southern California Edison, and San Diego Gas & Electric (SDG&E), may shut off electric power, referred to as "de-energization" or Public Safety Power Shut-offs (PSPS), to protect public safety under California law, specifically California Public Utilities Code (PU Code) Sections 451 and 399.2(a).*

*On July 12, 2018, the CPUC adopted Resolution ESRB-8 to strengthen customer notification requirements before de-energization events and ordered utilities to engage local communities in developing de-energization programs. Utilities must submit a report within 10 days after each de-energization event, and after high-fire-threat events where the utility provided notifications to local government, agencies, and customers of possible de-energization though no de-energization occurred.*

### **PG&E**

PG&E has implemented the PSPS program. October 2019 saw the occurrence of dry conditions, Red Flag days and strong Diablo and Santa Ana winds in California. The following events have happened:

- **October 9 – 10, 2019** -- PG&E implemented its first major PSPS. About 800,000 homes and businesses in 34 counties lost power. This event tested the readiness of PG&E’s public notification system and saw their website overwhelmed with contacts. Also, other facilities (such as the Caldecott Tunnel) scrambled to find back up power.
- **October 26 - 28, 2019** -- PG&E implemented a PSPS that affected about 1 million homes and businesses in 36 counties. The total number of people affected was more than 2.5 million. This was the largest intentional power shutoff in PG&E’s history. This shutoff was in response to a very strong Diablo wind condition and very dry conditions.




Other shutdowns are proposed, depending on climatic conditions. PG&E’s policies and procedures require inspection of their power lines and equipment before re-energizing. An outage can last several days. Figure 9 shows a summary of PG&E’s PSPS policies and procedures.

SEP 2019

## PACIFIC GAS AND ELECTRIC COMPANY PUBLIC SAFETY POWER SHUTOFF POLICIES AND PROCEDURES

The following is a description of Pacific Gas and Electric Company’s (PG&E) policies and procedures related to proactively turning off power for safety – and later restoring power – when gusty winds and dry conditions, combined with a heightened fire risk, threaten a portion of the electric system. This is often called proactive de-energization and restoration in the industry; PG&E is calling this a **Public Safety Power Shutoff**.

Given the continued and growing threat of extreme weather and wildfires, and as an additional precautionary measure following the 2017 and 2018 wildfires, we are expanding and enhancing our Community Wildfire Safety Program to further reduce wildfire risks and help keep our customers and the communities we serve safe. Our ongoing and expanded wildfire safety actions include:

 <b>REAL-TIME MONITORING AND INTELLIGENCE</b>	 <b>NEW AND ENHANCED SAFETY MEASURES</b>	 <b>SYSTEM HARDENING AND RESILIENCY</b>
<ul style="list-style-type: none"> <li>Coordinating prevention and response efforts by monitoring wildfire risks in real time from our Wildfire Safety Operations Center</li> <li>Expanding our network of PG&amp;E weather stations to enhance weather forecasting and modeling</li> <li>Supporting the installation of new high-definition cameras in high fire-threat areas</li> </ul>	<ul style="list-style-type: none"> <li>Further enhancing vegetation management efforts to increase focus on vegetation that poses a higher potential for wildfire risk</li> <li>Conducting accelerated safety inspections of electric infrastructure in high fire-threat areas</li> <li>Disabling automatic reclosing of circuit breakers and reclosers in high fire-risk areas during wildfire season</li> <li>Proactively turning off electric power for safety (Public Safety Power Shutoff) when gusty winds and dry conditions combine with a heightened fire risk</li> </ul>	<ul style="list-style-type: none"> <li>Installing stronger and more resilient poles and covered power lines, along with targeted undergrounding</li> <li>Upgrading and replacing electric equipment and infrastructure to further reduce wildfire risks</li> <li>Working with communities to develop new resilience zones to provide electricity to central community resources during a Public Safety Power Shutoff event</li> </ul>

Visit [pge.com/wildfiresafety](http://pge.com/wildfiresafety) for more information

Public Safety Power Shutoff is one component of the Community Wildfire Safety Program. PG&E has created a set of procedures for:

- Monitoring **fire danger conditions**
- Determining what **combination of conditions** necessitates turning off lines for safety
- Identifying **potentially impacted areas**
- Notifying customers**, municipalities, agencies and critical facilities
- Restoring power as quickly as possible** once it is safe to do so

Following the wildfires in 2017 and 2018, some of the changes included in this document are contemplated as additional precautionary measures intended to further reduce future wildfire risk.

Figure 9 – PG&E’s PSPS Policies and Procedures

Issues that have arisen from the shutdowns have included:

- The Diablo winds were very strong with speeds up to 100 miles per hour in the upper peaks. The high winds caused tree limbs to take down overhead power lines in the shutdown and non-shutdown areas.
- Public notification on the timing and extent of the shutdowns were critical. The shutdown on October 9<sup>th</sup> saw the PG&E website overwhelmed from the volume of contacts. AC Alert, City of Berkeley notifications, and local news broadcasts were effective.
- The shutdowns have been a major disruption to people and businesses. Especially affected were people with medical, mobility and other needs. UC Berkeley cancelled classes and many school districts closed. The economic impact has been estimated to be more than \$1 billion.
- Governor Newsom has criticized PG&E for decades of mis-management and for not maintaining their system.
- The local news reported that PG&E is beginning to think that undergrounding overhead utility wires may be needed to improve safety.

## Reducing the Impacts from a Fire

If a wildland fire occurs in Berkeley or in neighboring areas, we need to be prepared to reduce the impacts. The following are some options for Berkeley to prepare itself, including evacuation planning, undergrounding overhead wires and creating defensible space around our homes.

### Evacuation Planning

When a wildland fire occurs, it will be important to evacuate the area with or without notice from public safety officials. Berkeley has established evacuation procedures posted on the City's website ([www.cityofberkeley.info/wildfireevacuation/](http://www.cityofberkeley.info/wildfireevacuation/)). Some of the important features of the plan include:

- **Safe Passages** – The Berkeley Safe Passages pilot program is designed to blend traditional parking restrictions with innovative road markings and signage. Many roads in Fire Zones 2 and 3 are too narrow for parking and safe passage of vehicles when emergencies arise. Three locations will be selected so that staff and the public can evaluate the efficacy and impact. The Fire Chief listed three actions that needs to be done for the Safe Passages Program:
  - Identify, paint, and provide signage for new “Keep Clear” pinch points on streets
  - Expand “No Parking” areas throughout dangerously narrow streets
  - Identify funding for additional capacity for parking enforcement
- **Evacuation Routes** – Berkeley's evacuation routes are shown on Figure 6. The City has also shown the location of temporary evacuation sites, fire stations and schools.
- **CERT and Simulated Exercises** -- In a catastrophic disaster, government resources (people and supplies) may not be available for several days following the event. The Community Emergency Response Team (CERT) Program provides education in disaster preparedness and provides training in basic emergency skills. By preparing neighborhoods and community groups with basic emergency skills, we can lessen the effects of a disaster and help sustain

ourselves until assistance can arrive. Berkeley held simulated evacuation exercises in three parts of the City in the summer of 2019.

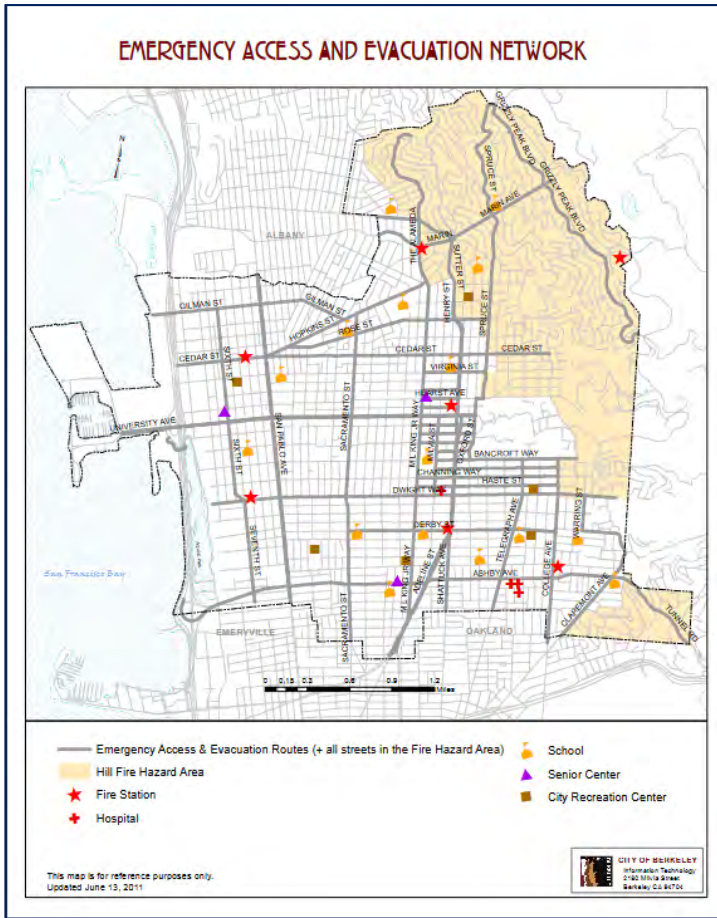


Figure 10 – Berkeley’s emergency access and evacuation network

### Undergrounding Overhead Wires

Each wildland fire in California is investigated for the cause of the fire. In many cases, problems with PG&E’s overhead wires or equipment have been contributing factors. Overhead wires not only can spark and cause a fire, but fallen poles and wires can impact ingress and egress on evacuation routes. This can be caused by high winds or fire damage. Figure 11 shows some of the downed wires and poles during the Tubbs Fire in 2017.

During the October 2019 power shutdown by PG&E, the intent was to reduce the potential for overhead energized wires to cause a fire. We found that the winds were so strong that they caused tree branches to take down



Figure 11 - Downed power poles and lines in 2017 Tubbs Fire  
Photo by LA Times

overhead wires in shutdown and non-shutdown areas. In Berkeley's Northbrae area, a power line came down with a felled tree branch from the strong winds on October 27, 2019 (see Figure 12).



Figure 12 – Downed power lines in Berkeley's Northbrae area  
Photo by Berkeleyside

This shows that Red Flag conditions can affect all of Berkeley and not just the high hazard fire zones.

### Property owner Responsibilities

A Fire Assessment District was created in 1992 (Berkeley City Ordinance 6129-N.S.) which funded fuel abatement and inspection programs in the Berkeley hills including 3 full-time inspectors and a comprehensive fire fuel reduction program. The assessment district expired in 1997 following the passing of California Proposition 218 in 1996. With the primary funding source removed, dedicated Fire Prevention staffing was lost although some programming continues to this day in the form of the Fire Fuel Chipper and Debris Bin programs. On-duty firefighters now annually inspect a small proportion of properties in Berkeley's hills.

Without a City inspection program, it is important that property owners create defensible space and harden their homes to reduce the impacts from a fire. Guidance information is available from the California Fire Safe Council ([www.cafiresafecouncil.org](http://www.cafiresafecouncil.org)).

- **Hardening Your Home** -- Fire hardened means your home is prepared for wildfire and an ember storm. It does not mean fireproof. Home hardening addresses the most vulnerable components of your house with building materials and installation techniques that increase resistance to heat, flames, and embers that accompany most wildfires.
- **Key Elements of a Defensible Space**
  - Keep your gutters and roofs clear of leaves and debris.
  - Maintain a 5-foot noncombustible zone around your home and deck.
  - Break up fuel by creating space between plants, and between the ground and the branches of trees.
  - Mow grass to a height of 4 inches.
  - Keep mulch away from the house. Bark mulch helps plants retain water but ignites and becomes flying embers during a wind-driven fire.
  - During a wildfire move anything burnable—such as patio furniture or gas BBQ tanks—30 feet away from structures.

## Section 4

# CONCLUSIONS AND RECOMMENDATIONS

### Recommended Actions

This is a progress report on the Phase 3 study. Not all of the work scope has been completed and the following recommends the next course of actions.

#### Organizational Responsibilities

The Phase 1 and 2 studies were conducted by the participating commissions and Phase 3 was intended to be a shared responsibility between the commissions and Public Works staff. We recommend the following future organizational responsibilities.

1. Consider the original Council referral completed and the lead responsibility for utility undergrounding planning and implementation to be with the Public Works Department.
2. To ensure that there is public input in the planning of utility undergrounding, we recommend forming an Undergrounding Task Force. The oversight for the task force should be with the Office of Councilmember Susan Wengraf. The participants shall be from different parts of the City, have background or interest in undergrounding, have disaster preparedness background, or other qualifications.
3. We recommend working with the Council's Facilities, Infrastructure, Transportation, Environment, and Sustainability Policy Committee.

#### Phase 3 Completion

We welcome input from Council on their direction to complete the remainder of the Phase 3 study work tasks. We recommend that the following work activities.

Phase 3 Work Tasks	Recommendation
<p><b>Task 1 – Define the Phase 3 projects</b></p> <p>D. <u>Major and Collector Streets</u> – The original work scope was to identify the major east/west routes to be undergrounded that would facilitate the travel of first responders and evacuation of residents. This work was done with input from Berkeley's fire department and transportation department. Also, we conducted a review of other fire mitigation measures underway in the Berkeley area.</p> <p>E. <u>Coordinate with Microgrid Development</u> – The original work scope was to evaluate microgrids as a way to increase power reliability after a major disaster. This work has not been conducted.</p>	<p>This work is largely completed. We recommend working with the Fire Department and their consultant to understand the latest planning on evacuation planning. The streets identified should be prioritized with multi-criteria to be developed.</p> <p>Consider this task when the City has determined a path forward for microgrids.</p>

<p>F. <u>Review code standards</u> – The original work scope was to evaluate codes that would limit the loads carried by utility poles. This work has not been conducted.</p>	<p>Consider this task when the timing is appropriate.</p>
<p><b>Task 2 -- Develop the financing plan</b></p> <p>4. <u>Refine cost estimate for undergrounding</u>. The original work scope was to refine the cost estimates previously prepared by Harris &amp; Associates. This work has been done with a consultant from the City’s pre-approved consultant list and from other references.</p> <p>5. <u>Participate in CPUC Rule 20 review</u> – The original work scope was to monitor activities with the CPUC regarding Rule 20 modifications. This work has been done to a limited extent.</p> <p>6. <u>Evaluate funding options</u>. The original work scope was to evaluate funding options for Phase 3 projects in Berkeley. This work has been done.</p>	<p>Work is completed.</p> <p>We recommend continuing participation with the CPUC and the League of California Cities on Rule 20 changes.</p> <p>We recommend that Council and the City’s Finance Department review the funding options, consider other City priorities, and develop a preferred approach to fund undergrounding.</p>
<p><b>Task 3 – Conduct community input</b> The original work scope was to conduct community outreach and workshops. This work has not been conducted.</p>	<p>We recommend developing and implementing a robust public engagement program in 2020.</p>
<p><b>Task 4 – Coordinate with utilities</b> The original work scope was to meet with PG&amp;E and telecom companies regarding the phase 3 projects. This work has not been conducted.</p>	<p>We recommend coordinating with PG&amp;E, Comcast, ATT, and other service providers as the study moves forward.</p>
<p><b>Task 5 – Prepare an implementation plan</b> The original work scope was to prepare an implementation plan. This work has not been conducted.</p>	<p>We recommend preparing an implementation plan that includes the organizational resources to carry out a sustained program, the priority of the evacuation routes, duration of the program, reporting requirements, and other elements.</p>

The completed Phase 3 study will be presented to Council. Work will not proceed to Phase 4 without Council approval.

### Considerations for Phase 4

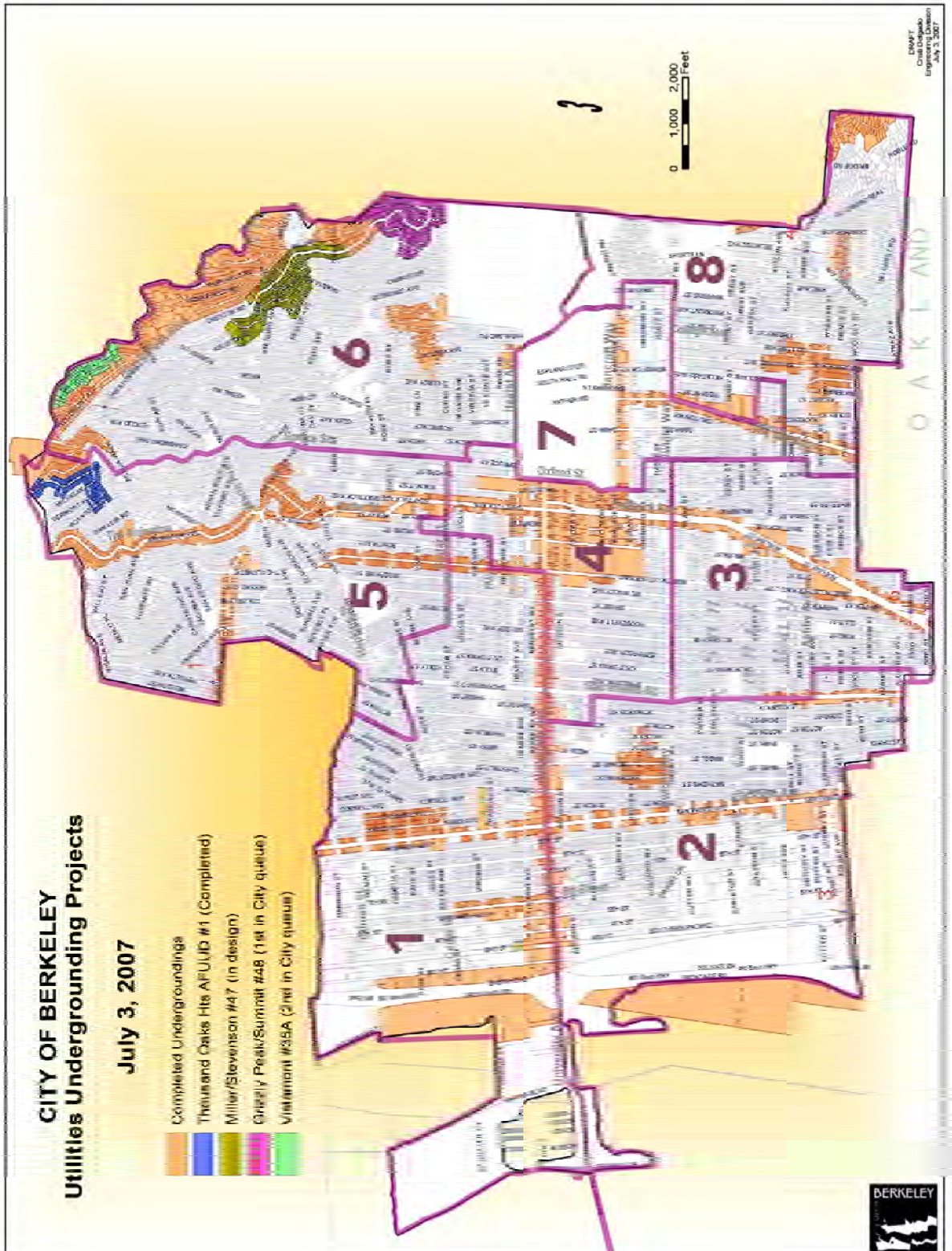
Phase 4 is the implementation of an undergrounding program in Berkeley.



**Appendix A**  
**Declaring Wildfire Prevention and Safety a Top Priority in the City of Berkeley**

DRAFT

# Appendix B Utilities Undergrounded in Berkeley



**Appendix C**  
**Report on Undergrounding Costs by Bellecci and Associates**

DRAFT



Kate Harrison  
Councilmember District 4

CONSENT CALENDAR  
October 29, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Harrison, Wengraf, Hahn, and Bartlett  
Subject: Amending Chapter 19.34 of the Berkeley Municipal Code to Expand Automatic Gas Shut-Off Valve Requirements in Multifamily, Condominium and Commercial Buildings Undergoing Renovations and to All Existing Buildings Prior to Execution of a Contract for Sale or Close of Escrow

RECOMMENDATION

Refer to the Disaster and Fire Safety Commission to consider an ordinance amending Berkeley Municipal Code (BMC) 19.34.040 to expand requirements for automatic natural gas shut-off valves or excess flow valves in multifamily, condominium and commercial buildings undergoing renovations and in all existing buildings prior to execution of a contract for sale or close of escrow. Ask the Commission to consider other triggers as appropriate.

POLICY COMMITTEE RECOMMENDATION

On October 3, 2019, the Facilities, Infrastructure, Technology, Environment & Sustainability Committee adopted the following action: M/S/C (Harrison/Robinson) to send the item with a Positive Qualified Recommendation back to the City Council with the following amendments.

Amend the recommendation revised to read as follows:

1. Refer to the Disaster and Fire Safety Commission to consider an ordinance amending Berkeley Municipal Code (BMC) 19.34.040 to expand requirements for automatic natural gas shut-off valves or excess flow valves in multifamily, condominium and commercial buildings undergoing renovations and in all existing buildings prior to execution of a contract for sale or close of escrow and to ask the Commission to consider other triggers as appropriate.

Amend the Financial Implications to read:

Staff savings realized from responders not having to shut off gas in an emergency.

Vote: All Ayes.

## BACKGROUND

The California Building Standards Code, or Title 24 of the California Code of Regulations, specifies the standards for buildings and other structures in California. Title 24 is intended to protect public health, safety, and general welfare building occupants, and is updated at the state level and adopted by local jurisdictions every three years. Municipalities are permitted to make local amendments to the Building Standards Code<sup>1</sup> as deemed necessary for general welfare, as long as they are submitted to the California Building Standards Commission with the necessary findings. The ideal time to update local buildings codes is before the next code cycle. Berkeley will adopt the 2019 code on January 1, 2020.

Natural gas in buildings poses significant risks to health and safety. A recent ordinance adding Chapter 12.80 to the Berkeley Municipal Code phases out natural gas in new buildings.<sup>2</sup> This will make Berkeley's new building stock safer and greener over time, but there is an outstanding need to prevent seismic and other disasters in existing buildings.

Gas shut-off valves are a component of a plumbing system capable of preventing the flow within a gas piping system. Shut-off valves allow for a resident to stop the flow of gas in their homes in case of an emergency, such as an earthquake or a gas leak.

All existing buildings, if they have natural gas, should have a shut-off valve of some kind. However, manual shut-off valves require timely attention during a seismic event, physical access and exertion, and mechanical knowledge to operate. In case of a natural disaster, relying purely on manual shut-off valves can be dangerous. For example, following the 2010 San Bruno explosion, Pacific Gas & Electric officials testified before the National Transportation Safety Board that "gas feeding the flames could have been shut off an hour earlier if PG&E had automatic or remotely controlled valves on the pipeline that exploded."<sup>3</sup> Since the San Bruno explosion, gas companies across California have urged a fast transfer to automatic shut-off valves.

Currently, BMC 19.34.040 requires automatic gas shut-off valves in all new construction or existing buildings that undergo repair or alteration exceeding \$50,000 consistent with sewer lateral requirements. However, it makes blanket exceptions for buildings with individually metered residential units when the building contains five or more residential units, unless the units are condominiums, putting renters at risk of physical harm.

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<sup>1</sup> "Local Amendments to Building Standards—Ordinances," California Building Standards Commission, <https://www.dgs.ca.gov/BSC/Codes/Local-Jurisdictions-Code-Ordinances>.

<sup>2</sup> Susie Cagle, "Berkeley became first US city to ban natural gas. Here's what that may mean for the future," The Guardian, <https://www.theguardian.com/environment/2019/jul/23/berkeley-natural-gas-ban-environment>.

<sup>3</sup> Paul Rogers, "PG&E officials grilled about automatic shut of valves," Mercury News, March 1, 2011, <https://www.mercurynews.com/2011/03/01/pge-officials-grilled-about-automatic-shut-off-valves-3/>.

In recommending this exception for multi-unit buildings in 2010, City staff intended to reduce the cost burden to property owners. For example, City staff were concerned that the ordinance would require very large multifamily buildings to install shut-off valves in every unit in a 50 unit building when completing a \$50,000 renovation.<sup>4</sup>

While financial costs are important, there will also likely be significant costs to human life and property resulting from natural gas infrastructure during seismic events that far outweigh the costs to property owners for installing shut-off valves. A more-tailored and comprehensive approach was adopted by the City of Los Angeles's 1997 policy in the wake of the Northridge Earthquake, requiring valves in all multifamily, condominium and commercial units when a permit for any addition, alteration or repair valued in excess of \$10,000 is taken out affecting the entire building, or in specific units affected by work in excess of \$10,000.<sup>5</sup>

This item proposes to apply the \$50,000 threshold for all work affecting multifamily, condominium and commercial buildings exclusive of work affecting the units and apply a \$10,000 threshold to work in excess of \$10,000 inclusive of any individual unit. In addition, this item proposes maintaining the current single-family home requirement when a permit is taken out of any addition, alteration or repair valued in excess of \$50,000.

Consistent with the Los Angeles code, the item removes the exception for commercial occupancies and uses in mixed use buildings of residential and non-residential occupancies with a single gas service line larger than 1 1/2 inches that serves the entire building. Berkeley City staff in 2010 previously suggested that pipes larger than 1 1/2 inches were marginally more expensive to retrofit with valves and therefore warranted an exception. Though upon further review, the few additional hundred dollars in labor and materials per valve does not warrant an exception due to ongoing risks to health and safety.

Berkeley is on top of one of California's most dangerous fault lines, the Hayward fault, making it prone to earthquakes. The extreme fire risk associated with natural gas infrastructure is illustrated by the 2017 U.S. Geological Survey stimulation of "a 7.0 quake on the Hayward fault line with the epicenter in Oakland." The agency's report predicted that "about 450 large fires could result in a loss of residential and commercial building floor area equivalent to more than 52,000 single-family homes and cause

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<sup>4</sup> "Installation of Automatic Gas Shut-off Valves," Berkeley Planning and Development Department, July 13, 2010, <https://www.cityofberkeley.info/recordsonline/api/Document/Af7NhvRQQKZ1%C3%81%C3%89xY9QpwmChW6QBqKp%C3%89scsKBclRXOVsvA1QlgXjP%C3%89Rs2zLVn2kCnCNjn918yaZSdbGqiogM WpBM%3D/>

<sup>5</sup> City of Los Angeles Ordinance No. 171874, December 16, 1997, [http://clkrep.lacity.org/onlinedocs/1995/95-0217-S1\\_ORD\\_171874\\_02-05-1998.pdf](http://clkrep.lacity.org/onlinedocs/1995/95-0217-S1_ORD_171874_02-05-1998.pdf); See also, City of Los Angeles Plumbing Code Section 94.1217.0.

property (building and content) losses approaching \$30 billion.”<sup>6</sup> The report identified ruptured gas lines as a key fire risk factor. This finding mirrors the destructive gas fires resulting from the Loma Prieta (1989) and Northridge (1994) earthquakes. According to the most recent census, 59.1% of units in Berkeley are occupied by renters.<sup>7</sup> It is vital to extend the shut-off valve requirement to rental units to prioritize the health and safety of all Berkeley residents and the broader community.

Beyond extending this protection to large rental buildings during major renovations, this ordinance amends BMC 19.34 to mirror the City of Los Angeles’s code to require installing automatic shut-off valves prior to execution of a contract for sale in all buildings and units therein.

The transfer of property triggers various state and local building code requirements. For example, at time of sale the state health and safety code requires that, gas water heaters are seismically braced, anchored, or strapped.<sup>8</sup> Other local ordinances related to environment, such as the BMC 19.81: the Building Energy Saving Ordinance, require energy efficiency reports prior to time of sale. The intention of Section 1209.4.2 is to ensure that all buildings that are sold in Berkeley include automatic gas shut-off valves, therefore enhancing seismic safety across the existing building stock.

#### FINANCIAL IMPLICATIONS

Staff savings realized from first responders not having to shut off valves manually in case of emergency.

Staff time to submit ordinance to the Building Standards Commission. In addition, building inspector staff time will be necessary to compliance with new provisions.

#### ENVIRONMENTAL SUSTAINABILITY

Mandating shut-off valves in rental units undergoing renovation and all units at sale will prevent the excess release of greenhouse gases (methane) due to gas leaks and fires during seismic events and other related emergencies.

#### CONTACT PERSON

Councilmember Kate Harrison, Council District 4, (510) 981-7140

#### ATTACHMENTS

1: Ordinance

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<sup>6</sup> “The HayWired earthquake scenario—Engineering implications,” U.S. Geological Survey, April 18, 2018, <https://pubs.er.usgs.gov/publication/sir20175013v2>.

<sup>7</sup> “Bay Area Census: City of Berkeley” <http://www.bayareacensus.ca.gov/cities/Berkeley.htm>

<sup>8</sup> Health and Safety Code § 18031.7, [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=18031.7.&lawCode=HSC](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=18031.7.&lawCode=HSC)

AMENDING CHAPTER 19.34 OF THE BERKELEY MUNICIPAL CODE TO EXPAND  
AUTOMATIC GAS SHUT-OFF VALVE REQUIREMENTS IN MULTIFAMILY,  
CONDOMINIUM AND COMMERCIAL BUILDINGS UNDERGOING RENOVATIONS  
AND TO ALL EXISTING BUILDINGS PRIOR TO EXECUTION OF A CONTRACT FOR  
SALE OR CLOSE OF ESCROW

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

Section 1. That Berkeley Municipal Code Section 19.36.040 is hereby amended to read as follows:

**19.34.040 Gas Shut-Off Valves.**

Chapter 12 of the 2016~~9~~ California Plumbing Code is adopted in its entirety subject to the modifications thereto which are set forth below.

**1209.2 General Requirements for Gas Shut-Off Valves.** Automatic gas shut-off valves installed either in compliance with this Section or voluntarily pursuant to a plumbing permit issued on or after the effective date of this Section, shall comply with the following:

**1209.2.1** All valves shall:

1. Comply with all applicable requirements of the Berkeley Plumbing Code.
2. Be tested and listed by recognized testing agencies such as the Independent Laboratory of the International Approval Services (IAS), Underwriter's Laboratory (UL), International Association of Plumbing and Mechanical Officials (IAPMO) or any other agency approved by the State of California Office of the State Architect (OSA).
3. Be listed by the State of California Office of the State Architect (OSA).
4. Be installed on downstream side of the gas utility meter.
5. Be installed in accordance with the manufacturer's instructions.
6. Be installed in accordance with a plumbing permit issued by the City of Berkeley.
7. Provide a method for expedient and safe gas shut-off in an emergency.
8. Provide a capability for ease of consumer or owner resetting in a safe manner.

**1209.2.2** Motion activated seismic gas shut-off valves shall be mounted rigidly to the exterior of the building or structure containing the fuel gas piping, unless otherwise specified in the manufacturer's installation instructions.

**1209.3 Definitions**



For the purpose of this Section terms shall be defined as follows:

**AUTOMATIC GAS SHUT-OFF VALVE** shall mean either a motion activated gas shut-off valve or device or an excess flow gas shut-off valve or device.

**DOWNSTREAM OF GAS UTILITY METER** shall mean all gas piping on the property owner's side of the gas meter and after the service tee.

**EXCESS FLOW GAS SHUT-OFF VALVE** shall mean an approved valve or device that is activated by significant gas leaks or overpressure surges that can occur when pipes rupture inside a structure. Such valves are installed at each appliance, unless otherwise specified by the manufacturer's installation instructions.

**MOTION ACTIVATED GAS SHUT OFF VALVE** shall mean an approved gas valve activated by motion. Valves are set to activate in the event of a moderate or strong seismic event greater than 5.0 on the Richter scale.

**UPSTREAM OF GAS UTILITY METER** shall mean all gas piping installed by the utility up to and including the meter and the utility's service tee.

**1209.4 Devices When Required.** Approved automatic gas shut-off or excess flow valves shall be installed as follows:

**1209.4.1 New Construction.** In any new building construction containing gas piping for which a building permit is first issued on or after the effective date of this Section.

**1209.4.2 Existing Buildings.** In any existing building, when any addition, alteration or repair is made for which a building permit is issued on or after the effective date of this Section and the valuation for the work exceeds \$50,000.

**1209.4.2.1 Multifamily, Condominium and Commercial Buildings.**

1. In any existing commercial, multifamily and condominium and commercial building, and applicable to all units and tenant spaces therein if the building is individually metered and lacks a central automatic shut-off valve downstream of the utility delivery point, when any addition, alteration or repair exclusive of individual units or tenant spaces is made for which a building permit is issued on or after the effective date of this Section and the valuation for the work exceeds \$50,000.
2. In any existing commercial, multifamily and condominium unit for all gas piping serving only those individual units, when any addition, alteration or repair inclusive of individual units or tenant spaces is made for which a building permit is issued on or after the effective date of this Section and the valuation for the work exceeds \$10,000.

**1209.4.3 Sale of Existing Buildings.**

The requirement to install seismic gas shutoff or excess flow shutoff valves shall apply

prior to entering into a contract of sale, or prior to the close of escrow when an escrow agreement has been executed in connection with a sale as follows:

1. in any building or structure, and all units therein when gas piping serving those units lacks a central automatic shut-off valve downstream of the utility delivery point; or
2. in an individual condominium unit for all gas piping serving that individual unit.

**1209.4.4 Exceptions:**

~~1.—Buildings with individually metered residential units when the building contains 5 or more residential units, unless the units are condominiums.~~

~~2.—For residential or mixed use condominium buildings, valves are required when the value of the work exceeds \$50,000 in any single condominium unit or when any work done outside of the units exceeds \$50,000.~~

~~3.—Commercial occupancies and uses in mixed use buildings of residential and non-residential occupancies with a single gas service line larger than 1 1/2 inches that serves the entire building.~~

14. Automatic gas shut-off valves installed with a building permit on a building prior to the effective date of this Section provided the valves remain installed on the building or structure and are adequately maintained for the life of the building or structure.

25. Automatic gas shut-off valves installed on a gas distribution system owned or operated by a public utility.

Section 2. The effective date of this amendment shall be January 1, 2020, or the effective adoption date of the 2019 California Building Standards Code, whichever is sooner.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



MEMO FOR DISCUSSION ON SPECIAL TAX ASSESSMENT FOR WILDFIRE PREVENTION – REVISED  
FOR OCTOBER COMMISSION MEETING- G COUZIN

To: Disaster and Fire Safety Commission  
From: Gradiva Couzin  
Date: 10/15/2019  
RE: Special tax assessment for wildfire prevention - Possible Future action

Greetings Fellow Commissioners,

I would like to share some information that may be useful in our discussion of a recommendation to City Council for reinstituting a special assessment zone in the hills for Wildfire prevention.

Here's the background as I understand it:

- There was previously a special assessment (tax) in the Berkeley Hills for five years 1992-1997
- The tax was \$50 per household for 8300 households, which comes to \$415,000/yearly
- The district boundaries covered the hill area, and were the same as the zoning ordinance hill overlay district, under the assumption that the special zoning requirements for the hill area would cover the properties that should have the special requirements for vegetation management due to fire risk in the hills.
- This assessment funded fire prevention staff members: 3 civilian inspectors, one civilian supervisor, and a small portion of the salaries for the Fire Marshal, Deputy Chief and Fire Chief.
- The staff did extensive inspections and education efforts in the area, both scheduled and in response to complaints. They were able to work with people and get compliance, but were not in a capacity to fine or enforce compliance. In the event of a difficult situation, the Fire Marshal, as the person with authority, was called in.
- Money from the assessment district was also used to purchase three vans for the inspectors, to set up and pay for the chipper program, as well as some demonstration garden events to educate home owners and their landscape contractors.
- State law changed in 1997 and the special assessment district was found to not be in compliance. The city council at the time chose to allow it to lapse.

Here are some back-of-the-envelope calculations that might help to get us started in this conversation:

- Cost for 4 additional fire prevention staff: very rough estimate \$600k /year
- Approx 8300 households in the Hills Fire Zones 2 & 3
- Estimated per household assessment = \$72/year

I look forward to your thoughts and insight. Thank you,

Gradiva

MEMO

To: Katie Van Dyke, Climate Action Program Manager, City of Berkeley  
From: Gradiva Couzin  
RE: Seismic Retrofit Refund Program Expansion to Include Clean Energy Improvements  
Date: 11/3/2019

**SUMMARY:**

At the Disaster and Fire Safety Commission meeting on October 23, 2019 the Commission was presented with a status update on Berkeley's Seismic Retrofit Refund Program, along with a referral for input into possible changes to the program.

This program has been an effective way of achieving seismic improvements for Berkeley properties for many years. The proposed expansion would be likely to result in more adoption of clean energy home improvements in Berkeley. I recommend including home fire hardening in its scope as well, to save lives and slow the spread of wildfires.

It's important to recognize that the program in its current form is inequitable and adds to other problematic disparities (especially in disasters):

- Throughout the US, clean energy rebates go mostly to more affluent people
- Disasters in Berkeley will hit poorer people harder, especially due to housing & income loss
- Post-disaster assistance typically is given more to higher-income people

I hope that an expansion to this program can be intentionally designed to direct funds towards the people and properties most in need of it, and to select renovations that have the highest impact for the largest number of residents. I've included a few ideas below.

Climate change is an emergency and requires urgent action. Even though this memo describes my concern about inequity in the program, I still think expanding the program immediately should happen.

**Background**

The Seismic Retrofit Refund Program provides tax refunds to offset the cost of seismic upgrades to residential properties in Berkeley, including single family homes and multi-unit properties. Up to 1/3 of the transfer tax may be refunded for

seismic upgrade expenses. As an example, for a \$1.2 Million home purchase, the maximum refund amount would be \$6,000.

Seismic upgrades covered by this program have included such work as:

- Bolting to the foundation
- Repairing or replacing substandard foundations
- Securing chimneys
- Other earthquake strengthening work

Since its inception 30 years ago, this program has provided an incentive for hundreds of homebuyers each year to make their homes safer, thereby making the entire city more prepared and resilient in case of earthquake.

In recent years, however, the program has been underutilized, with only 72 properties taking advantage of the program in 2018. This represents under 10% of the potential eligible properties.

With the goal of increasing utilization of this program and also improving the City's resiliency and sustainability, City Council is interesting in expanding the scope of the program to include not only seismic retrofits, but also other home improvements such as electrification, energy efficiency, and water efficiency.

### **An Easy Method of Achieving Sustainability Improvements**

Providing financial incentives to property owners in the form of a tax rebate can be an efficient and effective way to produce results. It's likely that expanding the scope of this program to include clean energy renovations would be effective in increasing the adoption of these improvements in Berkeley homes.

Because the administrative cost of this existing program to the City is minimal, expanding this program is an obvious path-of-least-resistance to maximize the adoption of clean energy & efficiency improvements in Berkeley homes:

- Weatherization + programmable thermostat installation
- Electrification to replace gas heating/cooling, cooking & water systems
- Solar panel + battery storage
- Electric vehicle charging station
- Greywater system installation
- Water efficient toilets installation
- Home appliance & lighting replacements

## **Wildfire Hardening**

Adding wildfire hardening to the list of covered home improvements could reduce the spread of wildfire in Berkeley, ultimately saving lives and property. If this expansion of scope moves forward, I recommend including wildfire hardening home improvements, such as:

- Removing wood shingle roof and replacing with fire-resistant roofing
- Covering all vent openings with metal mesh
- Protecting eaves and soffits with fire resistant materials
- Installing dual pane windows including a layer of tempered glass
- Replacing outer walls with stucco or other fire-resistant materials
- Removing trees; trimming trees and shrubs
- Sprinkler system installation

## **An Inequitable Way to Distribute Funding**

Despite this program's effectiveness, I would like to alert City Council to the lack of equity in this program. By its nature, this program provides tax rebates only to property owners who have recently purchased property. In October 2019, the median home purchase price in Berkeley was over \$1.3 million dollars. So, this program gives funding selectively to people who can afford to purchase properties at this dollar level. This excludes most people with low or moderate income, students, renters, seniors who are aging-in-place, and many others.

If Berkeley's program is expanded to include clean energy improvements, it will be adding to an existing disparity in distribution of such funds at the federal level. Research shows that the majority of funds in incentive-based clean energy programs in the US goes to people who are already affluent, as seen here:

- Since 2006, US households have received over \$18 billion in federal income tax credits for clean energy home improvements. 60% of these funds went to the top 20% of income earners, and only 10% of funds went to the bottom 60% of income earners.<sup>1</sup>
- Income tax credits for solar panels and electric cars go overwhelmingly to high-income households.<sup>2</sup>
- The most extreme is the program aimed at electric vehicles, where the top 20% of income earners has received about 90% of credits.<sup>3</sup>

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<sup>1</sup> <https://www.journals.uchicago.edu/doi/full/10.1086/685597>

<sup>2</sup> <https://energyathaas.wordpress.com/2015/07/20/are-clean-energy-tax-credits-equitable/>

<sup>3</sup> <https://www.journals.uchicago.edu/doi/full/10.1086/685597>

It is concerning that Berkeley's program would join this federal trend and send Berkeley tax dollars toward people who are already affluent.

### **Disasters Increase Inequality**

This regressive distribution of incentive funds is layered on another regressive distribution: Poorer people are at higher risk in disasters, and post-disaster assistance flows disproportionately to wealthier people<sup>4</sup>. Multiple studies show the same pattern after floods and other disasters: Rich people get richer, and poor people get poorer. Here are a few factors that contribute to this:

- Wealthier people are more likely to fit the requirements for federal aid. In the Northridge earthquake, 80% of damaged units were multifamily buildings, with low-cost rental housing particularly affected. However, federal recovery programs were designed to serve middle-class owners of single family dwellings. This resulted in a mismatch between needs and resources.
- In a Berkeley earthquake, low-income housing units are expected to be damaged at a much higher rate than other residences (See Berkeley's Local Hazard Mitigation Plan)
- People with funds to cover for a temporary loss of housing, or to cover a temporary loss of income, will have an easier time bouncing back from the impact of a disaster such as an earthquake or wildfire compared to people with lower incomes. "Low-income Americans are ... more likely to become homeless after a disaster and have more difficulty obtaining loans after one"<sup>5</sup>
- FEMA aid is not available to people who are undocumented.

The combination of

- (1) disasters have a higher impact on low-income residents
- (2) more post-disaster dollars go to higher income-residents
- (3) home-improvement incentive dollars are funneled to high-income residents

would create a triple-whammy working against people with fewer resources.

### **Possible Options Towards Improved Equity**

Here are some possible alterations of this program to make it more equitable:

- Revise this to a property tax rebate rather than a transfer tax rebate, so it can be applicable to all properties rather than just those that are transferred in any year.

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<sup>4</sup> <https://www.npr.org/2019/03/05/688786177/how-federal-disaster-money-favors-the-rich>

<sup>5</sup> <https://www.nytimes.com/2019/10/29/us/california-fires-homes.html>



- Allow a much higher rebate to incentivize the seismic retrofit of high-risk soft-story rental properties with 2-4 units (not covered in the existing Soft-Story retrofit requirement). Allow this rebate for property taxes in any year or spread over multiple years, not just at the time of property transfer.
- Increase the rebate for multi-family housing upgrades, where such upgrades would serve the tenants directly. For example, installation of an electric vehicle charging station for tenant use. Allow this rebate for property taxes in any year or spread over multiple years, not just at the time of property transfer.
- Expand the program to include non-structural seismic improvements such as bracing heavy shelves. Non-structural damage typically causes more injuries than structural failure in US earthquakes. These types of improvements may be more feasible for renters to complete.
- Reallocate funds from this program towards other uses, such as:
  - Funding clean energy upgrades such as solar panels at Berkeley public schools and senior centers, which also serve as disaster shelters.
  - A pool of funding from which any resident, including renters, can apply for a grant to perform clean energy or seismic upgrades in their home.
  - Grants to organizations that serve low income, elderly, and disabled residents in helping them prepare for disasters, such as BDPNN and Easy Does It.
  - Grants for Red Cross installation of smoke alarms in low income homes
  - Creating a ‘rainy day fund’ to provide post-disaster housing and relocation assistance to low-income residents.
  - Expanding the neighborhood Community Emergency Supply Program to provide funds for fire hardening, vegetation management, neighborhood microgrids, public charging stations, or other community-based improvements.

The above alterations will make this program less efficient, because they will require more City staff time to manage and administer. I think that this is the price the city has to pay in order to not go on the same inequitable “least-resistance” path that other clean energy incentive programs suffer from.

Due to the urgent need for immediate action on climate change, I think the program expansion should move forward without these changes, but these changes should be added ASAP.

Thank you for considering these suggestions!

## Chin, Khin

---

**From:** Gradiva Couzin <gradiva@gmail.com>  
**Sent:** Thursday, November 07, 2019 10:53 AM  
**To:** Chin, Khin  
**Subject:** Fwd: NOAA Weather Alert Radios -- Would They Serve Park Hills' Needs?

Hi Khin,  
Can you share this communication with the D&FS Commission?  
Thank you!  
Gradiva

Begin forwarded message:

**From:** Nancy Boas <[nboas@att.net](mailto:nboas@att.net)>  
**Subject:** NOAA Weather Alert Radios -- Would They Serve Park Hills' Needs?  
**Date:** November 7, 2019 at 10:28:40 AM PST  
**To:** Parkhills <[parkhills@mailman.panix.com](mailto:parkhills@mailman.panix.com)>  
**Cc:** Gradiva Couzin <[gradiva@gmail.com](mailto:gradiva@gmail.com)>, bob flasher <[rangerdude333@hotmail.com](mailto:rangerdude333@hotmail.com)>

Dear Neighbors:

In the last couple of days, I've been investigating whether NOAA emergency weather alert radios would alert Park Hills residents to a life-threatening wildfire or evacuation when the power is out. Gradiva Couzin, of Berkeley's Disaster and Fire Safety Commission, has been looking into the radios much longer; she is running a small pilot project and has generously shared what she's learned.

The short answer appears to be yes, these radios would alert us. And as a recommendation for a different system of warning -- outdoor emergency sirens — moves through City of Berkeley committees, weather radios are available now.

Residents would need a NOAA (National Oceanic and Atmospheric Administration) emergency weather radio with battery backup and "SAME" technology. SAME, or Specific Area Message Encoding, automatically locks on to your county's NOAA weather radio signal, requiring minimal programming from you, the user. (Without SAME programming, a weather radio will play any weather alert within the broadcast area of the NOAA weather radio transmitter to which the radio is tuned, so users may hear warnings that don't apply to them.)

As best I can make out, this is what the radio will do in an emergency. If the radio is plugged in and turned on, with battery backup in case of outage, and if the radio is programmed to Alameda and, optionally, Contra Costa channels, you'll hear three things: a warning alarm tone as an attention signal, followed by a broadcast message about the emergency, followed by a brief static burst to signify the end of the emergency message.

I programmed my radio to Alameda and Contra Costa channels (or SAME codes), since we're near the border. If there's a serious emergency in Alameda or Contra Costa county, I believe I'm going to hear it.

These radios cost \$30 on up, and many come with additional features such as AM/FM radio, solar panels, hand crank, phone charger, emergency flashlight, strobe lights and more.

Here's what Gradiva and I learned about the potential use of weather radios for wildfire alerting:

- Several sources confirmed that NOAA radios with SAME technology will sound the alarm when Alameda county (or whatever county/counties you've programmed) warns about nearby threatening wildfire or activates an evacuation order. We spoke to:
  - Keith May, Berkeley Fire Department
  - Kurt Von Savoye, Alameda County Office of Emergency Services: "We don't generally use them, they are reserved for true emergencies, but we would use this for a true emergency. Radios would receive whatever message we put out..."
  - David King, meteorologist with National Weather Service in Monterey. David sent out the Kincadee evacuation order on NOAA Weather Radio.
  - Domingo Cabrera, senior emergency services coordinator; Alameda County, Office of Emergency Services
  - Midland Radio Corporation
- Gradiva is using the Midland 120 radio for her pilot project: \$30 each, not tunable, it only listens to weather channel. There are many other manufacturers and models on the market.
- For an additional \$20, you can add a flashing LED light to better alert deaf or hard of hearing people.
- For an additional \$100, you can add a bed-vibration feature to awaken deaf or hard of hearing people when they sleep.
- Gradiva reports: "If I were to do this again, I'd choose radios that are tunable (\$30 more per radio) to stations in addition to the weather channel. That way they'd double as a battery-operated radio and be more useful during an evacuation."
- In power outage, batteries should last about 3 days on my Midland 120.
- People must keep their radios plugged in and turned on at all times, with fresh batteries for a power outage.
- Weekly tests: Every local National Weather Service weather forecast office is required to conduct a scheduled weekly test of the NOAA Weather Radio public alert system, generally every Wednesday between 10:00 a.m. and 12:00 p.m. On the Midland 120 model, I silenced the weekly test but flashing advisory lights indicated the test was occurring.

Hope this helps. Nancy Boas

**Chin, Khin**

---

**From:** Chin, Khin  
**Sent:** Friday, November 22, 2019 10:39 AM  
**To:** Chin, Khin  
**Cc:** May, Keith  
**Subject:** Public Notice: Preparation of an Environmental Impact Report – Wildland Vegetative Fuel Management Plan

Commissioners,

Please see the below notice for a public Meeting from UC Berkeley scheduled for December 2.

NOTE: The Brown Act permits a majority of a legislative body to attend and speak at an open and publicized meeting conducted by another organization. The Brown Act may nevertheless be violated if a majority discusses, deliberates, or takes action on an item during the meeting of the other organization. There is a fine line between what is permitted and what is not; hence, members should exercise caution when participating in these types of events.

<https://capitalstrategies.berkeley.edu/resources-notices/public-notices>

## **Public Notice: Preparation of an Environmental Impact Report – Wildland Vegetative Fuel Management Plan**

**Project Description:** UC Berkeley proposes to implement its Wildland Vegetative Fuel Management Plan (Plan) to treat vegetation that could become fire fuel within the Hill Campus. The proposed Plan includes three vegetation treatment types within the Hill Campus: 1) evacuation support treatments, 2) fire hazard reduction treatments, and 3) fuel break treatments. The Hill Campus or Plan Area is 800 acres and located in the hills adjoining and east of the UC Berkeley Campus Park and California Memorial Stadium. Lawrence Berkeley National Laboratory manages approximately 200 acres adjacent to the Hill Campus, which are located outside of the Plan Area.

**Environmental Review:** UC Berkeley has prepared an [Initial Study](#) to identify the appropriate document under the California Environmental Quality Act (CEQA). The Initial Study, which is included with the Notice of Preparation in the link below, contains a full description of the proposed project including location, objectives, and preliminary identification of potential environmental effects associated with the implementation of the Plan. As documented in the Initial Study, UC Berkeley has determined that it will prepare an Environmental Impact Report (EIR) for the Plan.

**Public Comment:** UC Berkeley has prepared a [Notice of Preparation \(NOP\)](#) to provide Responsible Agencies, Trustee Agencies and other Interested Parties with a description of the proposed project and to identify potential environmental impacts pursuant to State CEQA requirements. UC Berkeley invites comments on the scope and content of the environmental analysis, including the significant environmental issues, the proposed range of alternatives, and mitigation measures that should be included in the EIR. In accordance with the time limits mandated by State law, the NOP will be circulated for a 30-day review period, which will extend from November 20, 2019, to December 20, 2019. Responses to this NOP must be received by 5:00 p.m. on Friday, December 20, 2019. Please send your written or electronic responses to: Raphael Breines, Senior Planner, Physical & Environmental Planning, University of California, Berkeley, 300 A&E Building, Berkeley, CA 94720-1382 or email: [planning@berkeley.edu](mailto:planning@berkeley.edu) (link sends e-mail).

**Scoping Meeting:** A public scoping meeting will be held on Monday, December 2, 2019, at Julia Morgan Hall located in the Hill Campus at the UC Botanical Garden, 200 Centennial Drive, Berkeley, CA 94720,

beginning at 6:30 p.m. The scoping meeting will include a brief presentation of the proposed project followed by public comment on the scope and content of the EIR analysis.

**Download (PDF):** [Notice of Preparation and Initial Study](#)

**Inquiries:** (510) 643-4793 or [planning@berkeley.edu](mailto:planning@berkeley.edu)


Khin Chin, Emergency Services Coordinator  
Berkeley Fire Department  
Office of Emergency Services  
2100 Martin Luther King Jr. Way, Second Floor  
Berkeley, CA 94704  
510.981.5506 voice  
510.981.5579 fax  
[kchin@ci.berkeley.ca.us](mailto:kchin@ci.berkeley.ca.us)



City Clerk Department

November 18, 2019

To: Members of Berkeley Boards and Commissions

From:  Mark Numainville, City Clerk

Subject: Berkeley Lobbyist Registration Ordinance

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On October 2, 2018 the City Council adopted Chapter 2.09 of Berkeley Municipal Code creating a new lobbyist registration system. The effective date of this ordinance is January 1, 2020. As an appointed City official, contacts you have with members of community, agencies, organizations, businesses, etc. may be covered by the ordinance.

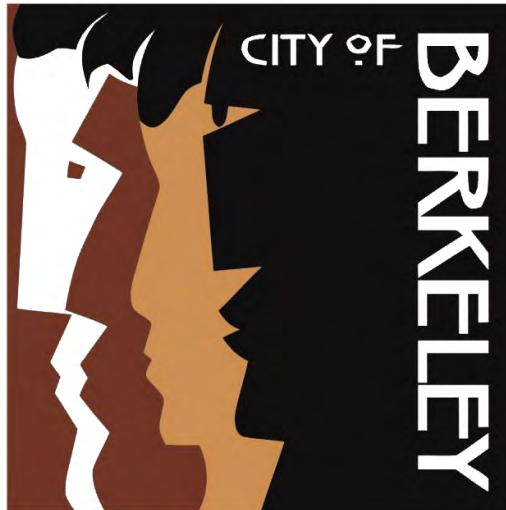
To be clear, your service as a commissioner does not itself create any obligation or requirement for you under the ordinance. Rather, as an appointed City official, you may on the receiving end of covered lobbying activities.

The requirement to register applies broadly. The definition of a “Local Government Lobbyist” includes any individual who is paid specifically to communicate with any elected or appointed City official or employee for the purpose of influencing any proposed or pending governmental action of the City; or any person whose duties as a salaried employee, officer or director of any corporation, organization or association include communication with any elected or appointed City official or City employee, for the purpose of influencing any proposed or pending governmental action of the City. See Section 2.09.050.M for the complete definition. There are also may exceptions and caveats to the requirements of the ordinance.

Once registered, a Local Government Lobbyist must file quarterly disclosures with the City (or annual disclosures if the lobbyist is a sole proprietorship or works for a lobbying firm with four or fewer employees). Your name and the subject of the lobbying activity may appear in these disclosures if you were lobbied on a proposed or pending governmental action. The lobbying disclosure forms are public documents and will be posted on the City’s website.

The attached ordinance and Lobbyist Registration Manual provides additional background on the registration, disclosure, and activity requirements and regulations.

If you have questions about the requirements, please contact the City Clerk Department at [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info).



# LOBBYIST MANUAL 2020 EDITION

BACKGROUND INFORMATION  
RULES AND PROCEDURES

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ADOPTED BY ORDINANCE NO. 7,629-N.S. (OCTOBER 2, 2018)

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## CHAPTER I. INTRODUCTION

### CHAPTER I. INDEX

- A. The History and Purpose of Berkeley's Lobbyist Registration Act
- B. The Open Government Commission
- C. Who must Register?
- D. What are Lobbying Activities?
- E. What kind of Communication falls within these Lobbying Activities?
- F. Who Are The Officers of the City of Berkeley?
- G. What Kind of Communications are Exempt?

#### **A. The History and Purpose of Berkeley's Lobbyist Registration Act**

On October 2, 2018, the Berkeley City Council adopted the Lobbyist Registration Act (Berkeley Municipal Code Chapter 2.09) by Ordinance No. 7,629-N.S. The ordinance goes into effect on January 1, 2020.

The findings of the Ordinance state that democracy in our representative form of government requires that the public have an opportunity to know as much as possible what lobbying efforts are taking place that may affect decisions being made by our elected officials, City staff, boards, and commissions.

As such, the stated purpose of the Lobbyist Registration Act (the Act) is to codify certain existing practices, as well as to adopt new practices, to ensure that the public has an adequate opportunity to be informed of the City's activities and to communicate its concerns to its elected and appointed officials.

This guide, prepared by the City, provides background information on the rules and procedures for lobbying activities in the City of Berkeley. Words and phrases used in this Manual and the Act have the same meanings and be interpreted in the same manner as words and phrases used in the Berkeley Election Reform Act and the state Political Reform Act of 1974 (California Government Code sections 81000 to 91014) and the regulations issued pursuant to both, unless otherwise expressly provided or unless the context otherwise requires. (BMC 2.09.040)

#### **B. The Open Government Commission**

The Open Government Commission (OGC) consists of the nine members of the Berkeley Fair Campaign Practices Commission who serve as *ex officio* members of the OGC. The Commission hears complaints of several open government laws, considers ways to informally resolve those complaints, and makes recommendations to the City Council regarding such complaints. Enforcement of the Lobbyist Registration Act is delegated by the Act to the OGC.

The OGC is staffed by the Berkeley City Attorney's Office. Please contact OGC staff at (510) 981-6998 or at [FCPC@cityofberkeley.info](mailto:FCPC@cityofberkeley.info) for questions regarding the requirements, definitions, and enforcement provisions of the Act.

### C. Who must Register?

The Act requires every “local governmental lobbyist” to register. A person qualifies as a local governmental lobbyist in the City of Berkeley if the individual:

1. Receives or is entitled to receive one thousand dollars (\$1,000) or more in economic consideration in a calendar month (other than reimbursement for reasonable travel expenses) to communicate directly or through agents with any elected or appointed City official or City employee, for the purpose of influencing any proposed or pending governmental action of the City; **or**
2. Is a salaried employee, officer, or director of a corporation, organization or association, and whose duties include communication directly or through agents with any elected or appointed City official or City employee, for the purpose of influencing any proposed or pending governmental action of the City.

#### *Examples:*

- A business hires a consultant for \$1,000 per month to communicate the business’s position on a proposed affordable housing development to a City Council staff member. The consultant qualifies as a lobbyist and must register.
- A salaried Executive Director of a non-profit organization that receives funding from the City speaks at a City Council meeting in their official capacity to advocate for funding. They qualify as a lobbyist and must register.

In case of any ambiguity, the definition of “local governmental lobbyist” shall be interpreted broadly.

- ❖ While the Act requires only individuals to register (and not companies or organizations), each employer and client of a lobbyist must be identified on both the Lobbyist Registration Form and the Lobbyist Quarterly/Annual Disclosure Reports.

### D. What are Lobbying Activities?

Lobbying activities that fall within the scope of the Act include any direct or indirect communication with any appointed or elected City official or City employee, for the purpose of influencing any proposed or pending governmental action of the City.

In other words, the communications are for the purpose of promoting, supporting, modifying, opposing, causing the delay or abandonment of conduct, or otherwise intentionally affecting the official government actions.

- ❖ Governmental action is discretionary administrative or legislative actions of the City, other than an action which is ministerial in nature.

**E. What kind of Communication falls within these Lobbying Activities?**

For purposes of the Act, a communication for the purpose of influencing a governmental action includes any contact with a City elected or appointed public official or employee, either directly or indirectly, orally, in writing, or electronically. Examples include, but are not limited to, an in-person meeting, telephone call, video conference, email, letter, text message, or indirectly through intermediaries.

**F. Who are the Officers of the City of Berkeley?**

The Act covers lobbying of any elected or appointed official, or employee, whether compensated or not, of the City of Berkeley or any of its agencies.

- An employee shall have the same meaning as set out in Title 20 of the Code of Federal Regulations § 404.1007(b).
- Examples include permanent staff, temporary employees, City Councilmembers, Rent Board members, School Board members, City Council aides, and appointed commissioners.
- Boards and Commissions shall mean any body created by the City Council or City Charter.

**G. What kind of Communications are Exempt?**

The Act exempts certain types of individuals and communications. Those exemptions include:

1. A public official acting in their official capacity.
2. The publication or broadcasting of news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge governmental action.
3. A person specifically invited by the City Council or any committee thereof, or by any board or commission, or any committee of a board or commission, or by any officer or employee of the City charged by law with the duty of conducting a hearing or making a decision, for the purpose of giving testimony or information in aid of the body or person extending the invitation.
4. A person who, without extra compensation and not as part of, or in the ordinary course of, their regular employment, presents the position of their organization when that organization has one or more of its officers, directors, employees or representatives already registered under the provisions of this Act.

*Examples:*

- A person who talks to a City public works employee on behalf of a neighborhood association to get a stop sign placed at a busy intersection does not qualify as a lobbyist unless the person is being paid \$1,000 per month or more to lobby on behalf of the association or is a salaried employee, officer, or director, of the neighborhood association.
- An employee of a community agency speaking at a City Council meeting, to advocate on behalf of their agency when the Executive Director of the agency is already registered as a local governmental lobbyist does not have to register.

5. The designated representatives of a recognized employee organization whose activities are limited to communicating with elected or appointed City officials or their representatives regarding (1) wages, hours and other terms and conditions of employment pursuant to the procedures set forth in Government Code Sections 3500—3510, or (2) the administration, implementation or interpretation of an existing employment agreement.
6. Persons whose only activity is to (1) submit a bid on a competitively bid contract, (2) respond to a request for proposal or qualifications, or (3) apply for grant funding or (4) negotiate the terms of a written contract or grant if selected pursuant to such bid or request for proposal or qualifications. This exception shall not apply to persons who attempt to influence the award or terms of a contract or grant with any elected or appointed official, unless their attempts are limited to speaking during public comment at a publicly noticed meeting.
7. Any individuals serving in their professional capacity (e.g. attorneys, architects, or engineers), who are employed by a local government lobbyist, and whose attempts to influence governmental action are limited to: (1) Publicly appearing at a public meeting, public hearing, or other official proceeding open to the public to represent or testify on behalf of a proposed development; (2) Preparing or submitting documents or writings in connection with the proposed development for use at a public meeting, public hearing, or other official proceeding open to the public; and (3) Contacting city employees or agents working under the direction of the City Manager directly relating to (1) and (2) above, or contacting elected or appointed City officials directly relating to (1) and (2) above.
8. Persons employed by, or a member of, a labor union.

*Examples:*

An architect attends and presents to the Zoning Adjustments Board, advocating for approval of their current development project:

- The developer or property owner is already registered as a local governmental lobbyist.
  - Since a representative from the project is already registered, the architect is exempt from registering.
- The developer or property owner is not registered as a local governmental lobbyist.
  - Then the architect must register.
- A property owner representing themselves before ZAB would not have to register.

## CHAPTER II. GETTING STARTED: REGISTRATION

### CHAPTER II. INDEX

- A. Filing Officer
- B. Initial Registration
- C. Failure to Register
- D. Training
- E. Termination of Lobbying Activities
- F. Availability of City Records
- G. Individual Lobbyist Records

#### **A. Filing Officer**

Berkeley's filing officer under both city and state law is the City Clerk. The City Clerk will provide forms and technology to complete and file the required reports. All lobbyist forms required by the Lobbyist Registration Act are filed with the City Clerk Department, located on the first floor of 2180 Milvia Street.

#### **B. Initial Registration (BMC 2.09.060)**

Beginning on January 1, 2020, a local governmental lobbyist must register prior to any lobbying activity taking place. At the time of initial registration, each local governmental lobbyist shall pay a fee of \$500. Upon registration, lobbyists will be given information regarding how to access the online portal provided by NetFile for future disclosure filing obligations.

- ❖ After initial registration, all individual local governmental lobbyists must also pay an annual re-registration fee of \$500 on or before every subsequent February 1.
- ❖ The City Clerk will waive all registration fees for any employee of a tax-exempt organization presenting proof of the organization's tax-exempt status under 26 U.S.C. Section 501(c)(3) or 501(c)(4), so long as the employee is acting in that capacity as a local government lobbyist.

All information required shall be filed with the City Clerk on forms provided by the City Clerk, and accompanied by a handwritten signature and a declaration that the contents thereof are true and correct under penalty of perjury.

On the registration form, the local governmental lobbyist must provide:

1. Their name, business address, e-mail address, and business telephone number.
2. The name, business address, and business telephone number of each client for whom the local governmental lobbyist attempts or receives compensation to influence any proposed or pending governmental action of the City.

3. The name, business address, and business telephone number of the local governmental lobbyist's employer, firm or business affiliation.

Failure to pay the registration fee shall constitute a termination of a local governmental lobbyist's registration with the Open Government Commission.

### **C. Failure to Register (BMC 2.09.100)**

If the OGC determines that a person is subject to registration and failed to register within **seven** days of that determination, the person shall be barred from acting as a local governmental lobbyist except when appearing before the City Council or other board or commissions at a noticed public meeting. Such debarment shall be in effect for three months from the date of such determination or until registration, whichever is later. The OGC may establish additional processes for the termination of a local governmental lobbyist's registration.

### **D. Training (BMC 2.09.080)**

Each local governmental lobbyist must complete a lobbyist training session offered by the OGC, through the Office of the City Clerk, **within 30 days** of the local governmental lobbyist's initial registration. The training is available via an online training.

Once completed, the local governmental lobbyist must file a signed Affirmation of Training Completion stating, under penalty of perjury, that the local governmental lobbyist has completed the training session. An original signature is required and must be submitted to the City Clerk Department.

Failure to file an Affirmation of Training **Completion** can result in a civil penalty.

### **E. Termination of Lobbying Activities (BMC 2.09.070)**

A local governmental lobbyist who has ended all activities that require registration, must notify the City Clerk and will be relieved of any further filing responsibilities until such time that they resume activity requiring registration. The lobbyist must file an amended registration form, indicating the termination, accompanied by a quarterly disclosure filing that indicates lobbying activities that are up-to-date with the date of termination.

### **F. Availability of City Records (BMC 2.09.110)**

All registration and disclosure information is open for public inspection at the City Clerk Department and online through NetFile. The information will be retained by the City for a period of five (5) years and will be accessible through the City's webpage.

### **G. Individual Lobbyist Records (2.09.130)**

A local governmental lobbyist shall retain, for a period of five years, all books, papers and documents necessary to substantiate the registration required to be made under the Act. Records must be sufficient to document the accuracy of disclosure reports. Upon request, lobbyists must make all records available to the OGC, City Attorney, and City Clerk.

## CHAPTER III. WHEN AND WHAT MUST A LOBBYIST FILE ON DISCLOSURE REPORTS?

### CHAPTER III. INDEX

- A. Quarterly Disclosure Report
- B. Annual Disclosure Report
- C. General Disclosure Requirements
- D. How to File?

#### A. Quarterly Disclosure Report (BMC 2.09.140)

For each calendar quarter in which a local governmental lobbyist was required to be registered, they shall file a quarterly disclosure report with the City Clerk. The reports shall be due no later than thirty (30) days after the end of the reporting period.

- ❖ An amendment is required within five (5) business days of changed circumstances that require correction or updating of such information.

#### B. Annual Disclosure Report (BMC 2.09.140)

If a local governmental lobbyist is a sole proprietorship or works for a lobbying firm with four or fewer employees, they shall file annually. The annual disclosure reports are due by January 31, covering the period January 1 through December 31. The annual disclosure report must include the same required information defined below.

#### C. General Disclosure Requirements

To comply with either the annual or quarterly disclosure filing requirements, a local government lobbyist must complete and submit a disclosure of lobbying activities report, detailing the lobbying activity that took place to the City Clerk Department. The disclosure of lobbying activities reports contain the schedules listed below. Lobbyists shall use only the schedules that pertain to their type of lobbying activities. The cover page of the disclosure report includes the option to indicate that no reportable lobbying activity has taken place.

---

| <u>Deadline</u>      | <u>Reporting Period</u> |                                                                                                                                                                            |
|----------------------|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| April 30             | January 1 - March 30    | <div style="border: 1px solid black; border-radius: 10px; padding: 10px; width: fit-content;">** Only applies to sole proprietor or firms with 4 or fewer employees.</div> |
| July 31              | April 1 - June 30       |                                                                                                                                                                            |
| October 31           | July 1 - September 30   |                                                                                                                                                                            |
| January 31           | October 1 - December 31 |                                                                                                                                                                            |
| Annual: January 31** | January 1 - December 31 |                                                                                                                                                                            |

---

1. **Schedule A: Governmental Action Disclosure.** Lists information regarding all discretionary administrative or legislative actions of the City, other than an action which is ministerial in nature, that the lobbyist sought to influence, including:

- a. The item(s) of governmental action and the name and address of the client(s) on whose behalf the local governmental lobbyist sought to influence.
- b. For each item of governmental action sought to be influenced, the name and title of each City employee, or elected or appointed City official with whom the local governmental lobbyist specifically met or communicated.
- c. A brief narrative description (no longer than three sentences) of the position advocated by the local governmental lobbyist on behalf of the identified client.

2. **Schedule B: Employment.** Lists information regarding the employment of any City employee, elected/appointed City official, or a member of the immediate family of one of these individuals by the local governmental lobbyist, or a registered client of a the lobbyist, including:

- a. The name of the person employed or hired.
- b. A description of the services actually performed.
- c. The total payments made to the City employee or elected or appointed City official during the reporting period identified only by the following categories: less than \$250; between \$250 and \$1,000; greater than \$1,000 but less than \$10,000; greater than \$10,000.

3. **Schedule C: Compensated Services.** Lists information regarding any compensated services the local governmental lobbyist has been hired to perform for any elected City officeholder or candidate for elected City office, including:

- a. The name of the person who employed or hired the local governmental lobbyist.
- b. A description of the services actually performed.
- c. The total payments made during the reporting period identified only by the following categories: less than \$250; between \$250 and \$1,000; greater than \$1,000 but less than \$10,000; greater than \$10,000.

**“Client”** means the real party in interest for whose benefit the services of a local governmental lobbyist are actually performed.

**“Payment”** means a payment, distribution transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.



4. **Schedule D: Contribution Solicitations.** Lists information regarding any solicitations by the local governmental lobbyist for contributions to an elected City officeholder, candidate for City office, or committee or campaign fund controlled by such officeholder or candidate, including:
- a. The names of the persons whom the local governmental lobbyist solicited.
  - b. The officeholder or candidate for whose benefit each solicitation was made.

If a local governmental lobbyist sources a donation from more than fifty individual members or employees of a corporation, union or other association that is a registered client of the local governmental lobbyist, or if the local governmental lobbyist makes a solicitation to all members or employees of a corporation, union or association that is a registered client of the local governmental lobbyist, the local governmental lobbyist may choose to disclose the name of the registered client instead of the names of the persons whom the lobbyist actually solicited.

#### **D. How to File?**

You may file disclosure reports either in person at the City Clerk Department or by accessing the City's online filing portal, NetFile. Quarterly and annual disclosure reports may be obtained through the individual lobbyist's filing portal. NetFile can be accessed through the City's webpage or visiting the filer access portal at <http://www.netfile.com/agency/berk/>.

Registered lobbyists must complete the report, print and sign it, and upload it into the system. **A hand-written signature is required on all documents.** Completed disclosure reports may also be sent by U.S. mail or delivered in person to the City Clerk Department. Disclosure reports may not be submitted via email.

Complete user instructions for NetFile are available through the City Clerk Department. Lobbyists may contact the City Clerk Department at (510) 981-6908 or [elections@cityofberkeley.info](mailto:elections@cityofberkeley.info) to get started with NetFile. The City Clerk Department also offers one-on-one training for lobbyists on using NetFile.

## CHAPTER IV. PROHIBITED ACTIVITIES

### CHAPTER IV. INDEX

- A. Personal Obligation of City Officials Prohibited
- B. Deception & False Appearances Prohibited
- C. Deception Prohibited
- D. Restrictions on Payments And Expenses Benefiting Local Public Officials
- E. Restriction on Campaign Consultants Lobbying Current And Former Clients

#### **A. Personal Obligation of City Officials Prohibited (BMC2.09.180)**

A local governmental lobbyist, or the lobbyist's clients must abstain from carrying out any act with the express purpose and intent of placing any elected or appointed City official or City employee under personal obligation to the local governmental lobbyist, client, contractor or person.

**"City official"** means the Mayor, members of the City Council and Rent Stabilization Board, City Commissioners, the City Auditor, and School Board members.

#### **B. Deception & False Appearances Prohibited (BMC 2.09.190 & 2.09.200)**

No local governmental lobbyist or client may deceive or attempt to deceive a City employee, or elected or appointed City official as to any material fact pertinent to any pending or proposed governmental action. Neither may a local governmental lobbyist or client attempt in any way to create a fictitious appearance of public favor (or disfavor) of any governmental action or to cause any communication to be sent to a City employee in the name of any fictitious person or in the name of any real person without the real person's consent.

#### **C. Deception Prohibited (BMC 2.09.210)**

No local governmental lobbyist or client may represent, either directly or indirectly, orally or in writing that such person can control or obtain the vote or action of any City employee, or elected or appointed City official.

#### **D. Restrictions on Payments and Expenses Benefiting Local Public Officials (BMC 2.09.220)**

No local government lobbyist or client shall make any payment or incur any expense, including any gift of travel, that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals, in which the cumulative value of such payments or expenses exceeds \$240 during any calendar year. The prohibited payments and expenses include gifts, honoraria and any other form of compensation.

**"Payment"** means a payment, distribution transfer, loan advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible

The following are exempt from the restrictions in 2.09.220:

1. gifts of food or refreshment worth \$25 or less per occasion, if the local governmental lobbyist is a 501 (c)(3) nonprofit organization, the gift of food or refreshment is offered in connection with a public event held by the 501 (c)(3) nonprofit organization, and the same gift of food or refreshment is made available to all attendees of the public event;
2. payments or expenses that, within thirty (30) days after receipt, are returned unused or are reimbursed;
3. gifts of food or beverage worth \$25 or less per occasion, if said gift is provided in the home of an individual local governmental lobbyist or individual local governmental lobbyist's registered client when the individual or member of the individual's family is present;
4. a pass or ticket to a fundraising event for a campaign committee or candidate, or for an organization exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code;
5. informational material;
6. campaign contributions not to exceed the limit imposed by the Berkeley Election Reform Act or state law, as applicable; and
7. Salaries, consulting fees or other payments for services rendered or bargained for.

No other exception to, or exclusion from, the definition of gift or honoraria contained in the Political Reform Act of 1974 as amended, and the regulations issued pursuant thereto, shall apply to this section.

For purposes of the gift limits imposed by section 2.09.220, gifts shall be aggregated as set forth in state law.

The following types of payments are prohibited under 2.09.220:

1. A lobbyist or a lobbyist's registered client cannot use an intermediary for payments, including any gift of travel that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals.
2. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from any lobbyist for the individual's personal benefit or for the personal benefit of a member of the immediate family of one of these individuals.

3. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from a third-party if the officer knows or has reason to know that the third-party is providing the payment or expense on behalf of a lobbyist.

**E Restriction on Campaign Consultants Lobbying current and former Clients (BMC 2.09.230)**

A campaign consultant cannot lobby any elected or appointed City official of the City who is a current or former client of the campaign consultant. This prohibition shall not apply to:

1. An employee of a campaign consultant whose sole duties are clerical; or
2. An employee of a campaign consultant who did not personally provide campaign consulting services to the officer of the city with whom the employee seeks to communicate in order to influence local legislative or administrative action.

Whenever the following words or phrases are used in Section 2.09.230, they are defined as follows:

1. "Current client" means a person for whom the campaign consultant has been contracted to provide campaign consulting services. If such person is a committee as defined by Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12), the current client shall be any individual who controls such committee; any candidate that such committee was primarily formed to support; and any proponent or opponent of a ballot measure that the committee is primarily formed to support or oppose.
2. "Employee" means an individual employed by a campaign consultant, but does not include any individual who has an ownership interest in the campaign consultant that employs them.
3. "Former client" means a person for whom the campaign consultant has terminated all campaign consulting services within the past twenty-four (24) months.

## CHAPTER V. ENFORCEMENT

### CHAPTER V. INDEX

- A. Complaints, Investigations & Civil Actions
- B. Hearings & Violations
- C. Penalties
- D. Criminal Violation
- E. Joint and Several Liability

#### **A. Complaints, Investigations & Civil Actions (BMC 2.09.250 & 2.09.280)**

Any person who believes a violation of the Act has occurred may file a complaint with the OGC, which may (1) refer to the secretary to investigate, to the extent the secretary has not done so; (2) dismiss the complaint; or (3) find probable cause that a violation of this chapter has occurred.

The Commission may also initiate an investigation of a possible violation based on information presented to it, including by staff.

If the Commission has reason to believe that a violation has occurred or is about to occur, it may also institute action at law or equity to enforce and compel compliance with the provisions in BMC Chapter 2.09.280. Any resident of the City who believes that a violation has occurred, may institute such action at law or equity for injunctive relief and to compel compliance with the provisions in BMC Chapter 2.09.

#### **B. Hearings & Violations (BMC 2.09.260 & 2.09.270)**

In reviewing a complaint or an investigation that the Commission has initiated, if the Commission determines that there is probable cause for believing that a violation has occurred and makes a good faith effort to give reasonable written notice to the person or persons involved, it may hold a hearing to determine if the violation has occurred, and may determine an appropriate remedy if a violation is found. The Commission shall conduct such hearings and proceedings with respect to determinations of probable cause pursuant to adopted procedures.

➤ If the Commission finds a violation, the Commission may:

1. Find mitigating circumstances and take no further action.
2. Issue a public statement or reprimand.
3. Impose a civil penalty.
4. Take other advisory or informal action as specified in the Open Government Ordinance.

**C. Penalties (BMC 2.09.280 - BMC 2.09.290)**

The Commission may impose penalties of up to one thousand dollars (\$1,000) for each violation or, if the violation was a prohibited payment, expense or gift under Section 2.09.220, of up to three times the value of each prohibited payment, expense or gift.

Unpaid penalties will be referred to the appropriate City agency or department for collection.

For local government lobbyists found to have repeatedly (over more than one quarter), knowingly, or willfully violated the Act, the Commission may impose penalties of up to twenty-five thousand dollars (\$25,000) for any violation, using factors adopted by the Commission.

**D. Criminal Violation (BMC 2.09.300)**

Any person who knowingly or willfully violates the provisions of this Act is guilty of a misdemeanor. The prosecution of any misdemeanor violation shall commence within four years after the date on which the alleged violation occurred.

No person convicted of a misdemeanor violation of this Act may act as a local governmental lobbyist, render consultation or advice to any registered client, or otherwise attempt to influence a governmental action for compensation for one year after such conviction.

**E. Joint and Several Liability (BMC 2.09.310)**

Should two or more persons be responsible for any violation, they may be jointly and severally liable. The client or employer of a local governmental lobbyist shall be jointly and severally liable for all violations of the Act committed by the local governmental lobbyist in connection with acts or omissions undertaken on behalf of that client or employer.

If a business, firm or organization registers or files local governmental lobbyist disclosures on behalf of its employees pursuant to Section 2.09.150, the business, firm or organization may be held jointly and severally liable for any failure to disclose its employees' lobbying activities.

## APPENDIX A: RESOURCE DIRECTORY

1. OPEN GOVERNMENT COMMISSION

2180 Milvia Street, Fourth Floor

Berkeley, CA 94704

(510) 981-6998

[fcpc@cityofberkeley.info](mailto:fcpc@cityofberkeley.info) <http://www.cityofberkeley.info/opengovernmentcommission/>

2. CITY CLERK

2180 Milvia Street, First Floor

Berkeley, CA 94704

(510) 981-6900

[elections@cityofberkeley.info](mailto:elections@cityofberkeley.info)

<http://www.cityofberkeley.info/clerk>

3. BERKELEY MUNICIPAL CODE

Lobbyist Registration and Regulations

Chapter 2.09

<https://www.codepublishing.com/CA/Berkeley/>

**APPENDIX B: FULL TEXT OF ORDINANCE**

**ORDINANCE NO. 7,629-N.S.**

**ADDING CHAPTER 2.09 TO THE BERKELEY MUNICIPAL CODE TO REQUIRE THE REGISTRATION AND REGULATION OF LOCAL GOVERNMENT LOBBYISTS AND AMENDING CHAPTER 2.07, REVOLVING DOOR RESTRICTIONS**

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

Section 1. That a new Chapter 2.09 is hereby added to the Berkeley Municipal Code to read as follows:

**Chapter 2.09  
LOBBYIST REGISTRATION AND REGULATIONS**

Sections:

**Article 1. General Provisions**

- 2.09.010 Title for citations.
- 2.09.020 Findings.
- 2.09.030 Purpose.

**Article 2. Definitions and Interpretation of This Act**

- 2.09.040 Words and phrases.
- 2.09.050 Definitions.

**Article 3. Registration of Lobbyists**

- 2.09.060 Registration with the Open Government Commission.
- 2.09.070 Cessation of employment.
- 2.09.080 Lobbyist training.
- 2.09.090 Exceptions.
- 2.09.100 Failure to register.
- 2.09.110 Availability of information.
- 2.09.120 Filing under penalty of perjury.
- 2.09.130 Records.

**Article 4. Disclosure of Lobbying Activities and Audits**

- 2.09.140 Quarterly disclosure.
- 2.09.150 Registration and filing of disclosures by organizations.
- 2.09.160 Audits

**Article 5. Prohibitions**

- 2.09.170 No unregistered employment or activity.
- 2.09.180 Personal obligation of City officials prohibited.



- 2.09.190 Deception prohibited.
- 2.09.200 False appearances prohibited.
- 2.09.210 Prohibited representations.
- 2.09.220 Restrictions on payments and expenses benefiting local public officials.
- 2.09.230 Restriction on campaign consultants lobbying current and former clients.

**Article 6. Enforcement**

- 2.09.240 Rules and regulations.
- 2.09.250 Complaint, investigative procedures, and probable cause.
- 2.09.260 Notice and hearing on violations.
- 2.09.270 Violations – commission action.
- 2.09.280 Civil actions.
- 2.09.290 Civil penalties
- 2.09.300 Criminal violation.
- 2.09.310 Joint and several liabilities.
- 2.09.320 Effective date.
- 2.09.330 Severability.

**Article 1. General Provisions**

**2.09.010 Title.**

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

**2.09.020 Findings.**

A. Democracy in our representative form of government requires that the public have an opportunity to know as much as possible what lobbying efforts are taking place that may affect decisions being made by our elected officials, City staff, boards, and commissions.

B. To the extent possible, it is the government's responsibility to balance the responsibility to ensure the health, safety, and general welfare of the public at large in a fiscally and environmental sustainable manner.

**2.09.030 Purpose.**

Therefore, the purpose of this ordinance is to codify certain existing practices, as well as to adopt new practices, to ensure that the public has an adequate opportunity to be informed of the City's activities and to communicate its concerns to its elected and appointed officials.

**Article 2. Definitions and Interpretation of This Act**

**2.09.040 Words and phrases.**

Words and phrases used in this Act shall have the same meanings and be interpreted in the same manner as words and phrases used in the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12) and the Political Reform Act of 1974, California

Government Code 81000 — 91014, hereafter the Political Reform Act, as amended and the regulations issued pursuant thereto, unless otherwise expressly provided or unless the context otherwise requires.

**2.09.050 Definitions.**

For the purposes of this Act, the following definitions shall be applicable:

A. "Campaign consultant" means any person or entity that receives or is promised economic consideration equaling \$1,000 or more in a calendar year for campaign consulting services. The term "campaign consultant" includes any person or entity that subcontracts with a campaign consultant to provide campaign consulting services, and that receives or is promised economic consideration equaling \$1,000 or more in a calendar year for providing campaign consulting services. The term "campaign consultant" does not include attorneys who provide only legal services, accountants who provide only accounting services, pollsters who provide only polling services, and treasurers who provide only those services which are required of treasurers by the Political Reform Act and the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12).

B. "Campaign consulting services" means participating in campaign management or developing or participating in the development of campaign strategy.

C. "Client" means the real party in interest for whose benefit the services of a local governmental lobbyist are actually performed. An individual member of an organization shall not be deemed to be a "client" solely by reason of the fact that such member is individually represented by an employee or agent of the organization as a regular part of such employee's or agent's duties with the organization as long as such member does not pay an amount of money or other consideration in addition to the usual membership fees for such representation.

D. "Committee" shall be defined as set forth in the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12).

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

F. "Contribution" shall have the same meaning as set forth in the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12).

G. "Controlled committee" shall have the same meaning as set forth in the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12), but shall not include any state committees.

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

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

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

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

L. "Influence" or "influencing" means contacting a City elected or appointed official or employee, either directly or indirectly, for the purpose of promoting, supporting, modifying, opposing, causing the delay or abandonment of conduct, or otherwise intentionally affecting the official actions.

M. "Local governmental lobbyist" means any individual who: (1) receives or is entitled to receive one thousand dollars (\$1,000) or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, to communicate directly or through agents with any elected or appointed City official or City employee, for the purpose of influencing any proposed or pending governmental action of the City; or (2) whose duties as a salaried employee, officer or director of any corporation, organization or association include communication directly or through agents with any elected or appointed City official or City employee, for the purpose of influencing any proposed or pending governmental action of the City. No person is a local governmental lobbyist by reason of activities described in Section 2.09.090. In case of any ambiguity, the definition of "local governmental lobbyist" shall be interpreted broadly.

N. "Payment" means a payment, distribution transfer, loan advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

O. "Person doing business with the City" means any person whose financial interests are materially affected by governmental action as defined by Section 2.09.050(K). It includes persons currently doing business with the City, planning to do business with the City, or having done business with the City within two years. For purposes of this Act a person's financial interests shall not be found to be materially affected by the issuance of any license or permit which does not require the exercise of discretion by City elected or appointed officials or employees.

P. "Public event" shall mean an event or gathering that any member of the public may attend, has been publicly announced and publicized in advance, and for which there is no admission cost or fee.

Q. "Public official" means an elected or appointed officer or employee or officially designated representative, whether compensated or not, of the United States or any of its agencies, the State of California, any political subdivision of the state, including cities, counties, districts, or any public corporation, agency or commission.

R. "Registered client" means any client of a local governmental lobbyist listed as part of the requirements of sections 2.09.060 and 2.09.140.

S. "State committee" shall mean a committee that makes contributions or expenditures to support or oppose candidates or measures voted on in state elections, or in more than one county.

### **Article 3. - Registration of Lobbyists**

#### **2.09.060 Registration with the Open Government Commission.**

A. No person shall act as local governmental lobbyist before registering as a local governmental lobbyist with the Open Government Commission, through the office of the City Clerk.

B. At the time of registering, the local governmental lobbyist shall file with the City Clerk, in writing:

1. His or her name, business address, e-mail address, and business telephone number.
2. The name, business address, and business telephone number of each client for whom the local governmental lobbyist attempts or receives compensation to influence any proposed or pending governmental action of the City.
3. The name, business address, and business telephone number of the local governmental lobbyist's employer, firm or business affiliation.

C. The local governmental lobbyist shall reregister annually during the month of January and at that time shall resubmit the required information.

D. Local governmental lobbyists shall amend any information submitted to the Open Government Commission through registration and quarterly disclosures within five business days of the changed circumstances that require correction or updating of such information.

E. At the time of initial registration, and during each annual registration, each local governmental lobbyist shall pay a fee of \$500.

F. Failure to pay the annual fee shall constitute a termination of a local governmental lobbyist's registration with the Open Government Commission. The Open Government

Commission is also authorized to establish additional processes for the termination of a local governmental lobbyist's registration.

G. The City Clerk shall waive all registration fees for any employee of a tax-exempt organization presenting proof of the organization's tax-exempt status under 26 U.S.C. Section 501(c)(3) or 501(c)(4), so long as they are acting in that capacity.

H. The City Clerk shall deposit all fees collected pursuant to this Section in the General Fund of the City of Berkeley.

**2.09.070 Cessation of employment.**

A local governmental lobbyist who has terminated all activities requiring registration shall notify the City Clerk of that fact and thereupon shall be relieved of any further obligations under this Act until such time as he or she commences activity requiring registration.

**2.09.080 Lobbyist training.**

A. Each local governmental lobbyist must complete a lobbyist training session offered by the Open Government Commission, through the Office of the Clerk, within 30 days of the local governmental lobbyist's initial registration. Thereafter, local governmental lobbyists shall engage in additional training sessions as required by the Open Government Commission, at its discretion.

B. The Open Government Commission shall make local governmental lobbyist training sessions available on its website.

C. On or before the deadline for completing any required local governmental lobbyist training session, a local governmental lobbyist must file a signed declaration with the Open Government Commission stating, under penalty of perjury, that the local governmental lobbyist has completed the required training session.

**2.09.090 Exceptions.**

The provisions of this Act shall not apply:

A. To a public official acting in his or her official capacity.

B. To the publication or broadcasting of news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge governmental action.

C. To a person specifically invited by the City Council any committee thereof, or by any board or commission, or any committee of a board or commission, or by any officer or employee of the City charged by law with the duty of conducting a hearing or making a decision, for the purpose of giving testimony or information in aid of the body or person extending the invitation.

D. To a person who, without extra compensation and not as part of, or in the ordinary course of, his or her regular employment, presents the position of his or her organization

when that organization has one or more of its officers, directors, employees or representatives already registered under the provisions of this Act.

E. To designated representatives of a recognized employee organization whose activities are limited to communicating with elected or appointed City officials or their representatives regarding (1) wages, hours and other terms and conditions of employment pursuant to the procedures set forth in Government Code Sections 3500—3510, or (2) the administration, implementation or interpretation of an existing employment agreement.

F. To persons whose only activity is to (1) submit a bid on a competitively bid contract, (2) respond to a request for proposal or qualifications, or (3) apply for grant funding or (4) negotiate the terms of a written contract or grant if selected pursuant to such bid or request for proposal or qualifications. This exception shall not apply to persons who attempt to influence the award or terms of a contract or grant with any elected or appointed official, unless their attempts are limited to speaking during public comment at a publicly noticed meeting.

G. To any individuals serving in their professional capacity (e.g. attorneys, architects, or engineers), who are employed by a local government lobbyist, and whose attempts to influence governmental action are limited to: (1) Publicly appearing at a public meeting, public hearing, or other official proceeding open to the public to represent or testify on behalf of a proposed development; (2) Preparing or submitting documents or writings in connection with the proposed development for use at a public meeting, public hearing, or other official proceeding open to the public; and (3) Contacting city employees or agents working under the direction of the city manager directly relating to (1) and (2) above, or contacting elected or appointed City officials directly relating to (1) and (2) above.

H. Persons employed by, or a member of, a labor union.

**2.09.100 Failure to Register.**

If the Open Government Commission determines that a person is subject to registration and he or she fails to register within seven days of that determination, he or she shall be barred from acting as a local governmental lobbyist except when appearing before the City Council or other board or commission at a noticed public meeting. Such debarment shall be in effect for three months from the date of such determination or until registration, whichever is later.

**2.09.110 Availability of information.**

All registration information shall be retained by the City Clerk for a period of five years from the date of filing, shall constitute part of the public records of the City, and shall be open to public inspection.

**2.09.120 Filing under penalty of perjury.**

All information required by this Act shall be filed with the City Clerk on forms prescribed by the Open Government Commission, and accompanied by a declaration by the local

governmental lobbyist that the contents thereof are true and correct under penalty of perjury.

**2.09.130 Records.**

A local governmental lobbyist shall retain, for a period of five years, all books, papers and documents necessary to substantiate the registration required to be made under this Chapter.

**Article 4. Disclosure of Lobbying Activities and Audits**

**2.09.140 Quarterly disclosure.**

For each calendar quarter in which a local governmental lobbyist was required to be registered, he or she shall file a quarterly report with the City Clerk, unless the local governmental lobbyist is a sole proprietorship or works for a lobbying firm with four or fewer employees, in which case they shall file annually. The reports shall be due no later than thirty (30) days after the end of the reporting period. The report shall contain the following information:

A. The item(s) of governmental action and the name and address of the client(s) on whose behalf the local governmental lobbyist sought to influence.

B. For each item of governmental action sought to be influenced, the name and title of each City employee, or elected or appointed City official with whom the local governmental lobbyist specifically met or communicated.

C. A brief narrative description (no longer than three sentences) of the position advocated by the local governmental lobbyist on behalf of the identified client.

D. If any local governmental lobbyist, or a registered client at the behest of a local governmental lobbyist, employs or requests, recommends or causes a client of the local governmental lobbyist to employ, and such client does employ, any City employee, or elected or appointed City official, in any capacity whatsoever, or a member of the immediate family of one of these individuals, the local governmental lobbyist shall disclose (1) the name of the person employed or hired, (2) a description of the services actually performed, and (3) the total payments made to the City employee or elected or appointed City official during the reporting period identified only by the following categories: less than \$250; between \$250 and \$1,000; greater than \$1,000 but less than \$10,000; greater than \$10,000.

E. If any elected City officeholder or candidate for elected City office employs or hires a local governmental lobbyist to provide compensated services to the officeholder or candidate, the local governmental lobbyist shall disclose (1) the name of the person who employed or hired the local governmental lobbyist, (2) a description of the services actually performed, and (3) the total payments made during the reporting period identified only by the following categories: less than \$250; between \$250 and \$1,000; greater than \$1,000 but less than \$10,000; greater than \$10,000.

F. If a local governmental lobbyist solicits any person to make a contribution to an elected City officeholder, candidate for City office or to any committee or campaign fund controlled by such officeholder or candidate, the local governmental lobbyist shall disclose the names of the persons whom the local governmental lobbyist solicited, and the officeholder or candidate for whose benefit each solicitation was made. A solicitation does not include a request for a contribution made:

1. in a mass mailing sent to members of the public;
2. in response to a specific request for a recommendation;
3. to a gathering which members of the public may attend; or
4. in a newspaper, on radio or television, or in any other mass media.

A local governmental lobbyist does not "solicit" solely because his or her name is printed with other names on stationary or a letterhead used to request contributions. If a local governmental lobbyist sources a donation from more than fifty individual members or employees of a corporation, union or other association that is a registered client of the local governmental lobbyist, or if the local governmental lobbyist makes a solicitation to all members or employees of a corporation, union or association that is a registered client of the local governmental lobbyist, the local governmental lobbyist may choose to disclose the name of the registered client instead of the names of the persons whom the lobbyist actually solicited.

#### **2.09.150 Registration and filing of disclosures by organizations.**

The Open Government Commission is authorized to establish procedures to permit the registration and filing of local governmental lobbyist disclosures by a business, firm, or organization on behalf of the individual local governmental lobbyists employed by those businesses, firms, or organizations.

#### **2.09.160 Audits**

At least once every year, the Open Government Commission shall initiate audits of at least 5% of registered local governmental lobbyists, at minimum one local governmental lobbyist, selected at random. At the request of the Open Government Commission, the City Clerk may assist in conducting these audits. This requirement shall not restrict the authority of the Open Government Commission or the City Clerk to undertake any other audits or investigations of a local governmental lobbyist authorized by law or regulation. Within ten business days of a request by the Open Government Commission or City Clerk, a local governmental lobbyist or anyone required to register as a local governmental lobbyist shall provide the requested documents required to be retained under this Chapter.

### **Article 5. Prohibitions**

#### **2.09.170 No unregistered employment or activity.**



A. A local governmental lobbyist shall not engage in any activity on behalf of a client as a local governmental lobbyist unless such local governmental lobbyist is registered and has listed such client with the City Clerk.

B. No person shall accept compensation for acting as a local governmental lobbyist except upon condition that he or she forthwith register as required by this Act.

**2.09.180 Personal obligation of City officials prohibited.**

Local governmental lobbyists, or clients shall abstain from carrying out any act with the express purpose and intent of placing any elected or appointed City official or City employee under personal obligation to such local governmental lobbyist, client, contractor or person.

**2.09.190 Deception prohibited.**

No local governmental lobbyist or client shall deceive or attempt to deceive a City employee, or elected or appointed City official as to any material fact pertinent to any pending or proposed governmental action.

**2.09.200 False appearances prohibited.**

No local governmental lobbyist or client shall attempt in any way to create a fictitious appearance of public favor or disfavor of any governmental action or to cause any communication to be sent to a city employee in the name of any fictitious person or in the name of any real person without the real person's consent.

**2.09.210 Prohibited representations.**

No local governmental lobbyist or client shall represent, either directly or indirectly, orally or in writing that such person can control or obtain the vote or action of any City employee, or elected or appointed City official.

**2.09.220 Restrictions on payments and expenses benefiting local public officials.**

A. No local government lobbyist or a registered client shall make any payment or incur any expense, including any gift of travel, that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals, in which the cumulative value of such payments or expenses exceeds \$240 during any calendar year. This \$240 limit may be adjusted every four years by the OGC to account for inflation. The payments and expenses specified in subsections 2.09.220(A)-(D) include gifts, honoraria and any other form of compensation but do not include:

1. gifts of food or refreshment worth \$25 or less per occasion, if the local governmental lobbyist is a 501 (c)(3) nonprofit organization, the gift of food or refreshment is offered in connection with a public event held by the 501 (c)(3) nonprofit organization, and the same gift of food or refreshment is made available to all attendees of the public event;
2. payments or expenses that, within thirty (30) days after receipt, are returned unused or are reimbursed;

3. gifts of food or beverage worth \$25 or less per occasion, if said gift is provided in the home of an individual local governmental lobbyist or individual local governmental lobbyist's registered client when the individual or member of the individual's family is present;
4. a pass or ticket to a fundraising event for a campaign committee or candidate, or for an organization exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code;
5. informational material;
6. campaign contributions not to exceed the limit imposed by the Berkeley Election Reform Act or state law, as applicable; and
7. salaries, consulting fees or other payments for services rendered or bargained for. No other exception to, or exclusion from, the definition of gift or honoraria contained in the Political Reform Act of 1974 as amended, and the regulations issued pursuant thereto, shall apply to this section.

For purposes of the gift limits imposed by subsections (A)-(C), gifts shall be aggregated set forth in California Code of Regulations, Title 2, Section 18945.1, as it may hereafter be amended.

B. No lobbyist or a lobbyist's registered client shall make any payment to a third-party for the purpose of making any payment or incurring any expense, including any gift of travel, that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals.

C. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from any lobbyist for the individual's personal benefit or for the personal benefit of a member of the immediate family of one of these individuals.

D. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from a third-party if the officer knows or has reason to know that the third-party is providing the payment or expense on behalf of a lobbyist.

**2.09.230 Restriction on campaign consultants lobbying current and former clients.**

A. No campaign consultant, individual who has an ownership interest in the campaign consulting business, or employee of the campaign consultant shall lobby any elected or appointed City official of the city who is a current or former client of the campaign consultant.

B. This prohibition shall not apply to:

1. an employee of a campaign consultant whose sole duties are clerical; or

2. an employee of a campaign consultant who did not personally provide campaign consulting services to the officer of the city with whom the employee seeks to communicate in order to influence local legislative or administrative action.

C. The exceptions in Subsection (B) shall not apply to any person who communicates with an officer of the city in his or her capacity as an employee of the campaign consultant who is prohibited by Subsection (A) from making the communication.

D. Whenever the following words or phrases are used in this Section, they shall be defined as follows:

1. "Current client" shall mean a person for whom the campaign consultant has been contracted to provide campaign consulting services. If such person is a committee as defined by Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12), the current client shall be any individual who controls such committee; any candidate that such committee was primarily formed to support; and any proponent or opponent of a ballot measure that the committee is primarily formed to support or oppose.

2. "Employee" shall mean an individual employed by a campaign consultant, but does not include any individual who has an ownership interest in the campaign consultant that employs them.

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

## **Article 6. Enforcement**

### **2.09.240 Rules and regulations.**

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

### **2.09.250 Complaint, investigative procedures, and probable cause.**

A. Any person who believes that a violation of any portion of this chapter has occurred may file a complaint with the Open Government Commission. The Open Government Commission may initiate an investigation of a possible violation of this chapter based on information brought before the commission, including information presented by staff.

B. After receiving a complaint or information regarding a possible violation of this chapter, the Open Government Commission shall decide whether to (1) refer to the secretary to investigate, to the extent the secretary has not done so; (2) dismiss the complaint; or (3) find probable cause that a violation of this chapter has occurred.

### **2.09.260 Notice and hearing on violations.**

After the Open Government Commission determines there is probable cause for believing that a provision of this Chapter has been violated and makes a good faith effort to give reasonable written notice to the person or persons involved in the allegation using the contact information with which they registered, it may hold a hearing to determine if a violation has occurred, and may determine an appropriate remedy if a violation is found. The hearing pursuant to this section shall be conducted in an impartial manner, consistent with the requirements of due process. A record shall be maintained of the proceedings,

and a report summarizing the facts, issues, and any remedial actions shall be issued by the commission following the conclusion of the hearing.

The commission shall conduct such hearings and proceedings with respect to determinations of probable cause pursuant to adopted procedures. All interested persons may participate in the hearing.

**2.09.270 Violations – commission action.**

If the Open Government Commission finds a violation of this Act, the Open Government Commission may: (1) Find mitigating circumstances and take no further action; (2) issue a public statement or reprimand, (3) impose a civil penalty in accordance with this Act, or (4) take other action as specified in 2.06.190(A)(1).

**2.09.280 Civil actions.**

If the commission has reason to believe that a violation of this chapter has occurred or is about to occur, it may also institute action at law or equity to enforce and compel compliance with the provision of this chapter. Any resident of the City who believes that a violation of this chapter has occurred, may institute such action at law or equity for injunctive relief and to compel compliance with the provisions of this chapter.

**2.09.290 Civil penalties.**

A. Except as otherwise specified in this Act, the Open Government Commission may impose penalties of up to one thousand dollars (\$1,000) for each violation or, if the violation was a prohibited payment, expense or gift under section 2.09.220, of up to three times the value of each prohibited payment, expense or gift.

B. If any civil penalty imposed by the Open Government Commission is not timely paid, the Open Government Commission shall refer the debt to the appropriate City agency or department for collection.

C. For local government lobbyists found to have repeatedly over more than one quarter, knowingly, or willfully violated the Act, the Open Government Commission may impose penalties of up to twenty-five thousand dollars (\$25,000) for any violation, using factors adopted by the Open Government Commission through its rules, regulations, or procedures.

**2.09.300 Criminal violation.**

A. Any person who knowingly or willfully violates the provisions of this Act is guilty of a misdemeanor.

B. The prosecution of any misdemeanor violation of this Act shall commence within four years after the date on which the alleged violation occurred.

C. No person convicted of a misdemeanor violation of this Act may act as a local governmental lobbyist, render consultation or advice to any registered client, or otherwise attempt to influence a governmental action for compensation for one year after such conviction.

**2.09.310 Joint and several liability.**

A. Should two or more persons be responsible for any violation under this Chapter, they may be jointly and severally liable.

B. The client or employer of a local governmental lobbyist shall be jointly and severally liable for all violations of this Chapter committed by the local governmental lobbyist in connection with acts or omissions undertaken on behalf of that client or employer.

C. If a business, firm or organization registers or files local governmental lobbyist disclosures on behalf of its employees pursuant to Section 2.09.150 the business, firm or organization may be held jointly and severally liable for any failure to disclose its employees' lobbying activities.

**2.09.320 Effective date.**

The effective date of this Act shall be January 1, 2020. The Act may be effective at an earlier date if administratively feasible.

**2.09.330 Severability.**

The provisions of this Chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Chapter, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this Chapter, or the validity of its application to other persons or circumstances.

Section 2. That Berkeley Municipal Code section 2.06.190 is amended as follows:

**2.06.190 Open Government Commission--Duties.**

A) There is hereby created the Open Government Commission, which shall have authority for oversight of this Chapter and Chapter 2.09, the Lobbyist Registration Act, as set forth in this Section. The Open Government Commission shall consist of the members of the Berkeley Fair Campaign Practices Commission established by Berkeley Municipal Code section 2.12.170 who shall be ex officio members of the Open Government Commission.

1) The Open Government Commission shall:

a) hear complaints by any person concerning alleged non-compliance with this Ordinance, the Brown Act, the Public Records Act, or the Lobbyist Registration Act, by the City or any of its legislative bodies, elected or appointed officials, officers or employees;

b) consider ways to informally resolve those complaints and make recommendations to the Council regarding such complaints;

c) seek advice from the City Attorney concerning those complaints;

d) advise the City Council of its opinion, conclusion or recommendation as to any complaint; and

e) take any action authorized by the Lobbyist Registration Act under Chapter 2.09.

To be considered by the Open Government Commission, complaints shall be submitted in writing using a form provided by the City, and must be submitted to the Secretary of the Commission no less than 14 days prior to the Commission meeting at which it will be considered.

2) In addition, the Commission may advise the City Council concerning the report prepared pursuant to subdivision (C), propose additional legislation or procedures that it deems advisable to ensure the City's compliance with this Ordinance, the Brown Act, the Public Records Act, and the Lobbyist Registration Act, and advise the City Council as to any other action or policy that it deems advisable to enhance open and effective government in Berkeley.

B) The power and authority of the Open Government Commission with respect to oversight of this Chapter shall be limited to the functions set forth in this Section, and the Commission shall not have any of the additional authority or powers set forth in Chapter 2.12 with respect to oversight or enforcement of this Chapter.

C) Each year, the City Manager shall prepare and submit to the Open Government Commission a report that contains at least the following information:

- 1) The number of Public Records Act requests received by the City;
- 2) The average length of time taken to respond to those requests;
- 3) The approximate number of pages produced in response to those requests;
- 4) The number and resolution of all written complaints received by the City concerning its compliance with the Public Records Act with respect to such requests;
- 5) The number and resolution of all complaints received by the City concerning its compliance with the Brown Act; and
- 6) Any other information the City Manager deems appropriate that relates to the City's compliance with this Ordinance, the Brown Act, the Public Records Act, the Lobbyist Registration Act, or open and effective government in Berkeley.

D) Notwithstanding anything to the contrary in Section 2.04.075 or Chapter 3.02, the appointment and tenure of members of the Commission shall be governed by Chapter 2.12.

**Chapter 2.09**  
**LOBBYIST REGISTRATION AND REGULATIONS**

## Sections:

Article 1. General Provisions

- [2.09.010](#) Title.
- [2.09.020](#) Findings.
- [2.09.030](#) Purpose.

Article 2. Definitions and Interpretation of This Act

- [2.09.040](#) Words and phrases.
- [2.09.050](#) Definitions.

Article 3. Registration of Lobbyists

- [2.09.060](#) Registration with the Open Government Commission.
- [2.09.070](#) Cessation of employment.
- [2.09.080](#) Lobbyist training.
- [2.09.090](#) Exceptions.
- [2.09.100](#) Failure to Register.
- [2.09.110](#) Availability of information.
- [2.09.120](#) Filing under penalty of perjury.
- [2.09.130](#) Records.

Article 4. Disclosure of Lobbying Activities and Audits

- [2.09.140](#) Quarterly disclosure.
- [2.09.150](#) Registration and filing of disclosures by organizations.
- [2.09.160](#) Audits.

Article 5. Prohibitions

- [2.09.170](#) No unregistered employment or activity.
- [2.09.180](#) Personal obligation of City officials prohibited.
- [2.09.190](#) Deception prohibited.
- [2.09.200](#) False appearances prohibited.
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## Article 6. Enforcement

- [2.09.240](#) Rules and regulations.
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- [2.09.290](#) Civil penalties.
- [2.09.300](#) Criminal violation.
- [2.09.310](#) Joint and several liability.
- [2.09.320](#) Effective date.
- [2.09.330](#) Severability.

### **2.09.010 Title.**

This chapter shall be known as the Berkeley Lobbyist Registration Act, hereafter "the Act." (Ord. 7629-NS § 1 (part), 2018)

### **2.09.020 Findings.**

A. Democracy in our representative form of government requires that the public have an opportunity to know as much as possible what lobbying efforts are taking place that may affect decisions being made by our elected officials, City staff, boards, and commissions.

B. To the extent possible, it is the government's responsibility to balance the responsibility to ensure the health, safety, and general welfare of the public at large in a fiscally and environmentally sustainable manner. (Ord. 7629-NS § 1 (part), 2018)

### **2.09.030 Purpose.**

Therefore, the purpose of this ordinance is to codify certain existing practices, as well as to adopt new practices, to ensure that the public has an adequate opportunity to be informed of the City's activities and to communicate its concerns to its elected and appointed officials. (Ord. 7629-NS § 1 (part), 2018)

### **2.09.040 Words and phrases.**

Words and phrases used in this Act shall have the same meanings and be interpreted in the same manner as words and phrases used in the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12) and the Political Reform Act of 1974, California Government Code 81000 — 91014, hereafter the Political Reform Act, as amended and the regulations issued pursuant thereto, unless otherwise expressly provided or unless the context otherwise requires. (Ord. 7629-NS § 1 (part), 2018)

### **2.09.050 Definitions.**



For the purposes of this Act, the following definitions shall be applicable:

- A. "Campaign consultant" means any person or entity that receives or is promised economic consideration equaling \$1,000 or more in a calendar year for campaign consulting services. The term "campaign consultant" includes any person or entity that subcontracts with a campaign consultant to provide campaign consulting services, and that receives or is promised economic consideration equaling \$1,000 or more in a calendar year for providing campaign consulting services. The term "campaign consultant" does not include attorneys who provide only legal services, accountants who provide only accounting services, pollsters who provide only polling services, and treasurers who provide only those services which are required of treasurers by the Political Reform Act and the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12).
- B. "Campaign consulting services" means participating in campaign management or developing or participating in the development of campaign strategy.
- C. "Client" means the real party in interest for whose benefit the services of a local governmental lobbyist are actually performed. An individual member of an organization shall not be deemed to be a "client" solely by reason of the fact that such member is individually represented by an employee or agent of the organization as a regular part of such employee's or agent's duties with the organization as long as such member does not pay an amount of money or other consideration in addition to the usual membership fees for such representation.
- D. "Committee" shall be defined as set forth in the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12).
- E. "Contractor" means any party to an agreement in which the value of the consideration exceeds one thousand dollars (\$1,000), and, (1) The City is a party, or (2) the agreement or its effectiveness is in any way dependent or conditioned upon approval by the City Council or any board or commission, officer or employee of the City.
- F. "Contribution" shall have the same meaning as set forth in the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12).
- G. "Controlled committee" shall have the same meaning as set forth in the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12), but shall not include any state committees.
- H. "Employee" shall have the same meaning as set out in Title 20 of the Code of Federal Regulations § 404.1007(b).
- I. "Gift" shall be defined as set forth in the Political Reform Act, and the regulations adopted thereunder.
- J. "Gift of travel" shall mean payment, advance, or reimbursement for travel, including transportation, lodging, and food and refreshment connected with the travel.
- K. "Governmental action" means any discretionary administrative or legislative action of the City other than an

action which is ministerial in nature.

L. "Influence" or "influencing" means contacting a City elected or appointed official or employee, either directly or indirectly, for the purpose of promoting, supporting, modifying, opposing, causing the delay or abandonment of conduct, or otherwise intentionally affecting the official actions.

M. "Local governmental lobbyist" means any individual who: (1) receives or is entitled to receive one thousand dollars (\$1,000) or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, to communicate directly or through agents with any elected or appointed City official or City employee, for the purpose of influencing any proposed or pending governmental action of the City; or (2) whose duties as a salaried employee, officer or director of any corporation, organization or association include communication directly or through agents with any elected or appointed City official or City employee, for the purpose of influencing any proposed or pending governmental action of the City. No person is a local governmental lobbyist by reason of activities described in Section [2.09.090](#). In case of any ambiguity, the definition of "local governmental lobbyist" shall be interpreted broadly.

N. "Payment" means a payment, distribution transfer, loan advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

O. "Person doing business with the City" means any person whose financial interests are materially affected by governmental action as defined by Section [2.09.050\(K\)](#). It includes persons currently doing business with the City, planning to do business with the City, or having done business with the City within two years. For purposes of this Act a person's financial interests shall not be found to be materially affected by the issuance of any license or permit which does not require the exercise of discretion by City elected or appointed officials or employees.

P. "Public event" shall mean an event or gathering that any member of the public may attend, has been publicly announced and publicized in advance, and for which there is no admission cost or fee.

Q. "Public official" means an elected or appointed officer or employee or officially designated representative, whether compensated or not, of the United States or any of its agencies, the State of California, any political subdivision of the state, including cities, counties, districts, or any public corporation, agency or commission.

R. "Registered client" means any client of a local governmental lobbyist listed as part of the requirements of sections [2.09.060](#) and [2.09.140](#).

S. "State committee" shall mean a committee that makes contributions or expenditures to support or oppose candidates or measures voted on in state elections, or in more than one county. (Ord. 7629-NS § 1 (part), 2018)

#### **2.09.060 Registration with the Open Government Commission.**

A. No person shall act as local governmental lobbyist before registering as a local governmental lobbyist with the Open Government Commission, through the office of the City Clerk.

- B. At the time of registering, the local governmental lobbyist shall file with the City Clerk, in writing:
1. His or her name, business address, e-mail address, and business telephone number.
  2. The name, business address, and business telephone number of each client for whom the local governmental lobbyist attempts or receives compensation to influence any proposed or pending governmental action of the City.
  3. The name, business address, and business telephone number of the local governmental lobbyist's employer, firm or business affiliation.
- C. The local governmental lobbyist shall reregister annually during the month of January and at that time shall resubmit the required information.
- D. Local governmental lobbyists shall amend any information submitted to the Open Government Commission through registration and quarterly disclosures within five business days of the changed circumstances that require correction or updating of such information.
- E. At the time of initial registration, and during each annual registration, each local governmental lobbyist shall pay a fee of \$500.
- F. Failure to pay the annual fee shall constitute a termination of a local governmental lobbyist's registration with the Open Government Commission. The Open Government Commission is also authorized to establish additional processes for the termination of a local governmental lobbyist's registration.
- G. The City Clerk shall waive all registration fees for any employee of a tax-exempt organization presenting proof of the organization's tax-exempt status under 26 U.S.C. Section 501(c)(3) or 501(c)(4), so long as they are acting in that capacity.
- H. The City Clerk shall deposit all fees collected pursuant to this Section in the General Fund of the City of Berkeley. (Ord. 7629-NS § 1 (part), 2018)

**2.09.070 Cessation of employment.**

A local governmental lobbyist who has terminated all activities requiring registration shall notify the City Clerk of that fact and thereupon shall be relieved of any further obligations under this Act until such time as he or she commences activity requiring registration. (Ord. 7629-NS § 1 (part), 2018)

**2.09.080 Lobbyist training.**

A. Each local governmental lobbyist must complete a lobbyist training session offered by the Open Government Commission, through the Office of the Clerk, within 30 days of the local governmental lobbyist's initial registration. Thereafter, local governmental lobbyists shall engage in additional training sessions as

required by the Open Government Commission, at its discretion.

B. The Open Government Commission shall make local governmental lobbyist training sessions available on its website.

C. On or before the deadline for completing any required local governmental lobbyist training session, a local governmental lobbyist must file a signed declaration with the Open Government Commission stating, under penalty of perjury, that the local governmental lobbyist has completed the required training session. (Ord. 7629-NS § 1 (part), 2018)

### **2.09.090 Exceptions.**

The provisions of this Act shall not apply:

A. To a public official acting in his or her official capacity.

B. To the publication or broadcasting of news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge governmental action.

C. To a person specifically invited by the City Council or any committee thereof, or by any board or commission, or any committee of a board or commission, or by any officer or employee of the City charged by law with the duty of conducting a hearing or making a decision, for the purpose of giving testimony or information in aid of the body or person extending the invitation.

D. To a person who, without extra compensation and not as part of, or in the ordinary course of, his or her regular employment, presents the position of his or her organization when that organization has one or more of its officers, directors, employees or representatives already registered under the provisions of this Act.

E. To designated representatives of a recognized employee organization whose activities are limited to communicating with elected or appointed City officials or their representatives regarding (1) wages, hours and other terms and conditions of employment pursuant to the procedures set forth in Government Code Sections 3500—3510, or (2) the administration, implementation or interpretation of an existing employment agreement.

F. To persons whose only activity is to (1) submit a bid on a competitively bid contract, (2) respond to a request for proposal or qualifications, or (3) apply for grant funding or (4) negotiate the terms of a written contract or grant if selected pursuant to such bid or request for proposal or qualifications. This exception shall not apply to persons who attempt to influence the award or terms of a contract or grant with any elected or appointed official, unless their attempts are limited to speaking during public comment at a publicly noticed meeting.

G. To any individuals serving in their professional capacity (e.g. attorneys, architects, or engineers), who are employed by a local government lobbyist, and whose attempts to influence governmental action are limited to: (1) Publicly appearing at a public meeting, public hearing, or other official proceeding open to the public to

represent or testify on behalf of a proposed development; (2) Preparing or submitting documents or writings in connection with the proposed development for use at a public meeting, public hearing, or other official proceeding open to the public; and (3) Contacting city employees or agents working under the direction of the city manager directly relating to (1) and (2) above, or contacting elected or appointed City officials directly relating to (1) and (2) above.

H. Persons employed by, or a member of, a labor union. (Ord. 7629-NS § 1 (part), 2018)

#### **2.09.100 Failure to Register.**

If the Open Government Commission determines that a person is subject to registration and he or she fails to register within seven days of that determination, he or she shall be barred from acting as a local governmental lobbyist except when appearing before the City Council or other board or commission at a noticed public meeting. Such debarment shall be in effect for three months from the date of such determination or until registration, whichever is later. (Ord. 7629-NS § 1 (part), 2018)

#### **2.09.110 Availability of information.**

All registration information shall be retained by the City Clerk for a period of five years from the date of filing, shall constitute part of the public records of the City, and shall be open to public inspection. (Ord. 7629-NS § 1 (part), 2018)

#### **2.09.120 Filing under penalty of perjury.**

All information required by this Act shall be filed with the City Clerk on forms prescribed by the Open Government Commission, and accompanied by a declaration by the local governmental lobbyist that the contents thereof are true and correct under penalty of perjury. (Ord. 7629-NS § 1 (part), 2018)

#### **2.09.130 Records.**

A local governmental lobbyist shall retain, for a period of five years, all books, papers and documents necessary to substantiate the registration required to be made under this Chapter. (Ord. 7629-NS § 1 (part), 2018)

#### **2.09.140 Quarterly disclosure.**

For each calendar quarter in which a local governmental lobbyist was required to be registered, he or she shall file a quarterly report with the City Clerk, unless the local governmental lobbyist is a sole proprietorship or works for a lobbying firm with four or fewer employees, in which case they shall file annually. The reports shall be due no later than thirty (30) days after the end of the reporting period. The report shall contain the following information:

A. The item(s) of governmental action and the name and address of the client(s) on whose behalf the local governmental lobbyist sought to influence.

B. For each item of governmental action sought to be influenced, the name and title of each City employee, or elected or appointed City official with whom the local governmental lobbyist specifically met or communicated.

C. A brief narrative description (no longer than three sentences) of the position advocated by the local governmental lobbyist on behalf of the identified client.

D. If any local governmental lobbyist, or a registered client at the behest of a local governmental lobbyist, employs or requests, recommends or causes a client of the local governmental lobbyist to employ, and such client does employ, any City employee, or elected or appointed City official, in any capacity whatsoever, or a member of the immediate family of one of these individuals, the local governmental lobbyist shall disclose (1) the name of the person employed or hired, (2) a description of the services actually performed, and (3) the total payments made to the City employee or elected or appointed City official during the reporting period identified only by the following categories: less than \$250; between \$250 and \$1,000; greater than \$1,000 but less than \$10,000; greater than \$10,000.

E. If any elected City officeholder or candidate for elected City office employs or hires a local governmental lobbyist to provide compensated services to the officeholder or candidate, the local governmental lobbyist shall disclose (1) the name of the person who employed or hired the local governmental lobbyist, (2) a description of the services actually performed, and (3) the total payments made during the reporting period identified only by the following categories: less than \$250; between \$250 and \$1,000; greater than \$1,000 but less than \$10,000; greater than \$10,000.

F. If a local governmental lobbyist solicits any person to make a contribution to an elected City officeholder, candidate for City office or to any committee or campaign fund controlled by such officeholder or candidate, the local governmental lobbyist shall disclose the names of the persons whom the local governmental lobbyist solicited, and the officeholder or candidate for whose benefit each solicitation was made. A solicitation does not include a request for a contribution made:

1. in a mass mailing sent to members of the public;
2. in response to a specific request for a recommendation;
3. to a gathering which members of the public may attend; or
4. in a newspaper, on radio or television, or in any other mass media.

A local governmental lobbyist does not "solicit" solely because his or her name is printed with other names on stationery or a letterhead used to request contributions. If a local governmental lobbyist sources a donation from more than fifty individual members or employees of a corporation, union or other association that is a registered client of the local governmental lobbyist, or if the local governmental lobbyist makes a solicitation to all members or employees of a corporation, union or association that is a registered client of the local governmental lobbyist, the local governmental lobbyist may choose to disclose the name of the registered client instead of the names of the persons whom the lobbyist actually solicited. (Ord. 7629-NS § 1 (part), 2018)

**2.09.150 Registration and filing of disclosures by organizations.**

The Open Government Commission is authorized to establish procedures to permit the registration and filing of local governmental lobbyist disclosures by a business, firm, or organization on behalf of the individual local governmental lobbyists employed by those businesses, firms, or organizations. (Ord. 7629-NS § 1 (part), 2018)

**2.09.160 Audits.**

At least once every year, the Open Government Commission shall initiate audits of at least 5% of registered local governmental lobbyists, at minimum one local governmental lobbyist, selected at random. At the request of the Open Government Commission, the City Clerk may assist in conducting these audits. This requirement shall not restrict the authority of the Open Government Commission or the City Clerk to undertake any other audits or investigations of a local governmental lobbyist authorized by law or regulation. Within ten business days of a request by the Open Government Commission or City Clerk, a local governmental lobbyist or anyone required to register as a local governmental lobbyist shall provide the requested documents required to be retained under this Chapter. (Ord. 7629-NS § 1 (part), 2018)

**2.09.170 No unregistered employment or activity.**

- A. A local governmental lobbyist shall not engage in any activity on behalf of a client as a local governmental lobbyist unless such local governmental lobbyist is registered and has listed such client with the City Clerk.
- B. No person shall accept compensation for acting as a local governmental lobbyist except upon condition that he or she forthwith register as required by this Act. (Ord. 7629-NS § 1 (part), 2018)

**2.09.180 Personal obligation of City officials prohibited.**

Local governmental lobbyists, or clients shall abstain from carrying out any act with the express purpose and intent of placing any elected or appointed City official or City employee under personal obligation to such local governmental lobbyist, client, contractor or person. (Ord. 7629-NS § 1 (part), 2018)

**2.09.190 Deception prohibited.**

No local governmental lobbyist or client shall deceive or attempt to deceive a City employee, or elected or appointed City official as to any material fact pertinent to any pending or proposed governmental action. (Ord. 7629-NS § 1 (part), 2018)

**2.09.200 False appearances prohibited.**

No local governmental lobbyist or client shall attempt in any way to create a fictitious appearance of public favor or disfavor of any governmental action or to cause any communication to be sent to a city employee in the name of any fictitious person or in the name of any real person without the real person's consent. (Ord. 7629-NS § 1 (part), 2018)

**2.09.210 Prohibited representations.**

No local governmental lobbyist or client shall represent, either directly or indirectly, orally or in writing that such

person can control or obtain the vote or action of any City employee, or elected or appointed City official. (Ord. 7629-NS § 1 (part), 2018)

**2.09.220 Restrictions on payments and expenses benefiting local public officials.**

A. No local government lobbyist or a registered client shall make any payment or incur any expense, including any gift of travel, that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals, in which the cumulative value of such payments or expenses exceeds \$240 during any calendar year. This \$240 limit may be adjusted every four years by the OGC to account for inflation. The payments and expenses specified in subsections 2.09.220(A)-(D) include gifts, honoraria and any other form of compensation but do not include:

1. gifts of food or refreshment worth \$25 or less per occasion, if the local governmental lobbyist is a 501 (c)(3) nonprofit organization, the gift of food or refreshment is offered in connection with a public event held by the 501 (c)(3) nonprofit organization, and the same gift of food or refreshment is made available to all attendees of the public event;
2. payments or expenses that, within thirty (30) days after receipt, are returned unused or are reimbursed;
3. gifts of food or beverage worth \$25 or less per occasion, if said gift is provided in the home of an individual local governmental lobbyist or individual local governmental lobbyist's registered client when the individual or member of the individual's family is present;
4. a pass or ticket to a fundraising event for a campaign committee or candidate, or for an organization exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code;
5. informational material;
6. campaign contributions not to exceed the limit imposed by the Berkeley Election Reform Act or state law, as applicable; and
7. salaries, consulting fees or other payments for services rendered or bargained for. No other exception to, or exclusion from, the definition of gift or honoraria contained in the Political Reform Act of 1974 as amended, and the regulations issued pursuant thereto, shall apply to this section.

For purposes of the gift limits imposed by subsections (A)-(C), gifts shall be aggregated set forth in California Code of Regulations, Title 2, Section 18945.1, as it may hereafter be amended.

B. No lobbyist or a lobbyist's registered client shall make any payment to a third-party for the purpose of making any payment or incurring any expense, including any gift of travel, that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals.



C. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from any lobbyist for the individual's personal benefit or for the personal benefit of a member of the immediate family of one of these individuals.

D. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from a third-party if the officer knows or has reason to know that the third-party is providing the payment or expense on behalf of a lobbyist. (Ord. 7629-NS § 1 (part), 2018)

**2.09.230 Restriction on campaign consultants lobbying current and former clients.**

A. No campaign consultant, individual who has an ownership interest in the campaign consulting business, or employee of the campaign consultant shall lobby any elected or appointed City official of the city who is a current or former client of the campaign consultant.

B. This prohibition shall not apply to:

1. an employee of a campaign consultant whose sole duties are clerical; or
2. an employee of a campaign consultant who did not personally provide campaign consulting services to the officer of the city with whom the employee seeks to communicate in order to influence local legislative or administrative action.

C. The exceptions in Subsection (B) shall not apply to any person who communicates with an officer of the city in his or her capacity as an employee of the campaign consultant who is prohibited by Subsection (A) from making the communication.

D. Whenever the following words or phrases are used in this Section, they shall be defined as follows:

1. "Current client" shall mean a person for whom the campaign consultant has been contracted to provide campaign consulting services. If such person is a committee as defined by Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12), the current client shall be any individual who controls such committee; any candidate that such committee was primarily formed to support; and any proponent or opponent of a ballot measure that the committee is primarily formed to support or oppose.
2. "Employee" shall mean an individual employed by a campaign consultant, but does not include any individual who has an ownership interest in the campaign consultant that employs them.
3. "Former client" shall mean a person for whom the campaign consultant has terminated all campaign consulting services within the past twenty-four (24) months. (Ord. 7629-NS § 1 (part), 2018)

**2.09.240 Rules and regulations.**

The Open Government Commission may adopt, amend, and rescind rules, procedures, and regulations to carry

out the purposes of this Chapter, and to govern the Commission's procedures to enforce this Chapter. (Ord. 7629-NS § 1 (part), 2018)

**2.09.250 Complaint, investigative procedures, and probable cause.**

A. Any person who believes that a violation of any portion of this chapter has occurred may file a complaint with the Open Government Commission. The Open Government Commission may initiate an investigation of a possible violation of this chapter based on information brought before the commission, including information presented by staff.

B. After receiving a complaint or information regarding a possible violation of this chapter, the Open Government Commission shall decide whether to (1) refer to the secretary to investigate, to the extent the secretary has not done so; (2) dismiss the complaint; or (3) find probable cause that a violation of this chapter has occurred. (Ord. 7629-NS § 1 (part), 2018)

**2.09.260 Notice and hearing on violations.**

After the Open Government Commission determines there is probable cause for believing that a provision of this Chapter has been violated and makes a good faith effort to give reasonable written notice to the person or persons involved in the allegation using the contact information with which they registered, it may hold a hearing to determine if a violation has occurred, and may determine an appropriate remedy if a violation is found. The hearing pursuant to this section shall be conducted in an impartial manner, consistent with the requirements of due process. A record shall be maintained of the proceedings, and a report summarizing the facts, issues, and any remedial actions shall be issued by the commission following the conclusion of the hearing.

The commission shall conduct such hearings and proceedings with respect to determinations of probable cause pursuant to adopted procedures. All interested persons may participate in the hearing. (Ord. 7629-NS § 1 (part), 2018)

**2.09.270 Violations – commission action.**

If the Open Government Commission finds a violation of this Act, the Open Government Commission may: (1) Find mitigating circumstances and take no further action; (2) issue a public statement or reprimand, (3) impose a civil penalty in accordance with this Act, or (4) take other action as specified in 2.06.190(A)(1). (Ord. 7629-NS § 1 (part), 2018)

**2.09.280 Civil actions.**

If the commission has reason to believe that a violation of this chapter has occurred or is about to occur, it may also institute action at law or equity to enforce and compel compliance with the provision of this chapter. Any resident of the City who believes that a violation of this chapter has occurred, may institute such action at law or equity for injunctive relief and to compel compliance with the provisions of this chapter. (Ord. 7629-NS § 1 (part), 2018)

**2.09.290 Civil penalties.**

- A. Except as otherwise specified in this Act, the Open Government Commission may impose penalties of up to one thousand dollars (\$1,000) for each violation or, if the violation was a prohibited payment, expense or gift under section [2.09.220](#), of up to three times the value of each prohibited payment, expense or gift.
- B. If any civil penalty imposed by the Open Government Commission is not timely paid, the Open Government Commission shall refer the debt to the appropriate City agency or department for collection.
- C. For local government lobbyists found to have repeatedly over more than one quarter, knowingly, or willfully violated the Act, the Open Government Commission may impose penalties of up to twenty-five thousand dollars (\$25,000) for any violation, using factors adopted by the Open Government Commission through its rules, regulations, or procedures. (Ord. 7629-NS § 1 (part), 2018)

**2.09.300 Criminal violation.**

- A. Any person who knowingly or willfully violates the provisions of this Act is guilty of a misdemeanor.
- B. The prosecution of any misdemeanor violation of this Act shall commence within four years after the date on which the alleged violation occurred.
- C. No person convicted of a misdemeanor violation of this Act may act as a local governmental lobbyist, render consultation or advice to any registered client, or otherwise attempt to influence a governmental action for compensation for one year after such conviction. (Ord. 7629-NS § 1 (part), 2018)

**2.09.310 Joint and several liability.**

- A. Should two or more persons be responsible for any violation under this Chapter, they may be jointly and severally liable.
- B. The client or employer of a local governmental lobbyist shall be jointly and severally liable for all violations of this Chapter committed by the local governmental lobbyist in connection with acts or omissions undertaken on behalf of that client or employer.
- C. If a business, firm or organization registers or files local governmental lobbyist disclosures on behalf of its employees pursuant to Section [2.09.150](#) the business, firm or organization may be held jointly and severally liable for any failure to disclose its employees' lobbying activities. (Ord. 7629-NS § 1 (part), 2018)

**2.09.320 Effective date.**

The effective date of this Act shall be January 1, 2020. The Act may be effective at an earlier date if administratively feasible. (Ord. 7629-NS § 1 (part), 2018)

**2.09.330 Severability.**

The provisions of this Chapter are declared to be separate and severable. The invalidity of any clause,

sentence, paragraph, subdivision, section or portion of this Chapter, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this Chapter, or the validity of its application to other persons or circumstances. (Ord. 7629-NS § 1 (part), 2018)