

Fair Campaign Practices Commission
Open Government Commission

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

MEETING AGENDA

May 21, 2026

6:30 p.m.

2180 Milvia St., Berkeley, CA 94704

1st Floor, Cypress Room

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

A live broadcast of this meeting will be available at:

<https://cityofberkeley-info.zoomgov.com/j/1614055306>

Public comment will be taken in-person and virtually through the posted link.

Secretary: Sam Harvey

The Commission may act on any item on this agenda

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

4. Approval of agenda.
5. Public Comment. *Comments on subjects not on the agenda that are within the Commissions' purview are heard at the beginning of meeting. Speakers may comment on agenda items when the Commission hears those items.*
6. Approval of minutes for April 16, 2025 FCPC-OGC Regular Meeting.

Fair Campaign Practices Commission (FCPC) Agenda

7. Reports
 - a. Report from Chair
 - b. Report from Staff
8. Report from City Clerk on proposed Charter amendment regarding elections administration procedures and other topics; discussion.
9. Review and revision of FCPC Regulations¹; discussion and possible action.
10. Review of City of Berkeley elections website, including accessibility of Netfile public portal; discussion and possible action.

Open Government Commission (OGC) Agenda

11. Reports.
 - a. Report from Chair
 - b. Report from Staff
12. Public access to hybrid meetings, including progress update on North Berkeley Senior Center, policy discussion of topics raised by the public regarding access for persons with temporary or permanent disabilities, handling of written public comment, and the availability of live transcription and recordings; discussion and possible action.
13. Public access to supplemental materials and amendments at City Council meetings, including the timing of presentation of such materials by the Mayor or City Councilmembers, such that the public may comment on them; discussion and possible action.
14. Review and revision of Open Government Ordinance; discussion and possible action.

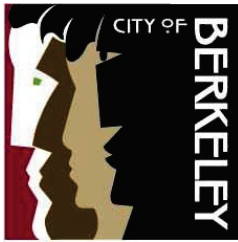
¹ <https://berkeleyca.gov/sites/default/files/2022-01/FCPC-Regulations.pdf>

15. City Council policies for items on consent calendar, including practice of placing consent items on agenda that are not going to pass unanimously; discussion and possible action.
16. Adjournment

Communications

- None

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



Fair Campaign Practices Commission
Open Government Commission

DRAFT MINUTES

April 16, 2026

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

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

Secretaries:
Samuel Harvey
Stephen Hylas
Lauren Packard

Members Present: David Shere, Janis Ching, Rithwik Sudharsan, Andrew Lazarus,
Kyle Haugh, Kitt Saginor

Also Present: Stephen Hylas, Staff Secretary

1. **Call to Order**

Chair called the meeting to order at 6:31 pm.

2. **Roll Call**

Roll call taken

3. **Land Acknowledgment**

4. **Approval of Agenda**

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

Motion to approve agenda. (M/S/C: Saginor/Shere; Ayes: Shere, Ching, Lazarus,
Haugh, Saginor; Noes: None; Absent: Lee, Sudharsan)

5. **Public Comment**

FCPC / OGC Agenda
 April 16, 2026
 Page 2

No speakers.

6. **Approval of minutes for February 19, 2026 FCPC-OGC Regular Meeting**

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

Motion to approve the minutes for the February 19, 2026 FCPC-OGC Regular Meeting (M/S/C: Ching/Shere; Ayes: Shere, Ching, Sudharsan, Lazarus, Haugh, Saginor; Noes: none; Absent: Lee)

Fair Campaign Practices Commission (FCPC) Agenda

7. **Reports**

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

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

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

Motion to approve stipulated agreement (M/S/C: Lazarus/Ching; Ayes: Shere, Ching, Sudharsan, Lazarus, Haugh, Saginor; Noes: none; Absent: Lee)

9. **Review and Revision of FCPC Regulations**

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

Motion to create ad hoc subcommittee to review and recommend revisions to FCPC regulations (M/S/C: Ching/Saginor; Ayes: Shere, Ching, Sudharsan, Lazarus, Haugh, Saginor; Noes: none; Absent: Lee)

Chair Haugh appointed Commissioner Sudharsan to the ad hoc committee.

Open Government Commission (OGC) Agenda

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

11. **Public access to hybrid meetings, including policy discussion of topics raised by the public regarding access for persons with temporary or permanent disabilities, handling of written public comment, and the availability of live transcription and recordings**

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

Motion to request the Secretary to ask the City Clerk to come to the next meeting to give a progress report on hybrid accessibility and the status of the North Berkeley Senior Center, and to create ad hoc subcommittee including to develop recommendations on hybrid meetings (M/S/C: Shere/Ching; Ayes: Shere, Ching, Sudharsan, Lazarus, Haugh, Saginor; Noes: none; Absent: Lee)

Chair Haugh appointed Commissioners Shere, Saginor and Sudharsan to the ad hoc committee.

12. **Public access to supplemental materials and amendments at City Council meetings, including the timing of presentation of such materials by the Mayor or City Councilmembers, such that the public may comment on them; discussion and possible action.**

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

Motion to request Vice Chair Ching to return with written proposal for next meeting (M/S/C: Saginor/Shere; Ayes: Shere, Ching, Sudharsan, Lazarus, Haugh, Saginor; Noes: none; Absent: Lee)

13. **Adjournment**

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

The meeting adjourned at 8:21 pm.



City Clerk Department

May 21, 2026

To: Fair Campaign Practices Commission

From: Mark Numainville, City Clerk

Subject: Proposed Charter Amendment for the November 2026 Election

The City Charter is an important, foundational document for the City. As such, amendments to the Charter may only be enacted by a vote of the people. Berkeley's City Charter was first enacted in 1895, with the "modern" Charter subsequently adopted in 1921. Over the years, as state laws, local regulations, and election administration evolve, it is necessary to ensure that the City Charter remains relevant, enforceable, and implementable.

The City Clerk Department and the City Manager are proposing a set of updates to the City Charter to appear on the November 3, 2026 ballot. These amendments to the City Charter are proposed to update, clarify, and in some cases, modify Charter provisions related to various election processes and requirements.

The proposed amendments do not fall under the regulatory purview of the Fair Campaign Practices Commission as enumerated in its enabling legislation, however, the Commission's role does have some alignment with this subject matter. The City Clerk Department will present the proposed amendments on May 21 to solicit general feedback and field any questions that the Commission may have on the subject.

By way of background, the City may place a Charter amendment on the ballot that addresses more than one subject. The single subject rule, which requires that components of an initiative cannot relate to more than one subject, does not apply to Charter amendments placed on the ballot by the City Council. In contrast, the single subject rule does apply to Charter amendments and other measures placed on the ballot through the citizens' initiative petition process. This was affirmed by the courts in *Hernandez v. County of Los Angeles* in 2008 (167 Cal.App.4th 12, 22-23). The case explicitly states that "Charter cities are also able to group multiple technical amendments into one ballot measure."

For 2026, the notable amendments in the proposed measure are listed below. The City Clerk will be present at the May 21, 2026 FCPC meeting to review the proposed amendments in more detail.

- Reduction of the candidate filing fee from \$150 to \$25 and elimination of signatures-in-lieu of filing fee. The \$150 filing fee was intended for cost recovery, yet the accompanying in-lieu process actually reduces cost recovery, while increasing demands on staff resources. \$25 is the standard filing fee in the Elections Code.
- Removal of place of residence, place of birth, and taxpayer status from the candidate statement. These are unnecessary and potentially prejudicial. Also, the removal of residence address is in line with recent state legislation to protect candidates and officeholders from political violence.
- Increase in the maximum allowable administrative cost recovery for the public financing program to match the actual impact on city resources.
- Addition of language to allow for a remedy when Charter requirements for the format of recall statements and answer are not followed.
- Addition of proactive deadlines for recall proponents to move the process forward, avoiding limbo periods and indefinite gray areas.
- Change of the term “qualified elector” to “registered voter” throughout when registered status is required by law.
- Update of language and timelines in the vacancy sections to align with modern election timelines for elections conducted by the County Registrar of Voters.
- Update of the end of term date from April 30 to November 30 to align with current term end date in the Charter for city elected offices.
- Addition of a deadline for the City Clerk to certify initiative petitions and an update to the deadline to submit the initiative to Council for action.
- Re-framing and clarification of the referendum requirements so that the City regulations do not conflict with the State Elections Code.

Review and possible recommendations for revisions to the FCPC Regulations**Appended to R2.12.325.2 Filing of Mass Mailings - Method of Filing:**

The two-hundred-piece mass mailing threshold in BMC Section 2.12.150 applies to the filing requirements of BMC Section 2.12.325 and the "Notice to Voters" disclaimer requirements of BMC Section 2.12.330. This threshold is separate from, and does not modify, the one-thousand-piece threshold in BMC Section 2.12.335.B, which governs the contributor disclosure requirements ("Major Funding Provided By") of BMC Section 2.12.335.

Appended to R2.12.335 Text or Graphic Electronic Media Advertisement:

(c) For purposes of BMC Section 2.12.335.B.2, "paid advertisements ... on the Internet" includes, but is not limited to, video advertisements, banner and display advertisements, social media advertisements (including sponsored or promoted posts), search advertisements, and native or in-feed advertisements, in each case when delivered through internet-based platforms to any desktop or mobile devices.

(d) The thresholds set forth in BMC Section 2.12.335.B, including the threshold of one thousand or more substantially similar pieces of campaign literature, e-mails, text messages, or pre-recorded telephone calls, apply only to the contributor disclosure requirements of BMC Section 2.12.335. These thresholds are separate from, and do not modify, the two-hundred-piece mass mailing threshold in BMC Section 2.12.150, which governs the filing requirements of BMC Section 2.12.325 and the "Notice to Voters" disclaimer requirements of BMC Section 2.12.330.

[this last one is probably not needed? it just restates the first change]

DRAFT

To: Mark Numainville, City Clerk
From: Kyle Haugh, Chair, Fair Campaign Practices Commission
Subject: NetFile Public Access Portal

Clerk Numainville:

On behalf of the Fair Campaign Practices Commission (“FCPC”), I’m writing regarding the ease of locating the website link to the NetFile Public Access Portal on the City of Berkeley Elections Page.

Several FCPC commissioners have noted that the Elections tab in the Public Access Portal provides a useful way to see who has filed to run in an upcoming election and what ballot initiatives have been filed. But we worry that members of the public who are looking for information on candidates and ballot initiatives in an election may not know about or know how to find this helpful tool.

Presently, the link may be accessed by going to the Elections page (<https://berkeleyca.gov/your-government/elections>), clicking the Campaign Finance box, and scrolling to the bottom of the Campaign Finance page (<https://berkeleyca.gov/your-government/elections/campaign-finance>). There, the Public Access Portal is linked and described as a way to “view campaign reports online.” But members of the public who are interested in learning who is running and what ballot initiatives have been filed, but who may not be looking specifically for the details of each campaign’s finance reports, may not know to look on this Campaign Finance page.

We wonder if it would be feasible to create a new box on the Elections page labeled, e.g., “Candidate and Ballot Initiative Filings,” with a descriptor such as, “See who has filed as a candidate and what ballot initiatives have been filed in upcoming and past elections.” The proposed box could be placed, for example, below the Ballot Measures box:


DRAFT

berkeleyca.gov/your-government/elections


Elections

Find information to help you vote in local elections, become a candidate for elected office, circulate a petition, and run your campaign following local election laws.


The City of Berkeley holds general municipal elections every two years. Special elections may be held as permitted by the Berkeley City Charter. Read our Election Calendar for a detailed timeline of the [November 2026 \(General\)](#) election processes.



BALLOT MEASURES
Discover the process of voting for measures to change city charter and laws



CANDIDATE INFORMATION
Learn about becoming a candidate for an elected office in Berkeley



CAMPAIGN FINANCE
Review campaign contributions and expenditures

Your Government

- About Us
- Boards & Commissions
- City Council
- ♦ **Elections**
 - Candidate Information
 - Local Petition Guidelines and Regulations
 - Campaign Finance
 - Mass Mailings
 - Ballot Measures
 - Voting Information
- Financial Information
- Jobs
- Our Work
- Public Records
- City Holidays
- Lobbyist Registration
- City Audits

That box could take members of the public to a new landing page for Candidate and Ballot Initiative Filings that explains that this information can be viewed by clicking on the Netfile link (<https://netfile.com/agency/brk/>), navigating to the Public Access Portal link (<https://netfile.com/public/BRK/campaign>) rather than the Filer Access Portal link, and clicking the Elections tab to view the relevant candidates, initiatives, and filings for upcoming and past elections.

If something along these lines would be feasible, we think the change would greatly improve public access to this important tool. We would welcome the opportunity to discuss this proposed website revision with you at an upcoming FCPC meeting.

Sincerely,
s/ *DRAFT*

Kyle Haugh
Chair, Fair Campaign Practices Commission

BERKELEY COMMISSIONS AND BOARDS ACCESSIBILITY INFORMATION ONLINE as of May 11, 2026							
Commission/Board	Date	Hybrid?	Recordings posted?	Location	Notes		
Board of Library Trustees	4/15/26	-	MP3	THP South Brance (West Branch) Libr			
Civic Arts Comm	4/22	-	-	THP South Branch Libr	subcomm is virtual on zoom		
Comm on Aging	4/15	-	-	NB Senior Center			
Comm on Disability	5/13	-	-	NB Senior Center	Remote participation is available, if needed as an ADA accommodation.		
Comm on Labor	5/20	-	-	SB Senior Center			
Comm on Status of Women	3/18	-	-	NB Senior Center	(April meeting was cancelled)		
Community Health Comm	4/23	-	-	SB Senior Center			
Design Review Committee	1/15	zoom	-	SB Senior Center	(usually at NBSC)		
Disaster & Fire Safety Comm	4/22	-	-	Berk Fire Dept Training Classroom			
Elmwood BIDA Board	2/6			2947 College			
Environment & Climate Comm	4/22	zoom	-	SB Senior Center	(usually at NBSC)		
Fair Campaign Practices Comm	4/16	zoom	videorecording	Cypress Room	quasi-judicial - videorecording & minutes not yet posted for March & April		
Homeless Services Panel	5/6	-	-	NB Senior Center			
Housing Advisory Comm	5/2	zoom	-	SB Senior Center	quasi-judicial 2/5 was first meeting with zoom		
Independent Redistricting Comm	3/16	zoom	videorecording	virtual meeting			
Human Welfare and Community Action Comm	4/22	zoom	-	Cypress Room	3/18 was first meeting with zoom		
Landmarks Preservation Commission	5/2	zoom	-	NB Senior Center	5/2 was first meeting with zoom		
Loan Administration Board					No posts since 2024		
Mental Health Commission	4/23	zoom	-	NB Senior Center			

BERKELEY COMMISSIONS AND BOARDS ACCESSIBILITY INFORMATION ONLINE as of May 11, 2026							
Commission/Board	Date	Hybrid?	Recordings posted?	Location	Notes		
Open Government Commission	4/16	zoom	videorecording	Cypress Room	videorecording & minutes not yet posted for March & April		
Parks, Recreation, and Waterfront Commission	4/8	-	-	Frances Albrier	this meeting was at Willard		
Peace and Justice Commission	5/4	-	-	SB Senior Center			
Personnel Board	5/4	zoom	videorecording	Cypress Room	2/2 was first meeting with zoom, 4/6 was first meeting for which videorecording is posted		
Planning Commission	5/6	zoom	-	NB Senior Center			
Policy Accountability Board	5/6	zoom	videorecording	Addison Street			
Reimagining Public Safety Task Force				Only in person, says to contact secretary.	No posts since 2022		
Safe Streets Citizen Oversight Committee (SSOC)	4/22			SB Senior Center	usually meets at NBSC, May meeting canceled		
Solano Avenue BID Advisory Board	3/17	-	-	Solano Oriental Rug Gallery			
Sugar-Sweetened Beverage Product Panel of Experts	4/16	-	-	West Berkeley Family Wellness Center			
Transportation and Infrastructure Commission	4/16	-	-	SB Senior Center	(usually at NBSC)		
Wildland Urban Interface Vegetation Code Workgroup	-	-	-	Varies	12/24/25 last meeting listed		
Youth Commission	4/13	-	-	MLK Youth Center			
Zero Waste Commission	4/15	-	-	Ratcliff Bldg			
Zoning Adjustments Board	2/26	zoom	granicus video	BUSD Board Room			

To: Honorable Mayor and Members of the City Council

From: Open Government Commission Kyle Haugh, Chair, and Samuel Harvey, Secretary

Subject: Public access to supplemental materials and amendments at City Council meetings, including the timing of presentation of such materials by the mayor or city councilmembers, such that the public may comment on them

RECOMMENDATION

Adopt a policy requiring that prior to the commencement of public comment on each Agenda Item, councilmembers will be asked to present any material they have prepared that is not already included in the packet.

RATIONALE FOR RECOMMENDATION

Pursuant to the Open Government Ordinance, the Open Government Commission may “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.”

FINANCIAL IMPLICATIONS

None.

CURRENT SITUATION AND ITS EFFECTS

The current Berkeley City Council Rules of Procedure and Order do not address additional materials that are submitted at the time of a City Council meeting. However, BMC 2.06.010A states, “Democracy in our representative form of government requires that the public have an opportunity to understand the government’s activities and to communicate its concerns to its elected and appointed representatives, and that those representatives have an adequate opportunity to consider those concerns and then act effectively and in a timely manner.”

Requiring councilmembers to present their prepared materials before public comment upholds the public’s opportunity to communicate concerns to its elected officials prior to elected officials taking action on a given item.

BACKGROUND

On January 20, 2026, prior to public comment on Item 24, a councilmember reported having “small amendments” to that item which the mayor invited her to share. Her response was, *“I think we should close the public hearing and then I can discuss my proposed amendments.”*

This did not constitute a violation of the Brown Act because the material was shared with the public at the same time it was shared with City Council. However, because these materials were not shared before public comment, the public lost their opportunity to communicate possible concerns with the materials, and our representatives lost their opportunity to act on these concerns.

ALTERNATIVE ACTIONS CONSIDERED

Leaving the current rules in place allows elected officials to withhold prepared materials until after public comment is closed. This weakens the value of public comment and erodes the public trust.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

CONTACT PERSON

Samuel Harvey, Secretary, Open Government Commission
sharvey@berkeleyca.gov

Review and possible recommendations for revisions to the Open Government Ordinance
(black text: existing language, red text: new language, blue text: notes)

Deadline for the broadcast and archival of all commission meetings

2.06.100 Broadcast of meetings.

A. All regular and special meetings of the City Council, Redevelopment Agency, Rent Stabilization Board, and Zoning Adjustments Board, when held in the venue regularly used, shall be recorded, televised and video-streamed live as well as archived for replay. The live broadcasts **and archived recordings** shall be captioned. **The archived recordings shall be posted on the relevant website no later than one week after each meeting is completed.**

~~B. It is the intent of the City to broadcast the meetings of the Planning Commission, Landmarks Preservation Commission, and Housing Advisory Commission, in the same manner as specified in paragraph A, as City resources become available.~~

B. No later than July 1, 2027, all meetings of the Planning Commission, Landmarks Preservation Commission, and Housing Advisory Commission shall be regularly broadcast and archived in the same manner as specified in paragraph A. No later than July 1, 2028, this requirement shall apply to all boards and commissions.

(Notes: July 1 is the fiscal year start date for the city, and a new budget is proposed every 2 years. A new budget will be adopted in July 2026, and then in July 2028, but mid-cycle revisions can happen. We could contact the city manager to try and change the proposed budget before it goes through in June 2026. Alternatively, we can consider a 2029 deadline for all commissions).

C. The City shall procure and maintain the necessary equipment and venues to support the regular broadcast and archival requirements of paragraphs A and B.

DG. The broadcast requirements shall not apply if necessary equipment malfunctions or if a public meeting is changed to a location that does not have the technological capacity to accommodate the broadcasting needs. This paragraph shall not be construed to excuse the City's obligations under paragraph C.

Requirement for California Public Records Act requests to be made accessible by all

2.06.180 Posting of documents.

All documents submitted to the City Council, including but not limited to, the Agenda and Agenda Packet, communications, and any documents submitted at a meeting of that body, shall be available through the City's website no later than the close of business the following business day after the meeting for which the documents were submitted.

Any electronic communications made to a requester regarding any Public Records Act requests, including status updates, metadata, or documents produced, shall be made freely available to the public via an online portal within a ten-day period after such communications were originally produced.

(Notes: I believe the City of Berkeley already does this via the NextRequest portal, but this inscribes the requirement into law. We could also consider a different timeframe: seven days, fourteen days, or "reasonable timeframe.")

Prohibition on Ephemeral Messaging Features for Public Business

Section 1. Section 2.06.020 is amended to add the following definitions:

I. “Public Business” means any matter relating to the conduct of the City's affairs.

J. “Ephemeral Messaging Features” means any setting, function, or feature of an electronic communications application or service that causes a message, or any portion of a message, to be automatically deleted, hidden, or rendered inaccessible after a defined period or upon a defined event, before the applicable records retention period has elapsed.

K. “Personal Account or Device” means any electronic account, device, application, or service that is not issued, owned, or controlled by the City.

Section 2. A new Section 2.06.185 is added to Article IV, to read:

2.06.185 Electronic communications concerning Public Business.

A. No member of any Legislative Body, and no elected or appointed official, officer, employee, or contractor of the City shall use for Public Business any app, software, or other technology that prevents the maintaining or preserving any electronic communication (e.g. Ephemeral Messaging Features), whether on a City-issued account or device or on a Personal Account or Device.

B. Any electronic communication concerning Public Business sent or received on a Personal Account or Device is subject to the City's applicable records retention schedule and to disclosure under the Public Records Act on the same terms as a communication conducted on a City-issued account or device.

C. Each person subject to subsection A shall make reasonable efforts to ensure that all electronic communications concerning Public Business sent or received on a Personal Account or Device are retained and stored in a manner that keeps them accessible for the duration of the applicable retention period, regardless of whether such communications would be subject to an exemption from disclosure under the Public Records Act. Upon receipt of a valid request under the Public Records Act seeking such communications, each such person shall search their Personal Accounts and Devices for responsive communications and shall produce all responsive communications, except those subject to a valid exemption under the Public Records Act.

(Notes: Should volunteers or commissioners be covered? Contractors?

Should Signal be allowed if ephemeral messaging feature is turned off?

We may consider a stronger version, which would require the use of city devices for all communications when such a device is available, and require forwarding communications from personal devices to a city IT system otherwise, similar to 44 U.S.C. §2911 -- see below).

Alternative Option: Prohibition on Ephemeral Messaging Features for Public Business and Forwarding Requirement for Usage of Personal Devices or Accounts for Public Business

Section 1. Section 2.06.020 is amended to add the following definitions:

I. “Public Business” means any matter relating to the conduct of the City's affairs.

J. “Ephemeral Messaging Features” means any setting, function, or feature of an electronic communications application or service that causes a message, or any portion of a message, to be automatically deleted, hidden, or rendered inaccessible after a defined period or upon a defined event, before the applicable records retention period has elapsed.

K. “Personal Account or Device” means any electronic account, device, application, or service that is not issued, owned, or controlled by the City.

Section 2. A new Section 2.06.185 is added to Article IV, to read:

2.06.185 Electronic communications concerning Public Business.

A. No member of any Legislative Body, and no elected or appointed official, officer, employee, or contractor of the City shall use for Public Business:

1. any app, software, or other technology that prevents the maintaining or preserving any written electronic communication (e.g. Ephemeral Messaging Features), whether on a City-issued account or device or on a Personal Account or Device.

2. a nonofficial electronic messaging system unless the official or employee sends a copy of all sent and received communications concerning public business to an official electronic messaging system within 20 days of the original sending or receiving of the communication.

Background

The Information in "[How Telegram Offers Way Around Public Records Laws](#)" revealed that members of the San Francisco Board of Supervisors were using Telegram to conduct city business. Telegram's "Secret Chat" feature, which includes a self-destruct timer for messages, was cited as a primary reason for the app's popularity among officials: one official said they were encouraged to use Telegram by colleagues in City Hall who described it as a way to skirt the city's public records laws. Supervisors were observed appearing "active" on the app throughout the day, often hourly, on their private phones.

California law treats public business communications on personal accounts as public records (City of San Jose v. Superior Court, 2017), but does not prohibit officials from using applications whose default behavior is to destroy those records before any member of the public can request them. Once a message is auto-deleted, no enforcement mechanism can recover it. Berkeley residents have shown interest in this category of communication. As of May 7, 2026, a search of the City of Berkeley's NextRequest portal returns more than 50 California Public Records Act requests referencing WhatsApp or other platforms that support self-deleting messages.

After (City of San Jose v. Superior Court, 2017), State Senator Dave Cortese authored CA SB 908: "An elected or appointed official or employee of a public agency shall not create or send a public record using a nonofficial electronic messaging system unless the official or employee sends a copy of the public record to an official electronic messaging system within 20 days of the original creation or sending of the public record." SB 908 died in 2024. **Note that this requirement is stronger than the one I proposed, which simply requires preservation of records, even if they are stored outside of city IT systems.**

This bill was likely inspired from the existing federal requirement under the "Presidential and Federal Records Act Amendments of 2014:"

44 U.S.C. §2911. Disclosure requirement for official business conducted using non-official electronic messaging accounts

- (a) An officer or employee of an executive agency may not create or send a record using a non-official electronic messaging account unless such officer or employee
- (1) copies an official electronic messaging account of the officer or employee in the original creation or transmission of the record; or
 - (2) forwards a complete copy of the record to an official electronic messaging account of the officer or employee not later than 20 days after the original creation or transmission of the record.

The Associated Press in "[Encrypted messaging apps promise privacy. Government transparency is often the price](#)" writes the following:

- Signal is one of many end-to-end encrypted messaging apps that include message auto-delete functions. While such apps promise increased security and privacy, they often skirt open records laws meant to increase transparency around and public awareness of government decision-making. Without special archiving software, the messages frequently aren't returned under public information requests.
- An Associated Press review in all 50 states found accounts on encrypted platforms registered to cellphone numbers for over 1,100 government workers and elected officials. The AP found accounts for state, local and federal officials in nearly every state, including many legislators and their staff, but also staff for governors, state attorneys general, education departments and school board members. The AP's list is likely incomplete because users can make accounts unsearchable.
- Improper use of the apps has been reported over the past decade in places like Missouri, Oregon, Oklahoma, Maryland and elsewhere, almost always because of leaked messages.
- The best remedy is stronger public record laws, said David Cuillier, director of the Brechner Freedom of Information Project at the University of Florida. Most state laws already make clear that the content of communication — not the method — is what makes something a public record, but many of those laws lack teeth, he said.

According to the [Colorado Freedom of Information Coalition](#), here is the current legal landscape:

- Michigan House Bill 4778 directs state departments to "[not use any app, software, or other technology that prevents it from maintaining or preserving a public record](#)"
- In *Sansone v. Governor of Missouri*, the Missouri Court of Appeals for the Western District held that the governor's use of disappearing messaging apps was not a violation of the sunshine laws because no messages were retained so there was no public record to be produced.
- Texas Senate Bill 944, enacted in 2019, requires government officials to preserve text messages sent from or received on their personal devices that concern public or official business. However, the law does not directly address the use of disappearing or encrypted messaging apps.
- Kansas Executive Order 18–06 requires governor's office employees to conduct official business on their official state email accounts; accordingly, any use of a disappearing or encrypted messaging app for official business would be in violation of the executive order.

The following government entities have been reported to have experienced incidents of personal devices and/or ephemeral messaging preventing the preservation of public records:

Title	Description	Result
Trump administration in SignalGate	Senior national security officials coordinated airstrikes on Signal and accidentally added The Atlantic's editor to the chat.	American Oversight sued ; Judge Boasberg issued a temporary restraining order to preserve messages (most already auto-deleted); Pentagon issued a memo barring Signal for non-public unclassified info.
Department of Government Efficiency (DOGE)	Department of Government Efficiency members used Signal for agency matters, allegedly to evade FOIA.	A 2025 memo was issued, asking DOGE employees to preserve Signal messages and disable auto-delete.
San Francisco Board of Supervisors	Supervisors and aides used Telegram (including Secret Chats with self-destruct timers, on purpose) for city business.	Supervisor decided not to use Telegram for public business until resolved by City Attorney.
San Jose Mayor	Mayor directed a constituent to contact him on a personal email account to skirt public records laws. "I'm going to delete this email from my government account..."	Judge ruled in August 2023 that they violated state transparency law; this directly prompted SB 908 (2024).
San Diego Councilmembers Offices	Official asked colleagues to use Signal for work purposes. When asked for records via CPRA, records were gone.	Found no action in response.
Missouri Governor	"nearly every member of the former governor's taxpayer-funded staff had a Confide [self-destructive texting app] account and that the app was being used to communicate both within the governor's office and with outside allies and lobbyists."	AG found no legal violation, but Governor's office banned self-destructive texting apps for public business.
Police in Portland, Maine	Police use Signal for sensitive communications, sometimes with self-deleting chat feature.	Found no action in response.

Oklahoma Treasurer's Office	Signal chats used to coordinate policy with outside lobbyists. Official disabled ephemeral messages, but lobbyist may have enabled it, and thus some records auto-deleted.	AG "strongly discourages public officials from using third-party messaging applications when communicating about public business."
Maryland Governor	Governor and senior advisors used Wickr chat rooms with 24-hour auto-delete for state business.	"Transparency in Public Records Act of 2022 (SB 307)" introduced to prevent this. Bill failed.
Michigan State Police	Top police officials used Signal. One quote lightly suggested that some Signal chat were missing.	Passed House Bill 4778 "all state departments and all state agencies must not use any app, software, or other technology that prevents it from maintaining or preserving a public record..."
Seattle Mayor	"Former Mayor Jenny Durkan's phone was changed to "delete messages after 30 days" for roughly three weeks, which effectively destroyed past texts. Former Chief Carmen Best deleted her text messages, saying she thought the city backed them up, as they do with email. Fire Chief Harold Scoggins conducted a hard reset on his phone, destroying his text messages, because he couldn't remember the passcode on his phone."	"King County Prosecutor declined criminal charges, citing inability to prove intent."
Florida Governor	Public business seems to have been conducted on personal devices; some records production refused.	"Appeals court overturned a ruling that governor's administration took too long in providing public records about a controversial 2022 decision to fly migrants from Texas to Massachusetts."