



Fair Campaign Practices Commission  
Open Government Commission

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

### MEETING AGENDA

September 18, 2025

6:30 p.m.

2180 Milvia St., Berkeley, CA 94704

1<sup>st</sup> Floor, Cypress Room

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

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

Secretary: Stephen Hylas

### The Commission may act on any item on this agenda

1. Call to Order 6:30 p.m.
2. Roll Call.
3. Land Acknowledgement: The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this 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 July 17, 2025 FCPC-OGC Regular Meeting.

### **Fair Campaign Practices Commission (FCPC) Agenda**

7. Reports
  - a. Report from Chair
  - b. Report from Staff
8. Report from Negotiating Subcommittee: Yes on Measure CC / No on Measure BB; discussion and possible action.
9. Public financing matching funds disbursement process; discussion and possible action.
10. Review and possible revision of Procedures for the Fair Campaign Practices Commission; discussion and possible action.
11. Review and revisions of BERA<sup>1</sup> and FCPC Regulations<sup>2</sup>; discussion and possible action.

### **Open Government Commission (OGC) Agenda**

12. Reports.
  - a. Report from Chair
  - b. Report from Staff
13. Complaints received July 2 & 3, 2025 re Council consideration of middle housing zoning ordinance amendments and conforming zoning map, and General Plan amendments at June 26, 2025 special meeting; discussion and possible action.
14. Complaint alleging irregularities at City Council April 28, 2025 special meeting; discussion and possible action.

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

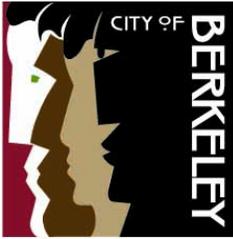
<sup>2</sup> <https://berkeleyca.gov/sites/default/files/2022-01/FCPC-Regulations.pdf>

15. Complaint from Kelly Hammargren re remote public access to City board and commission meetings; discussion and possible action.
16. Referral of non-filing quarterly lobbying reports: Yuri Sadiki-Torres; discussion and possible action.
17. Lobbyist Registration Act processes and administration; report from ad hoc subcommittee; discussion and possible action.
18. City Council Rules of Procedure and Order; discussion and possible action.
19. Progress in providing remote access to Commission and Board meetings; discussion and possible action.
20. Web Content Accessibility Guidelines: improving compliance on the City of Berkeley website; discussion and possible action.
21. 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., 4<sup>th</sup> Fl., Berkeley, CA.



Fair Campaign Practices Commission  
Open Government Commission

## PRELIMINARY DRAFT MINUTES

July 17, 2025

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

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

Secretary: Samuel Harvey

Members Present: Pajouablaï Monica Lee, Janis Ching, Emmanuelle Soichet, Andrew Lazarus, Kitt Saginor

Also present: Lauren Packard, Staff Secretary

1. **Call to Order**

Chair called the meeting to order at 6:35 p.m.

2. **Roll Call**

Roll call taken

3. **Land Acknowledgement**

4. **Approval of agenda**

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

*Motion to amend agenda to correct the date on pp. 2-3 header and approve agenda (M/S/C: Lee/Ching; Ayes:, Lee, Ching, Lazarus, Saginor; Noes: none; Abstain: none; Absent: Bowen, Soichet, Sudharsan)*

5. **Public Comment**

No speakers

6. **Approval of minutes for June 19, 2025 FCPC-OGC Regular Meeting**

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

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

### **Fair Campaign Practices Commission (FCPC) Agenda**

7. **Reports**

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

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

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

9. **Public financing matching funds disbursement process**

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

10. **Report and discussion from subcommittee on review and possible revision of Procedures for the Fair Campaign Practices Commission**

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

11. **Review of BERA and FCPC Regulations in preparation for possible future updates and revisions**

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

### **Open Government Commission (OGC) Agenda**

12. **Reports**

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

13. **Donna DeDemar, Brown Act Complaint received July 3, 2025**

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

14. **Dean Metzger, Brown Act Complaint received July 2, 2025**

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

*Motion to refer this matter to the Secretary to review and investigate the amended complaint which alleges a violation of the Brown Act occurred when supplemental material was posted less than 24 hours before the meeting; and to request the Secretary to return to the September meeting with a report and a recommendation for further action (M/S/C: Ching/Soichet; Ayes:, Lee, Ching, Soichet, Lazarus, Saginor; Noes: none; Abstain: none; Absent: Bowen, Sudharsan)*

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

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

16. **Lobbyist Registration Forms and Procedures**

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

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

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

*Motion to empanel an ad hoc subcommittee to develop potential recommendations concerning City Council Rules of Procedure and Order (M/S/C: Lee/Ching; Ayes:, Lee, Ching, Soichet, Lazarus, Saginor; Noes: none; Abstain: none; Absent: Bowen, Sudharsan)*

Chair Saginor appointed Commissioners Lee, Lazarus, and Saginor.

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

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

*Motion to request staff to inquire of the City whether the budget referral approved by Council on May 7, 2024 to allocate \$110,000 to enable all of the City's Commission Meetings to be conducted in hybrid format in FY2025 was funded. (M/S/C:*

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Page 4

Saginor/Ching; Ayes:, Lee, Ching, Soichet, Lazarus, Saginor; Noes: none; Abstain:  
none; Absent: Bowen, Sudharsan)

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

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

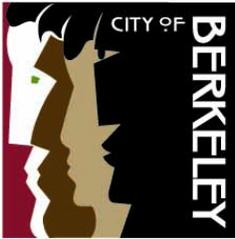
*Motion to direct the Chair to speak on behalf of the Commission to support the Commission on Disability in their recommendations to bring our web content into compliance with WCAG in support our open government responsibilities (M/S/C: Ching/Lee; Ayes:, Lee, Ching, Soichet, Lazarus, Saginor; Noes: none; Abstain: none; Absent: Bowen, Sudharsan)*

20. **Adjournment**

*Motion to adjourn*

(M/S/C: Ching/Lee; Ayes:, Lee, Ching, Soichet, Lazarus, Saginor; Noes: none; Abstain:  
none; Absent: Bowen, Sudharsan)

The meeting adjourned at 8:34 p.m.



Fair Campaign Practices Commission

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

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At its June 19, 2025 and July 17, 2025, regular meetings, the Commission reviewed proposed changes to the Commission's Procedures presented by the Commission subcommittee created to prepare a set of possible revisions to the Procedures. The Commission discussed those proposed revisions and provided feedback to the subcommittee members and Commission staff. The Commission Secretary prepared a set of proposed changes incorporating the full Commission's feedback, and adding additional recommended changes from Commission staff. At the Commission's July 17, 2025 meeting, the Chair requested that any commissioners with additional recommended changes submit those proposals to Commission staff prior to the publication of the agenda packet for the Commission's September 18, 2025 meeting.

Commissioner Soichet offered three suggested edits:

The following edits are reflected in the attached draft Procedures (Attachment 1), and highlighted in blue:

1. Delete V.B.3(a) – subsection (a) regarding when 14-day tolling period begins.
2. V.B.5 - Change 30 days to 60 days;

Commission staff recommend the Commission discuss the following recommended edit and recommend any revisions to the Procedures based upon that discussion.

3. Consider an addition to V.B.5 - If the complaint is received too late for the commission to review the complaint in a public meeting before the election occurs and after a 7-day response period has occurred, provide discretion to the secretary in conjunction with commission chair to further reduce the response period to 48 hours, if they deem the alleged violation is egregious and urgent (or some language that matches BERA/regulations)

Commission staff recommend the Commission provide any feedback or additional revisions to this draft so that a final draft may be submitted to the Commission for adoption at a future meeting.

Attachment:

1. FCPC Procedures Discussion Draft with Redline Revisions, September 2025

**PROCEDURES**  
**for the**  
**FAIR CAMPAIGN PRACTICES COMMISSION**

**Discussion draft with redline revisions September 2025**

**July 1998**  
**(Revised July 2014)**

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**Fair Campaign Practices Commission Procedures**

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

I. Meetings

A. Regular Meetings

1. A regular meeting of the Commission shall be held on the third Thursday of each month beginning at ~~6:30~~7:00 p.m. By majority vote, the Commission may change the date on which a given regular meeting will take place and may schedule regular meetings more or less frequently than once each month.
2. The agenda for each regular meeting shall be established by the Chairperson. Any commissioner may propose to the Commission matters for a future agenda. For matters of a time sensitive nature, a commissioner may submit a request to the Chairperson (through the Secretary) to add an item to the next agenda. For good cause, a majority of the Commission may delete matters from the agenda.
3. When the Chairperson, in consultation with the Secretary, determines that there is presently no business requiring Commission action, ~~they~~ *they* ~~he or she~~ may cancel the next regular meeting.

B. Special Meetings

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

C. Executive Session

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

D. Meetings in General

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

Berkeley Commissioners' *and Board Member-s*' Manual (current ed.) and, where that document is silent, the current edition of Robert's Rules of Order.

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

## II. Organization and Responsibilities

### A. Officers

1. The Commission shall elect a Chairperson and a Vice Chairperson annually at its regular meeting in February. If the Commission does not hold a February meeting, the election shall take place at the first regular meeting thereafter. After receiving written notice of resignation from an

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

duties of the Chairperson, the commissions shall elect one of their members to act as Chairperson pro tem for the duration of such absence or inability.

B. Commissioners

1. Commissioner Attendance/Termination for Absences

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

2. Other Grounds for Termination

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

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

3. Reappointment

Section 2.12.175 states "Each member of the commission shall serve for the same term as the councilmember appointing them. Members of the commission may not be reappointed by the same councilmember....A member whose term

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

#### 4. Resignation

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

#### C. Commission Staff

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

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

### III. Request for Advice and Opinions

#### A. Requests for Advice

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

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

B. Requests for Opinions

1. Opinion requests shall present all material facts as concisely as possible and shall state the question or questions based on the facts. They shall be *submitted in writing and* signed by the person requesting the opinion and shall indicate which candidate or organization such person is representing. The good faith reliance protection granted under BERA Section 2.12.220 shall extend only to those persons identified in the request, and only if the request for advice disclosed truthfully all the material facts and the requestor acted in reliance on such advice.
2. *At least annually, the Commission shall publish opinions provided in response to requests by adding them to a document connected to the Commission's web site.*

IV. Review of Campaign Reports and Statements

A. Detailed Review and Monitoring

1. The Secretary shall monitor campaign statements for compliance with *BERA* Section 2.12.440 ~~of BERA~~.
2. The Secretary shall monitor campaign statements for compliance with BERA Section 2.12.415 regarding transfers between committees and cumulative contributions.
3. The Secretary shall monitor compliance with the late reporting requirement of *BERA* Sections 2.12.295 and 2.12.297.

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

~~B. Substantial Compliance~~

- ~~1. A campaign statement is not in substantial compliance with BERA if there is:
  - a. Any internal discrepancies in reporting contributions, expenditures, or cash balance which total \$250 or more;
  - b. Any discrepancy of \$250 or more between the cash position or total contributions and expenditures reported and those reported in prior
  - c. Any omission of the address and date of receipt of any single or aggregate contribution of \$100 or more from a single source;
  - d. Any omission of any required original signature by the treasurer or by any candidate, including one who controls a committee; or
  - e. Any gap in periods of time covered by successive campaign statements, or statements in which the period covered is not in conformance with the law.~~

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

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

V. Complaints of Alleged Violations

A. Filing Requirements

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

the violation;

- d. Be accompanied by any documentation supporting the facts alleged. Statements which are not based upon personal knowledge should identify the source of information which gives rise to the complainant's belief in the truth of such statements; and
  - e. Be signed by the complainant under penalty of perjury.
2. Complaints which are not signed under penalty of perjury or which do not meet the standards for completeness described above shall be returned to the complainant and shall not be deemed received until such a declaration is made or the complaint is amended to be complete.
  3. ~~The Secretary may investigate the facts surrounding such a complaint or any oral complaint which he or she receives if it provides reasonable cause to believe a violation has occurred or will occur. Any evidence of violation discovered in such investigation shall be reported to the Commission at its next meeting.~~
  4. ~~The Secretary may conduct an initial review of the complaint to ascertain whether the complaint alleges a violation of BERA or instead falls outside of the Commission's purview. If the Secretary believes the complaint to fall outside of the Commission's purview, the complaint shall be presented as an information item to the Commission, and will only be referred back to the Secretary for investigation if the Commission determines, by a vote of a majority of appointed members, that the complaint falls within the Commission's purview.~~

~~The Secretary shall conduct an initial review of the complaint to ascertain whether the complaint alleges a violation of BERA or instead falls outside of the Commission's purview. If the Secretary believes the complaint falls outside of the Commission's purview, the complaint shall be presented to the Commission with a recommendation to take no action. The Secretary shall provide notice to the complainant and the respondent that the item will appear on the agenda no later than the date the agenda is posted. The item will only be referred back to the Secretary for investigation if the Commission determines, by a vote of the majority of appointed members, that the complaint falls within the Commission's purview.~~

#### C.B. Processing of Complaints

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

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

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

~~2.3. If the Secretary or the Commission determines that the complaint alleges a violation of BERA -- or if the Commission determines by a majority vote that the complaint falls within the Commission's authority pursuant to Part V.B.2 – the Secretary shall provide notice to the respondent(s) and instruct them that they may submit a response, including any evidence demonstrating that a violation has not occurred, within 14 calendar days; unless the Secretary or Commission determine that there is clear and convincing evidence that a violation has or will occur and there is a need for immediate action to protect the public interest.~~

~~a. The 14 day response period shall be calculated from the date the complaint was received or the date upon which the Commission determined by a majority vote that the complaint falls within the Commission's authority pursuant to Part V.B.2, whichever is later.~~

~~3.~~

~~4. After the 14--day response periods have passed, or sooner, if immediate action is required, the Secretary shall determine whether, based on the complaint, any response, and the evidence presented, sufficient evidence is present to suggest a violation may have occurred there is reasonable cause to believe a violation has occurred or may will occur. Following the Secretary's determination, tThe Secretary shall present the determination to the Commission at the its next meeting at which the matter may be placed on the agenda consistent with the Brown Act, following the Secretary's determination.~~

~~4.5. For complaints received within thirty sixty calendar days before a City~~

election for which the candidate, committee, or other person or matter which is the subject of the complaint appears on the ballot, the 14-day respondent response period in Parts V.B.3 and V.B.4 shall be reduced to 7 calendar days.

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

~~5.6. At the its next meeting at which the Commission receives the Secretary's determination pursuant to Part V.B.4, the Commission may shall decide: (a) whether to direct the Secretary to investigate the complaint, (b) whether to dismiss the complaint; or (c) whether to find probable cause to believe a provision of the BERA has been violated. Within three business days of the meeting, the Commission Secretary shall notify the parties of any action taken by the Commission.~~

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

~~If the Commission dismisses the complaint, the complainant may submit in writing, within 1420 days of the dismissal, a request for reconsideration to the Secretary. The Secretary shall review the request for reconsideration to determine whether the request contains any new evidence or allegations which may support reconsideration of the complaint by the Commission. Following the Secretary's review, the Secretary shall present a recommendation on the request for reconsideration to the Commission at the next meeting at which the matter may be placed on the agenda consistent with the Brown Act. The Commission may then (a) direct the Secretary to investigate the complaint, (b) dismiss the request for reconsideration; or (c) find probable cause to believe a provision of the BERA has been violated.~~

~~may deny the request, or based on good cause, take specified action consistent with BERA and its regulations. The Secretary will provide the complainant written notice of the decision within 20 days of receipt of the reconsideration submission. However, if the complainant provides new information or allegations in the request for reconsideration, this will be considered a new complaint and not a request for reconsideration.~~

~~d.~~ If the Commission decides to investigate the complaint, ~~to the extent not already done so by the Secretary,~~ the Secretary shall investigate the complaint to the extent feasible as authorized by these procedures, ~~which and~~ may include making inquiry of the parties to establish facts, and ~~shall~~ make a report to the Commission at ~~the its~~ next practicable meeting. Notice of the date of any meeting at which the complaint will be considered, along with a copy of the complaint and any accompanying Commission reports pertinent portions of Commission procedures shall be transmitted to the subject of the complaint and complainant as soon as possible but not later than the date that the agenda for the relevant meeting is posted. ~~The complainant shall also receive a notice of the date the matter has been scheduled along with a copy of pertinent portions of Commission procedures.~~

~~e.b.~~

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

~~7.~~ Consideration of the complaint by the Commission shall proceed according to Parts VI and VII.

~~8.7.~~

~~9.8.~~ Upon conclusion of its consideration of the complaint, the Commission shall decide what further actions it intends to take, if any, and shall inform the *parties* ~~complainant~~ of the reasons for its decision.

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

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

E.D. Conduct of Investigations

1. The Secretary is authorized to conduct investigations on behalf of the Commission. Investigations will be commenced either based on information discovered by the Secretary in the commission of his or her duties or based on a Complaint.
2. The Secretary may request records to which the Commission is entitled pursuant to BERA when *they have* ~~he or she~~ has reason to believe that a violation has occurred.
3. Failure to respond to written inquiries and requests for interviews or records by reasonable deadlines established by the Secretary shall be considered evidence of bad faith and shall be cause for the Commission to demand records or to initiate an audit unless the party or parties involved come forward with an explanation satisfactory to the Commission. A deadline may be extended if sufficient progress is made toward answering inquiries and the candidate or committee agrees to fully answer questions within a time established by mutual agreement between the Secretary and the parties involved.
4. If the Secretary has been unable to obtain voluntary access to such documents which the Secretary reasonably believes to be relevant to the investigation and/or the Commission's proceedings, then, upon majority vote, the Commission may issue a demand for campaign records pursuant to *BERA* Section 2.12.250.E(e) ~~of BERA~~.
5. The Secretary may request, and the Chairperson may appoint from time to time, an investigative committee to assist the Secretary in carrying out an investigation, auditing financial records, and preparing a report with specific recommendations to the Commission. In such cases, members of the investigative committee shall be bound by the same rules of confidentiality as the Secretary.
6. The Secretary shall present a written investigative report to the full Commission at the earliest opportunity. An investigative report shall include the following information: a description of alleged violation(s); the identification of the respondent(s); *a summary of any response submitted by the respondent(s); a summary of evidence; a discussion of applicable law (which may include but not be limited to applicable statutes, regulations, caselaw, and FCPC, FPPC and FEC precedents)* ~~and precedents from FCPC and, to the extent applicable, FPPC and FEC; statement by respondent(s) or other affected parties;~~ any aggravating or mitigating circumstances; and a recommendation for action.

VI. Disposition of Alleged ViolationsA. Report by Secretary

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

B. Proceeding After Presentation of Secretary's Report

1. The Commission may dismiss the matter (by majority vote) and proceed no further if evidence of any violation is insufficient or unreliable or if the possible violation has only a slight impact on the administration of BERA and/or the outcome of any election that further proceeding would be an inefficient use of resources.
2. The Commission may determine that probable cause exists to believe that the BERA has been violated. Probable cause exists when based on the circumstances presented there is a reasonable basis on which to believe that a violation of the BERA has occurred.

~~2.3.~~ The Commission may direct the Secretary to investigate the complaint further and return at a future meeting with an additional report.

~~3.4.~~ *The Commission shall inform the parties of each action taken in regard to the complaint.*

C. Proceeding after a Determination of Probable Cause

1. Upon making a determination of probable cause, the Commission Commission may take any of the following courses of action:
  - a. Dismiss the complaint, where appropriate, and take no further action.
  - b. Request the Secretary conduct further investigation, including an audit of campaign records;
  - c. Require the timely filing of campaign statements and/or amendments to campaign statements if the probable violation involves an error and/or an

omission on a campaign statement that has been filed, or if it involves the failure to file a campaign statement as required;

- d. Invite the respondents to participate in settlement negotiations. The Commission may request that the Secretary participate in negotiations on behalf of the Commission. Alternatively, the Chairperson may appoint a negotiating committee, which shall be guided by the Commission regarding the desired outcome of the settlement. Any settlement reached by the Secretary or negotiating committee and respondent(s) shall be presented to the commission for approval. Negotiations between the designated negotiator or negotiating committee and the respondent shall be confidential. Only the negotiated draft settlement agreement, or the fact of an impasse, shall be shared with the Commission.
- e. Schedule and conduct a hearing pursuant to BERA Section 2.12.230 of BERA. The hearing shall be conducted in accordance with Part VII below after the Secretary has completed his or her report. However, the hearing must be conducted within a reasonable time after a determination of probable cause.
- f. Ask the City Attorney or the District Attorney to seek legal remedies.
- g. Seek any other remedy within its authority.

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

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

~~2.1. The Commission may take any of the following courses of action:~~

~~3.1.~~

- ~~4.1. Dismiss the complaint, where appropriate, and take no further action.~~
- ~~5.1.~~
- ~~6.1. Request the Secretary conduct further investigation, including an audit of campaign records;~~
- ~~7.1.~~
- ~~8.1. Require the timely filing of campaign statements and/or amendments to campaign statements if the probable violation involves an error and/or an omission on a campaign statement that has been filed, or if it involves the failure to file a campaign statement as required;~~
- ~~9.1.~~
- ~~10.1. Invite the respondents to participate in settlement negotiations. The Commission may request that the Secretary participate in negotiations on behalf of the Commission. Alternatively, the Chairperson may appoint a negotiating committee, which shall be guided by the Commission regarding the desired outcome of the settlement. Any settlement reached by the Secretary or negotiating committee and respondent(s) shall be presented to the commission for approval. Negotiations between the designated negotiator or negotiating committee and the respondent shall be confidential. Only the negotiated draft settlement agreement, or the fact of an impasse, shall be shared with the Commission.~~
- ~~11.1. Schedule and conduct a hearing pursuant to BERA Section 2.12.230 of BERA. The hearing shall be conducted in accordance with Part VII below after the Secretary has completed his or her report. However, the hearing must be conducted within a reasonable time after a determination of probable cause.~~
- ~~12.1.~~
- ~~13.1. Ask the City Attorney or the District Attorney to seek legal remedies.~~
- ~~14.1.~~
- ~~15.1. Seek any other remedy within its authority.~~
- 16.3. After making a probable cause determination, the Commission shall promptly inform the parties of the determination and of the course(s) of action it intends to pursue.

## VII. Hearings

### A. Parties

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

B. Scheduling and Notices

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

C. Rules Regarding Written and Oral Submissions

1. Memoranda of argument and authorities may be submitted before the hearing by any party. The submitting party shall furnish copies to the Commission and to all other parties. Memoranda may be up to 15 pages. For good cause, the Chairperson may extend these limits.
2. Evidence, oral and documentary, may be presented to the Commission. The formal rules of evidence do not apply. All testimony offered shall be under oath. The Chair shall administer the oath or affirmation.

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

D. Conduct of Hearing

1. All hearings shall be audio recorded by the Secretary.
2. Order of presentation:
  - a. Secretary;
  - b. Each respondent; and
  - c. Questions by commissioners.

3. The hearing may be continued upon a majority vote of the Commission.

E. Commission Deliberations

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

F. Remedies

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

1. A stipulated agreement between itself and the party or parties found to have violated BERA. A stipulated agreement may include any of the following provisions:
  - a. The history of Commission activity regarding the matter and a statement of violation.
  - b. An admission of violation by the party or parties.
  - c. A monetary penalty to be paid to the City's General Fund.
  - d. A promise by the violating party or parties to comply with BERA.
  - e. Any other terms or conditions within the scope of the Commission's power (for example, nonmonetary settlement terms, such as attending a treasurer training, agreement to file or amend statements).
2. A monetary penalty.
  - a. The Commission may seek a monetary penalty pursuant to *BERA* Section 2.12.231 or *BERA* Section 2.12.435 ~~of BERA.~~
  - b. If the candidate or committee found to have violated BERA may have similarly violated the California Political Reform Act of 1974 as amended, the Commission may recommend that the City seek monetary penalties as prescribed in the Political Reform Act, on behalf of the

State.

3. Seek authorization from the City Council to file an action at law or equity to enforce and compel compliance with the provisions of the BERA.
4. Referral of willful violations to the District Attorney for criminal prosecution under *BERA* Section 2.12.460 ~~of BERA~~.
5. A written press release setting forth the Commission's finding of violation.

G. Reconsideration

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

VIII. Communications with City Council

A. Periodic Reports

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

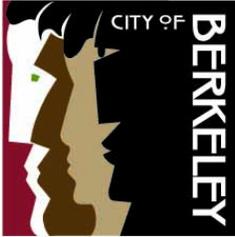
B. Spokesperson for Commission

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

IX. Communications With The Press

- A. Notice of meeting and agendas shall be sent to media. Minutes shall be sent out to media or other persons upon request.
- B. Copies of written press releases authorized by the Commission on various

matters shall be sent to the City Manager's office pursuant to the Commissioners' and Board Members' Manual.



Fair Campaign Practices Commission

Date: September 18, 2025  
 To: Fair Campaign Practices Commission  
 From: Sam Harvey, Commission Secretary  
 Subject: Revisions to the Berkeley Election Reform Act (BMC Ch. 2.12) and FCPC Regulations

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

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

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

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

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

At its July 2025 meeting, the Commission discussed the formation of an ad hoc subcommittee to draft a set of proposed revisions to BERA for review and approval by the Commission. Staff are available to assist the commission in drafting proposed amendments to BERA for this purpose.

Attachment:

1. Berkeley Election Reform Act (BMC Ch. 2.12.)

## Chapter 2.12 ELECTION REFORM ACT\*

Sections:

### Article 1. General Provisions

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

### Article 2. Definitions

- 2.12.070 Interpretation.**
- 2.12.075 Adjusting an amount for cost of living changes.**
- 2.12.080 Campaign statement.**
- 2.12.085 Candidate.**
- 2.12.090 Commission.**
- 2.12.095 Committee.**
- 2.12.100 Contribution.**
- 2.12.105 Controlled committee.**
- 2.12.110 Cumulative amount.**
- 2.12.115 Elected officer.**
- 2.12.120 Election.**
- 2.12.123 Election cycle.**

- 2.12.125 Elective office.**
- 2.12.127 Electronic filing.**
- 2.12.130 Expenditure.**
- 2.12.135 Filer.**
- 2.12.137 Fund.**
- 2.12.138 General election.**
- 2.12.140 Independent committee.**
- 2.12.142 Independent expenditure.**
- 2.12.145 Late contribution.**
- 2.12.150 Mass mailing.**
- 2.12.155 Measure.**
- 2.12.156 Nomination period.**
- 2.12.158 Participating candidate.**
- 2.12.160 Period covered.**
- 2.12.165 Persons.**
- 2.12.167 Qualified contribution.**
- 2.12.168 Qualifying period.**

### **Article 3. Fair Campaign Practices Commission**

- 2.12.170 Established--Number of members.**
- 2.12.175 Term--Appointments and reappointments.**
- 2.12.180 Quorum.**
- 2.12.185 Election of chairperson.**
- 2.12.186 Vice-chairperson.**
- 2.12.190 Vacancy filling.**
- 2.12.195 Members--Qualifications and restrictions.**
- 2.12.196 Avoidance of political conflict of interest.**
- 2.12.200 Staff powers and duties.**
- 2.12.205 Administrative responsibility.**
- 2.12.210 Rules and regulations--Authority.**
- 2.12.215 Additional duties.**
- 2.12.220 Opinions.**
- 2.12.225 Investigation authority and procedures.**
- 2.12.227 Subpoena--Testimony under oath.**
- 2.12.230 Notice and hearing on violations.**
- 2.12.231 Violation--Penalties.**
- 2.12.235 Judicial review of actions.**
- 2.12.240 Meetings to be open to the public.**

**Article 4. Disclosure Requirements and Procedures**

- 2.12.245 Campaign treasurer--Appointment required--Powers and duties.**
- 2.12.250 Campaign expenditure and contribution account--Establishment required--  
Procedure for use.**
- 2.12.255 Statement of organization--Committee required to file.**
- 2.12.260 *Repealed.***
- 2.12.265 *Repealed.***
- 2.12.270 Campaign statement--Filing requirements.**
- 2.12.271 Campaign statements--Additional filing requirements.**
- 2.12.272 Slate mailer organizations' reporting requirements.**
- 2.12.275 Campaign statement--Verification.**
- 2.12.280 Campaign statement--Information required.**
- 2.12.283 Campaign statement--Additional information required from participating  
candidates.**
- 2.12.285 *Repealed.***
- 2.12.290 *Repealed.***
- 2.12.295 Report of late contributions.**
- 2.12.297 Late independent expenditures preceding election.**
- 2.12.300 Contributions--Written instrument required when.**
- 2.12.305 Contributions--From persons using other than legal name prohibited.**
- 2.12.310 Contributions--By persons on behalf of other persons prohibited.**
- 2.12.315 Expenditures--Report requirements--Scope.**
- 2.12.320 Anonymous contributions--Restrictions--Payment to City required when.**
- 2.12.325 Mass mailings--Copies to commission.**
- 2.12.330 Mass mailings by independent expenditure.**
- 2.12.335 Disclosure on campaign communications of certain contributions and loans.**

**Article 5. Expenditure Limitations**

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

**Article 6. Limitations on Contributions**

- 2.12.415 Persons other than candidate--Maximum permitted amount.**
- 2.12.435 Excess amounts--Payment to City required.**
- 2.12.440 Contributions from certain organizations and business entities prohibited.**

**Article 7. Enforcement--Penalties For Violation**

- 2.12.445 Complaints--Filing, investigation and commission action.**

- 2.12.450**    **Actions for compliance--Who is authorized to institute.**
- 2.12.455**    **Actions for compliance--Procedure required and commission authority.**
- 2.12.460**    **Violation--Deemed misdemeanor--Penalty.**
- 2.12.465**    **Actions for compliance--Disposition of amounts recovered.**
- 2.12.470**    **Violation--Candidate's office forfeited when.**
- 2.12.475**    **Violation--Candidacy terminated when.**
- 2.12.480**    **Violation--Persons ineligible for candidacy--Time limit.**
- 2.12.485**    **Late filing penalties.**

#### **Article 8.    Berkeley Fair Elections Act of 2016**

- 2.12.490**    **Title and purpose.**
- 2.12.495**    **Offices covered.**
- 2.12.500**    **Eligibility for Fair Elections campaign funding.**
- 2.12.505**    **Fair Elections fund payments.**
- 2.12.507**    **Return of Contributions by Participating Candidates.**
- 2.12.510**    **Candidate statement notice.**
- 2.12.515**    **Transition rule for current election cycle.**
- 2.12.520**    **Special municipal elections.**
- 2.12.525**    **Campaign accounts for participating candidates.**
- 2.12.530**    **Use of Fair Elections funds.**
- 2.12.535**    **Administrative modification of timelines.**
- 2.12.540**    **Insufficient funds in the program.**
- 2.12.545**    **Cost of living adjustments.**
- 2.12.550**    **Fair Elections Act penalties.**
- 2.12.555**    **Violation--Persons ineligible for public funds--Time limit.**
- 2.12.560**    **Review by Commission.**

\* The City Attorney has determined that certain uncodified provisions are unconstitutional. See *Citizens for Jobs and Energy v. Fair Political Practices Comm.* (1976) 16 Cal. 3d 671.

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

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

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

## Article 1. General Provisions

### 2.12.005 Title for citation.

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

### 2.12.010 Findings.

The people find and declare as follows:

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

### 2.12.015 Purpose.

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

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

**2.12.020 Liberal construction.**

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

**2.12.025 Reports and statements--Signature and verification requirements.**

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

**2.12.030 Reports and statements--Filed where.**

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

**2.12.032 Requirement to file statements and reports electronically.**

- A. The following elected officers, candidates, committees, or other persons required to file campaign reports or statements under this Chapter and Title 9, Chapter 4 of the California Government Code (commencing with Section [84100](#)), are required to submit all reports or statements as an electronic filing:
1. A Participating Candidate, as defined in [2.12.158](#), and any Participating Candidate's campaign committee, regardless of the monetary amount of contributions received or expenditures made;
  2. An elected officer, candidate, committee, or other person who receives contributions totaling one thousand dollars (\$1,000) or more, or makes expenditures totaling one thousand dollars (\$1,000) or more, in a calendar year.
- B. Once an elected officer, candidate, committee, or other person is required to submit reports or statements as an electronic filing, that elected officer, candidate, committee, or other person shall continue to use electronic filing until the committee has officially terminated or the elected officer, candidate or other person has no further filing obligations.
- C. An elected officer, candidate, committee, or other person that must file pursuant to this Chapter, but is not a Participating Candidate or such a candidate's campaign committee as set forth in subsection A.1 and has not met

the \$1,000 threshold in subsection A.2, may submit required reports or statements as an electronic filing or in paper format.

D. In any instance in which the original report, statement, or other document is required to be filed with the Secretary of State and a copy of that report, statement, or other document is required to be filed with the City of Berkeley, the copy may be submitted as an electronic filing. (Ord. 7564-NS § 2, 2017; Ord. 7309-NS § 2, 2013)

### **2.12.033 Filing procedures.**

A. Electronic filing procedures shall be administered in accordance with California Government Code Section [84615](#).

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

### **2.12.035 Reports and statements--Filing fees prohibited.**

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

### **2.12.040 Statements--Public inspection requirements.**

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

### **2.12.045 Preservation from date of filing.**

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

### **2.12.050 Reports and statements--City Clerk responsibilities.**

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

- A. Supply the necessary forms and manuals prescribed by the commission;
- B. Notify in advance all candidates and known committees of the dates campaign statements are required;
- C. Report apparent violations of this chapter to the appropriate agencies; and
- D. Complete and maintain a current list of all reports and statements filed with his or her office. (Ord. 4700-NS § 109, 1974)

### **2.12.051 Amendment or repeal of chapter.**

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

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

### **2.12.055 Items of value--Report requirements.**

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

### **2.12.060 Applicability--Severability.**

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

### **2.12.065 Electronic posting of contributions prior to elections.**

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

## **Article 2. Definitions**

### **2.12.070 Interpretation.**

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

### **2.12.075 Adjusting an amount for cost of living changes.**

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

### **2.12.080 Campaign statement.**

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

### **2.12.085 Candidate.**

"Candidate," for the purposes of this chapter, means a candidate for a Berkeley municipal elective office. "Candidate" means an individual who is listed on the ballot or who has qualified to have write-in votes on his or her behalf counted by election officials, for nomination for or election to any elective office, or who receives a contribution, or makes an expenditure, or gives his or her consent for any other person to receive a contribution or make an expenditure with a view to bringing about his or her nomination or election to any elective office,

whether or not the specific elective office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he or she has announced his or her candidacy or filed a declaration of candidacy at such time. "Candidate" also includes any office-holder who is the subject of a recall election and any candidate for his or her office, but does not include the proponents or opponents of a recall. The proponents or opponents of a recall are for the purposes of this chapter the proponents or opponents of a measure. (Ord. 4700-NS § 203, 1974)

### **2.12.090 Commission.**

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

### **2.12.095 Committee.**

"Committee" means any person or combination of persons that directly or indirectly receives contributions which total more than one thousand dollars in a calendar year or makes expenditures exceeding more than one thousand dollars in a calendar year for the purpose of influencing or attempting to influence the action of voters for or against the nomination or election of one or more candidates, or the passage or defeat of any measure, including any committee or subcommittee of a political party. (Ord. 7875-NS § 1, 2023; Ord. 4945-NS § 1 (part), 1976; Ord. 4700-NS § 205, 1974)

### **2.12.100 Contribution.**

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

**2.12.105 Controlled committee.**

"Controlled committee" means a committee either directly or indirectly controlled by a candidate or committee, or which acts jointly with a candidate or controlled committee in the making of expenditures or the receipt or solicitation of contributions. A committee is deemed controlled if another committee or candidate exercises significant influence over its actions or decisions. A committee may be controlled with respect to one or more candidates and independent with respect to other candidates. (Ord. 5895-NS § 2, 1988)

**2.12.110 Cumulative amount.**

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

**2.12.115 Elected officer.**

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

**2.12.120 Election.**

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

**2.12.123 Election cycle.**

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

**2.12.125 Elective office.**

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

**2.12.127 Electronic filing.**

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

**2.12.130 Expenditure.**

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

**2.12.135 Filer.**

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

**2.12.137 Fund.**

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

**2.12.138 General election.**

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

**2.12.140 Independent committee.**

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

**2.12.142 Independent expenditure.**

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

**2.12.145 Late contribution.**

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

**2.12.150 Mass mailing.**

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

**2.12.155 Measure.**

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

**2.12.156 Nomination period.**

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

**2.12.158 Participating candidate.**

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

**2.12.160 Period covered.**

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

**2.12.165 Persons.**

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

**2.12.167 Qualified contribution.**

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

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

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

**2.12.168 Qualifying period.**

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

### **Article 3. Fair Campaign Practices Commission**

#### **2.12.170 Established--Number of members.**

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

#### **2.12.175 Term--Appointments and reappointments.**

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

#### **2.12.180 Quorum.**

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

#### **2.12.185 Election of chairperson.**

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

#### **2.12.186 Vice-chairperson.**

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

#### **2.12.190 Vacancy filling.**

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

**2.12.195 Members--Qualifications and restrictions.**

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

**2.12.196 Avoidance of political conflict of interest.**

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

**2.12.200 Staff powers and duties.**

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

**2.12.205 Administrative responsibility.**

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

**2.12.210 Rules and regulations--Authority.**

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

**2.12.215 Additional duties.**

The commission shall, in addition to its other duties:

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

### **2.12.220 Opinions.**

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

### **2.12.225 Investigation authority and procedures.**

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

### **2.12.227 Subpoena--Testimony under oath.**

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

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

**2.12.230 Notice and hearing on violations.**

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

The commission shall conduct such hearings and proceedings with respect to determinations of probable cause pursuant to adopted procedures. All interested persons may participate in the hearing. (Ord. 5895-NS § 1, 1988; Ord. 4700-NS § 312, 1974)

**2.12.231 Violation--Penalties.**

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

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

**2.12.235 Judicial review of actions.**

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

**2.12.240 Meetings to be open to the public.**

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

## Article 4. Disclosure Requirements and Procedures

### 2.12.245 Campaign treasurer--Appointment required--Powers and duties.

- A. Each candidate and each committee shall appoint a campaign treasurer. A candidate may appoint himself or herself as his or her campaign treasurer. No contribution and no expenditures shall be accepted or made by or on behalf of a candidate or committee at a time when there is a vacancy in the office of treasurer.
- B. No expenditure shall be made by or on behalf of a candidate or committee without the authorization of the treasurer or that of his or her designated agent.
- C. All contributions received by a person acting as an agent of a candidate shall be reported promptly by such person to the candidate or any of his or her designated agents. All contributions received by a person acting as an agent of a committee shall be reported promptly by the recipient to the committee's treasurer or any of his or her designated agents. "Promptly," as used in this section, means not later than five days before the closing date of any campaign statement required to be filed by the treasurer, and immediately if the contribution was received less than five days before the closing date. All contributions shall be separated from and may not be commingled with any personal funds of the recipient or any other person. (Ord. 4700-NS § 400, 1974)

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

- A. A campaign treasurer for each candidate and for each and every committee shall establish and manage a campaign expenditure and contribution checking account for the candidate or committee. All monetary contributions to the candidate, to a person on behalf of the candidate or to a person on behalf of a committee shall be placed in the candidate's or committee's checking account promptly.
- B. Amounts shall be paid by the campaign treasurer from the campaign contribution checking account only upon receipt of a bill or voucher from a person furnishing goods or services to the candidate or committee, which bill or voucher itemizes and identifies the goods or services furnished or to be furnished and lists the unit and total price therefor. All payments of fifty dollars or more shall be made by check, credit card or debit card, and payable to the person furnishing the goods or services to a candidate or committee.
- C. In the event that, after payment has been made for all goods and services furnished in connection with the campaign of a candidate or committee, there remains a balance in the checking account of the candidate or committee, the campaign treasurer shall liquidate the contribution checking account consistent with California Government Code Section [89510](#) et seq., and applicable state regulations, before terminating the campaign committee.
- D. No committee or candidate shall accept or receive a non-monetary contribution with a fair market value in excess of fifty dollars unless the contributor provides the campaign treasurer with a receipt or voucher that

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

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

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

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

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

### **2.12.255 Statement of organization--Committee required to file.**

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

B. Every committee that qualifies during the period between the closing date of the last pre-election statement and the election shall file with the City Clerk, by hand delivery or by such means as the commission may prescribe, a statement of organization no later than the close of the next business day.

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

### **2.12.260 Statement of organization--Information required.**

*Repealed by [Ord. 7875-NS](#).*

### **2.12.265 Statement of organization--Change of information--Amendment required.**

*Repealed by [Ord. 7875-NS](#).*

### **2.12.270 Campaign statement--Filing requirements.**

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

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

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

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

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

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

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

### **2.12.271 Campaign statements--Additional filing requirements.**

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

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

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

### **2.12.272 Slate mailer organizations' reporting requirements.**

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

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

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

### **2.12.275 Campaign statement--Verification.**

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

### **2.12.280 Campaign statement--Information required.**

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

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

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

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

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

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

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

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

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

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

*Repealed by [Ord. 7296-NS](#).*

## 2.12.290 Campaign statement--Consolidation permitted when.

Repealed by [Ord. 7296-NS](#).

## 2.12.295 Report of late contributions.

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

## 2.12.297 Late independent expenditures preceding election.

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

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

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

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

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

### **2.12.300 Contributions--Written instrument required when.**

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

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

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

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

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

### **2.12.315 Expenditures--Report requirements--Scope.**

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

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

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

### **2.12.325 Mass mailings--Copies to commission.**

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

### **2.12.330 Mass mailings by independent expenditure.**

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

NOTICE TO VOTERS

(Required by City of Berkeley)

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

It is paid for by

(Name)

(Address, City, State)

(Ord. 6096-NS § 2 (part), 1991)

### **2.12.335 Disclosure on campaign communications of certain contributions and loans.**

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

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

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

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

C. For purposes of this section, "campaign communication" does not include: small promotional items such as pens, pencils, clothing, mugs, potholders, or other items on which the statement required by this section cannot be reasonably printed or displayed in an easily legible typeface; posters, yard or street signs, billboards, supergraphic signs, skywriting, and similar items; television, cable, satellite, and radio broadcasts or advertisements; communications paid for by a newspaper, radio station, television station or other recognized news medium; and communications from an organization to its members.

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

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

## **Article 5. Expenditure Limitations**

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

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

## **Article 6. Limitations on Contributions**

### **2.12.415 Persons other than candidate--Maximum permitted amount.**

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

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

(Ord. 7857-NS § 1, 2023: Ord. 7793-NS § 1, 2021: Ord. 5895-NS § 1, 1988: Ord. 4700-NS § 600, 1974)

### **2.12.435 Excess amounts--Payment to City required.**

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

### **2.12.440 Contributions from certain organizations and business entities prohibited.**

No proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, including non-profit corporations, or labor union shall make a contribution to any candidate or committee (supporting or

opposing any candidate) directly or indirectly, and no campaign treasurer (of any such committee) shall solicit or accept such contribution. (Ord. 6096-NS § 1, 1991; Ord. 4701-NS § 1 (part), 1974; Ord. 4700-NS § 605, 1974)

## **Article 7. Enforcement--Penalties For Violation**

### **2.12.445 Complaints--Filing, investigation and commission action.**

Any person who believes that a violation of any portion of this chapter has occurred may file a complaint with the commission. If the commission determines that there is reason to believe a violation of this chapter has occurred, it shall make an investigation. If the commission has reason to believe that a violation of this chapter has occurred or is about to occur, it may institute action at law or equity to enforce and compel compliance with the provisions of this chapter. (Ord. 4700-NS § 710, 1974)

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

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

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

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

### **2.12.460 Violation--Deemed misdemeanor--Penalty.**

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

**2.12.465 Actions for compliance--Disposition of amounts recovered.**

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

**2.12.470 Violation--Candidate's office forfeited when.**

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

**2.12.475 Violation--Candidacy terminated when.**

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

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

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

**2.12.485 Late filing penalties.**

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

## Article 8. Berkeley Fair Elections Act of 2016

### 2.12.490 Title and purpose.

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

- A. Diminish the public perception of corruption and strengthen public confidence in the governmental and election processes.
- B. Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- C. Help reduce the influence of private campaign contributions on Berkeley government.
- D. Reduce the impact of wealth as a determinant of whether a person becomes a candidate.
- E. Foster more meaningful participation in the political process.
- F. Provide candidates who participate in the program with sufficient resources with which to communicate with voters.
- G. Increase the accountability of elected officials to the constituents who elect them, as opposed to the contributors who fund their campaigns.
- H. Free candidates from the time needed to raise campaign money, and allow officeholders more time to carry out their official duties. (Ord. 7524-NS § 3.6 (part), 2016)

### 2.12.495 Offices covered.

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

### 2.12.500 Eligibility for Fair Elections campaign funding.

- A. To be eligible to be certified as a participating candidate, a candidate must:
  - 1) During the qualifying period for the election involved, choose to participate in the Fair Elections program by filing with the City a written application for certification as a participating candidate in such form as may be prescribed by the Commission, containing the identity of the candidate, the office that the candidate seeks, and the candidate's signature, under penalty of perjury, certifying that:
    - a) The candidate has complied with the restrictions of this chapter during the election cycle to date;

- b) The candidate's campaign committee has filed all campaign finance reports required by law during the election cycle to date and that they are complete and accurate; and
  - c) The candidate will comply with the requirements of this Act during the remainder of the election cycle and, specifically, if certified an eligible participating candidate, will comply with the requirements applicable to participating candidates.
- 2) Meet all requirements to be eligible to hold the office sought:
- a) For the office of Mayor, Councilmember, Auditor, or School Director, the requirements as set forth in Sections 9 and 10 of Article V of the Charter of the City of Berkeley; or
  - b) For the office of Commissioner of the Rent Stabilization Board, the requirements as set forth in Section 121 of Article XVII of the Charter of the City of Berkeley.
- 3) Before the close of the qualifying period, collect and submit at least 30 qualified contributions, from at least 30 unique contributors, of at least ten dollars (\$10)\*, for a total dollar amount of at least five-hundred dollars (\$500)\*.
- a) Each qualified contribution shall be acknowledged by a receipt to the contributor, with a copy retained by the candidate. The receipt shall include the contributor's signature, printed name, home address, and telephone number, if any, and the name of the candidate on whose behalf the contribution is made. In addition, the receipt shall indicate by the contributor's signature that the contributor understands that the purpose of the qualified contribution is to help the candidate qualify for Fair Elections campaign funding and that the contribution is made without coercion or reimbursement.
  - b) A contribution for which a candidate has not obtained a signed and fully completed receipt shall not be counted as a qualified contribution.
- 4) Maintain such records of receipts and expenditures as required by the Commission;
- 5) Obtain and furnish to the Commission or City staff any information they may request relating to his or her campaign expenditures or contributions and furnish such documentation and other proof of compliance with this chapter as may be requested by such Commission or City staff;
- 6) Not make expenditures from or use his or her personal funds or funds jointly held with his or her spouse, domestic partner, or unemancipated children in connection with his or her election except as a monetary or non-monetary contribution to his or her controlled committee of \$250\* or less. Contributions from a participating candidate to his or her own controlled committee are not eligible for matching funds.
- 7) Not accept contributions in connection with the election for which Fair Elections funds are sought other than qualified contributions, contributions not greater than fifty dollars (\$50)\* made by a natural person non-resident of Berkeley, or non-monetary contributions with a fair market value not greater than fifty dollars (\$50)\*. The aggregate value of all contributions from any individual must not be greater than fifty dollars (\$50)\*;

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

9) Not accept loans from any source.

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

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

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

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

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

## **2.12.505 Fair Elections fund payments.**

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

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

- 1) \$129,000\* for a candidate running for the office of Mayor;
- 2) \$43,000\* for a candidate running for the office of City Council;
- 3) \$20,000\* for a candidate running for the office of Auditor;

- 4) \$20,000\* for a candidate running for the office of Board of Education;
- 5) \$8,000\* for a candidate running for the office of Rent Stabilization Board.

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

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

- 1) All Qualified Contributions, of any dollar amount, eligible for matching Fair Elections funds must be publicly disclosed with the contributor information required under Sections [2.12.280](#) and [2.12.283](#).
- 2) All campaign filings must be current in order for a Participating Candidate to receive a disbursement of Fair Elections funds and the Participating Candidate and a Participating Candidate's controlled committee must not have any outstanding fines related to campaign filings or violations of municipal, state or federal election law. All applications for Fair Elections funds shall include a certification by the Participating Candidate that the Participating Candidate or his or her controlled committee does not have any outstanding fines or penalties related to campaign filings. Upon submission of outstanding campaign filings and payment of any outstanding fines, withheld Fair Elections funds will be disbursed at the next regularly scheduled distribution for that election cycle.

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

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

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

G. The City shall provide each participating candidate with a written determination specifying the basis for any non-payment of Fair Elections funds. The Commission shall provide participating candidates with a process by which they may immediately upon receipt of such determination petition the Commission for reconsideration of any such non-payment and such reconsideration shall occur within seven business days of the filing of such

petition. In the event that the Commission denies such petition then it shall immediately notify the candidate of his or her right to seek judicial review of the Commission's denial pursuant to Section [2.12.235](#).

- H. 1. Unspent campaign funds of any Participating Candidate who does not qualify as a candidate for the ballot at the election for which the funds were distributed, up to the total amount of funds that the participating candidate received as Fair Election Funds distributions in that election cycle and after accounting for campaign debts and expenditures, must be returned to the City no later than the date of the election for which the funds were distributed. All funds returned under this paragraph must be accompanied by any required supporting documentation. In such cases, the participating candidate must return the unspent funds to the City, up to the total amount of funds that the participating candidate received as Fair Election Funds distributions, prior to refunding any contributions to individual contributors.
2. Any campaign funds that remain unspent by a Participating Candidate following the date of the election for which they were distributed, up to the total amount of funds that the Participating Candidate received as Fair Elections Funds distributions in that elections cycle and after accounting for campaign debts and expenditures, must be returned to the City, within sixty (60) days after the date of the election. All funds returned under this paragraph must be accompanied by any required supporting documentation.
3. All unspent campaign funds returned to the City shall be deposited in the Fair Elections Fund pursuant to the City Charter.
4. The City Clerk shall immediately refer to the Commission for enforcement any participating candidate who does not return unspent funds as required by this subsection.
5. After the deadline to return unspent funds in [2.12.505.H.2](#), a participating candidate may continue to raise funds in accordance with Article [8](#) of Chapter [2.12](#) to pay campaign-related debt from the most recent election. Any such contributions received shall not be eligible for matching funds.
- I. Any request by a Participating Candidate for a refund of any amount of unspent campaign funds previously repaid to the City, for a qualified campaign expenditure or other permissible campaign purpose, shall be submitted to the Commission to approve, in whole or in part, or deny. The Commission shall make a final determination on the refund within 45 days of receipt.
- J. Requests for matching funds may be submitted no later than 30 days after Election Day for the election at which the participating candidate qualified as a candidate.
- K. Upon approval of a participating candidate's Initial Qualifying Request, the candidate is prohibited from withdrawing from the Public Financing Program and receiving contributions pursuant to Section [2.12.415](#) for the same office at the same election for which they are a participating candidate. (Ord. 7875-NS §§ 6--8, 2023; Ord. 7793-NS § 4, 2021; Ord. 7723-NS § 2, 2020; Ord. 7691-NS § 3, 2020; Ord. 7674-NS § 2, 2019; Ord. 7564-NS § 8, 2017; Ord. 7524-NS § 3.6 (part), 2016)

### **2.12.507 Return of Contributions by Participating Candidates.**

- A. Notwithstanding the requirements in Section [2.12.505.H.1](#), if a participating candidate returns a qualified contribution for which they have requested and received matching funds, they must immediately return all said matching funds to the City.
- B. Notwithstanding the requirements in Section [2.12.505.H.1](#), a participating candidate may return a non-qualified contribution to the contributor at any time without triggering any requirement that they return matching funds. (Ord. 7875-NS § 9, 2023)

### **2.12.510 Candidate statement notice.**

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

### **2.12.515 Transition rule for current election cycle.**

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

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

### **2.12.520 Special municipal elections.**

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

### **2.12.525 Campaign accounts for participating candidates.**

- A. During an election cycle, each participating candidate shall conduct all campaign financial activities through a single campaign expenditure and contribution account as required by Section [2.12.250](#).

- B. A participating candidate may maintain a campaign account other than the campaign account described in subsection A if the other campaign account is for the purpose of retiring a campaign debt that was incurred during a previous election campaign in which the candidate was not a participating candidate.
- C. Contributions for the purposes of a retiring a previous campaign debt that are deposited in the kind of "other campaign account" described in subsection B shall not be considered "contributions" to the candidate's current campaign.
- D. Participating candidates shall file reports of financial activity related to the current election cycle separately from reports of financial activity related to previous election cycles. (Ord. 7524-NS § 3.6 (part), 2016)

### **2.12.530 Use of Fair Elections funds.**

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

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

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

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

### **2.12.535 Administrative modification of timelines.**

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

### **2.12.540 Insufficient funds in the program.**

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

### **2.12.545 Cost of living adjustments.**

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

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

**2.12.550 Fair Elections Act penalties.**

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

- A. It is a violation of the law for candidates to accept more Fair Elections Act benefits than those to which they are entitled or misuse such benefits or Fair Elections funding.
- B. If a participating candidate knowingly or willfully accepts or spends Fair Elections funding in violation of this Act, then the candidate shall repay to the Fair Elections Fund an amount equal to twice the value of Fair Elections funding unlawfully accepted or spent.
- C. The Commission shall, after a hearing held pursuant to Section [2.12.230](#), have the authority to impose the fine created by this section upon a two-thirds vote. (Ord. 7524-NS § 3.6 (part), 2016)

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

No person who commits a substantial violation of this chapter shall be eligible to receive public funds for a period of four years from and after the date that the Commission determines, upon a two-thirds vote, that such a violation has occurred, following a hearing held pursuant to Section [2.12.230](#). The Commission shall by regulation state the criteria to be satisfied in order to make a finding of a substantial violation. (Ord. 7524-NS § 3.6 (part), 2016)

**2.12.560 Review by Commission.**

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

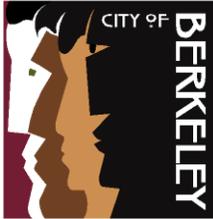
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**The Berkeley Municipal Code is current through Ordinance 7977-NS, passed July 8, 2025.**

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

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

[Hosted by General Code.](#)



## Open Government Commission

Date: September 8, 2025

To: Open Government Commission

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

Subject: Complaints alleging Brown Act violation regarding Council's consideration of Middle Housing zoning amendments and conforming zoning map and General Plan amendments

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### **EXECUTIVE SUMMARY**

On July 2, 2025, Open Government Commission (“OGC”) staff received the first attached complaint (“Complaint 1”) from Dean Metzger alleging that City Council violated the Brown Act (Gov. Code § 54950 et seq.) when it voted to adopt the Middle Housing zoning ordinance amendments and complementary General Plan amendments at its June 26, 2025 special meeting. (Attachment 1.) Specifically, the Complaint alleges that City Council violated the Brown Act when Councilmembers (“CMs”) Kesarwani and Tregub posted supplemental items fewer than 72 hours before the meeting.

On July 3, OGC staff received the second attached complaint (“Complaint 2”) from Donna DeDiemar alleging that Council violated the Brown Act during the same June 26, 2025 Special Meeting when it revised staff’s proposal for varied density standards ranging from 40 to 60 dwelling units per acre across zoning districts to one uniform 70 dwelling units per acre density standard across all zoning districts. (Attachment 2.)

On July 13, 2025, Donna DeDiemar emailed staff requesting to withdraw Complaint 2 because of advice “from the City Attorney given at the July 8, 2025 city council meeting clarifying the noticing rules required for Special Sessions of the city council under the Brown Act.” (Attachment 3.)

On July 17, 2025 at its regularly scheduled meeting, Dean Metzger gave oral public comment amending Complaint 1 such that it now alleges that City Council violated the Brown Act when supplemental materials from CMs Tregub and Kesarwani were posted the day of the meeting and not 24 hours prior to the meeting.

Subsequently, the OGC requested that staff investigate these complaints.

After thoroughly reviewing the facts and relevant authorities, staff conclude that there is no reasonable basis to believe that a Brown Act violation or Berkeley Open Government Ordinance (BMC Ch. 2.06) violation occurred. Government Code section 54956, subdivision (a), allows special meetings such as the June 26, 2025 special meeting to be noticed 24 hours in advance. Agenda item descriptions for such meetings need only include a “brief, general description” of an item to put the public on notice of the matter being considered. (Gov. Code, § 54954.2(a).) With regard to supplemental materials, the Brown Act only requires that they be made available to the

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public at the same time they are submitted to the legislative body. (Gov. Code, § 54957.5(b)(1).) The Berkeley Municipal Code ("BMC") provides that supplemental materials are proper if they are posted by 5:00 p.m. on the day prior to the City Council meeting at which it is to be considered. (BMC § 2.06.070(E)(2)(b).) Here, the City Council followed all appropriate procedures with respect to noticing the Special Meeting and posting the agenda and supplemental materials.

Staff therefore recommend that the OGC dismiss the complaint.

### **BACKGROUND**

**Complaint:** The Open Government Ordinance ("OGO") (BMC Ch. 2.06) provides that the OGC shall "hear complaints by any person concerning alleged non-compliance" with, among other statutes, the Brown Act (Gov. Code § 54950 et seq.) and the OGO by "the City or any of its legislative bodies, elected or appointed officials, officers or employees." (BMC § 2.06.190(A)(1)(a).) The OGC shall then "advise the City Council of its opinion, conclusion or recommendation as to any complaint." (*Id.* at § 2.06.190(A)(1)(d).)

Here, the only live complaint, Complaint 1, alleges that a Brown Act violation occurred at the City Council's June 26, 2025 special meeting because Council voted to adopt the Middle Housing zoning ordinance amendments and complementary General Plan amendments, including a uniform 70 dwelling unit per acre density standard, without giving the public adequate notice that this density standard would be considered. The basis for this allegation seems to be that the supplemental materials from CMs Tregub and Kesarwani, which set forth the 70 du/acre proposal, were posted too late to give the public adequate notice.

**Brown Act Background:** The Brown Act provides, "A special meeting may be called at any time by the presiding officer of the legislative body of a local agency" so long as notice is provided to all of the legislative body members, to all media outlets who have requested notification, and on the City's website "at least 24 hours before the time of the meeting as specified in the notice." The Brown Act further provides that the "call and notice shall specify the time and place of the special meeting and the business to be transacted or discussed." (Gov. Code, § 54956(a).)

The Brown Act contains no particular agenda requirements for special meetings. However, for regular meetings, the Brown Act requires that agendas contain "a brief general description of each item of business to be transacted or discussed at the meeting," where "[a] brief general description of an item generally need not exceed 20 words." (Gov. Code, § 54954.2(a).)

The Brown Act is silent with respect to requirements for posting supplemental materials for special meetings. However, in the context of regular meetings, the Brown Act provides, "If a writing is a public record related to an agenda item for an open session of a regular meeting of the legislative body of a local agency and is distributed to all, or a majority of all, of the members of a legislative body of a local agency by a person in connection with a matter subject to discussion or consideration at an open meeting of the body less than 72 hours before that meeting, the writing shall be made available for public inspection [by making the writing available at a public location and listing the address on the agenda for the meeting] at the time the writing is distributed to all, or a majority of all, of the members of the body." (Gov. Code, § 54957.5(b)(1).)

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To effectuate these provisions, the Open Government Ordinance provides, "No item may be considered unless it is included in the Agenda Packet except that a correction or supplement to an item already included in the Agenda Packet may be considered" if "the correction or supplement to an item is posted on the City's website with the City Council agendas no later than either: (a) 5:00 pm on the fifth calendar day prior to the City Council meeting at which it is to be considered; or (b) 5:00 pm on the day prior to the City Council meeting at which it is to be considered, subject to the receipt of the correction or supplement by the City Clerk by noon the day prior to the City Council meeting for distribution at the meeting." (BMC § 2.06.070.E.2(b).)

### ANALYSIS

#### Notice of the Meeting was Proper

On June 16, 2025, the City posted the Special Meeting agenda for the June 26 meeting. (Attachment 4.) On June 16, 2025, the City Clerk distributed the agenda packet as well as supplemental communications and reports 2 to both the legislative body as a whole (Attachment 5), the media (Attachment 6), and members of the legislative body attending remotely (Attachment 7.) Note that the emails to the legislative body and the media are sent bcc.

On June 19, 2025, the City revised the agenda. (Attachment 8.) Subsequently, on June 19, 2025 the City Clerk distributed the revised agenda packet and supplemental communications 3 to the legislative body (Attachment 9), the media (Attachment 10), and the members of the legislative body attending remotely (Attachment 11). Note that the emails to the legislative body and the media are sent bcc. Thus, notice was properly given well in advance of the Brown Act's 24-hour deadline for special meetings. (Gov. Code, § 54956(a).)

#### The Agenda Was Legally Sufficient

On the revised agenda that was properly posted well in advance of the Brown Act's 24-hour deadline, the item of business was described thusly:

**Recommendation:** Conduct a public hearing, and upon conclusion:

1. Adopt first reading of an ordinance amending Berkeley Municipal Code Title 23 (Zoning Ordinance) and the Zoning Map, for the purposes of encouraging development of "middle housing" in areas currently zoned R-1, R-1A, R-2, R-2A and MU-R ("low-density residential districts"), with an effective date of November 1, 2025; and
2. Adopt a Resolution amending the General Plan for the same purpose.

The description of the item in the agenda is 62 words—much longer than the 20 words anticipated by the Brown Act. (Gov. Code, § 54954.2(a).) This is because the amendments to the Zoning Ordinance, Zoning, and General Plan proposed by staff included a number of measures designed to encourage greater development in residential districts of the City, including:

- Permitting Single-Family Residential and Multi-Family Residential uses with a Zoning Certificate (ZC).
- Consolidating the R-1A and R-2 zoning districts.
- Revising development standards related to building height, lot coverage and setbacks, to permit larger residential buildings.
- Establishing new minimum and maximum density standards.
- Revising requirements related to Residential Additions and additional bedrooms;
- Regulating the size of new single-family homes on a single lot.

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- Permitting demolition of single-family homes with a ZC if they are part of a project that includes a net increase in units.
- Authorizing the Zoning Officer to attach Standard Conditions of Approval to projects approvable with a ZC.<sup>1</sup>

Density standards are just one of the myriad provisions considered by Council, yet the agenda description captures the fact that the item will result in greater density; the description explains that the item includes potential adoption of amendments to the Zoning Ordinance, Zoning Map, and General Plan with the purpose of "encouraging development" in a number of zoning districts that are currently "low-density." Therefore, this description meets the "brief, general description" standard for agenda items in the Brown Act. (Gov. Code, § 54954.2(a).)

#### The Supplemental Materials Were Properly Posted

The City Clerk confirmed that on June 25, 2025, both CMs Kesarwani and CM Tregub provided their supplemental materials to his office by noon and that subsequently, the agenda packets were simultaneously provided to the other councilmembers and published on the website by 5:00 p.m. on June 25, 2025. Therefore, the Councilmembers and the City followed the procedures outlined in BMC Section 2.06.070(E)(2)(b) and followed the Brown Act requirement that writings be made available to the public at the same time they are provided to the legislative body. (Gov. Code, § 54957.5(b)(1).)

### **RECOMMENDATION**

Pursuant to Section 2.06.190, subdivision (A)(1) of the OGO, the OGC shall:

- a) hear complaints by any person concerning alleged non-compliance with this Ordinance, the Brown Act, the Public Records Act, or the Lobbyist Registration Act, by the City or any of its legislative bodies, elected or appointed officials, officers or employees;
- b) consider ways to informally resolve those complaints and make recommendations to the Council regarding such complaints;
- c) seek advice from the City Attorney concerning those complaints;
- d) advise the City Council of its opinion, conclusion or recommendation as to any complaint; and
- e) take any action authorized by the Lobbyist Registration Act under Chapter 2.09.

Staff recommend the OGC conclude that no violations of the Brown Act or the OGO occurred with regards to the allegations that neither notice, the agenda description, nor the posting of supplementals was sufficient for the June 26, 2025 Special Meeting at which City Council considered the Middle Housing zoning ordinance amendments and conforming zoning map and General Plan amendments in accordance with Section 2.06.190(A)(1)(d) of the OGO.

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<sup>1</sup> See Staff Report, Page 1, available at <https://berkeleyca.gov/sites/default/files/documents/2025-06-26%20Special%20Item%2001%20Zoning%20Ordinance%20and%20General%20Plan.pdf>

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Attachments.

1. Complaint 1 from Dean Metzger
2. Complaint 2 from Donna DeDiemar
3. July 13, 2025 Email from Donna DeDiemar
4. June 26, 2025 Special Meeting Agenda
5. June 16, 2025 Notice to Legislative Body
6. June 16, 2025 Notice to Media
7. June 16, 2025 Notice to Councilmember attending remotely
8. June 26, 2025 Revised Special Meeting Agenda
9. June 19, 2025 Notice to Legislative Body
10. June 19, 2025 Notice to Media
11. June 19, 2025 Notice to Councilmember attending remotely

**From:** [Dean Metzger](#)  
**To:** [FCPC \(Fair Campaign Practices Commission\)](#); [Dean Metzger](#)  
**Subject:** Violation of Brown Act by City Council  
**Date:** Wednesday, July 2, 2025 11:17:16 AM  
**Attachments:** [Open Government Compliant Jul 2 2025.pdf](#)

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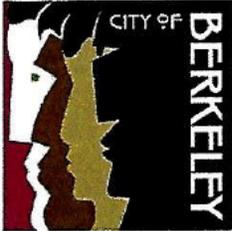
**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Samuel Harvey & Stephen Hylas,

Attached is an alleged violation of the Brown act by City Council at the City Council of June 26, 2025.

Please let me know if any further information is needed for you to proceed processing this complaint.

Dean Metzger



**Complaint of Noncompliance**  
**Berkeley Election Reform Act ("BERA")\***

Fair Campaign Practices Commission

Full Name: Dean Metzger  
Date: July 2, 2025  
Address: [REDACTED]  
E-mail (optional but suggested): drm1a2@sbcglobal.net  
Phone (optional but suggested): [REDACTED]

Party or parties alleged to have committed or are about to commit a violation of BERA:  
Berkeley City Council

Clear, concise and accurate statement of the facts that constitute the violation of BERA.  
If additional space is needed, you may attach additional pages:

City Council meeting of June 26, 2025

Violation of the Brown Act

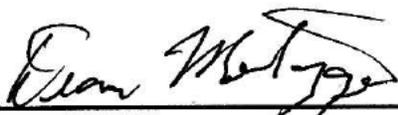
Supplemental items were added to the agenda with less than 72 hours notice when no emergency was declared.

See attached document for details

Documents: Attach any documentation supporting the facts alleged.

Statements that are not based upon personal knowledge should identify the source of information that gives rise to the complainant's belief in the truth of such statements.

***I declare under penalty of perjury under the laws of the State of California that all information submitted hereon and in the attachments is true and correct.***

Signature  Date 7/2/2025

\*Use this "Complaint of Noncompliance" form to allege a violation of BERA pursuant to Berkeley Municipal Code Section 2.12.225 and the *Procedures of the Fair Campaign Practices Commission*.

**Attachment No. 1**

Action Calendar – Public Hearings

Thursday, June 26, 2025 ANNOTATED AGENDA

**The 72-hour Rule of the Brown Act**

**An agenda must be posted at least 72 hours before a regular meeting in a location freely accessible to members of the public.**

**Action: M/S/C (Kesarwani/Bartlett) to:**

1. Adopt first reading of Ordinance No. 7,978–N.S. as proposed in the item from the City Manager including further changes in the supplemental material from Councilmember Kesarwani in Supplemental Communications Packet #2 with the following amendments:
  - Establish a limit of 70 dwelling units per acre in all applicable zones: R-1, R-2, R2A, and M-UR
  - Incorporate the request from Councilmember Tregub to consider results from other comparable jurisdictions in the annual report from the Planning Department.
  - Incorporate Councilmember Humbert’s amendment to direct Planning Staff to return to the City Council by April 1, 2026 and annually thereafter with a simple, quantitative report listing for the present year and all previous years, beginning in 2025: 1) The number of middle housing project applications; 2) The total number of units proposed within those middle housing project applications; 3) The number of middle housing projects/units granted building permits, and 4) The number of middle housing projects/units granted certificates of occupancy.
  - Modify the direction on the equity report to remove the fixed date and direct staff to return to Council with the equity report within 12 months of the City reaching the threshold of 25 middle housing project applications being received by the Planning Department or two years (whichever comes first).
  - **Incorporate the following request from Councilmember Tregub’s supplemental item: To the extent feasible, the objective design standards referral should consider loss of open or permeable yard space, solar access, privacy, tree canopy, biodiversity, and**

**opportunities for stormwater runoff mitigations with consideration of costs and not reducing the development potential of the ordinance as proposed.**

- Further, to make corresponding edits to the General Plan to reflect the amended density standard. And direct that the second reading be scheduled for July 8, 2025 regular meeting agenda.

**Councilmember Rashi Kesarwani**

REVISED AGENDA MATERIAL for Supplemental Packet 1 Meeting Date: June 26, 2025 Item

Number: 1 Item Description: Middle Housing Ordinance Amendments Submitted by: Councilmembers Rashi Kesarwani, Ben Bartlett, Cecilia Lunaparra and Mayor Adena Ishii The item amends the ordinance to establish uniform density standards across R-1, R-2, R-2A, and M-UR zoning districts, increases the maximum dwelling units per acre, incentivizes pitched roofs and rooftop access, and refers an equity impact analysis as well as the development of objective design standards to Planning staff.

**Igor Tregub, Councilmember District 4 JUNE 26, 2025**

To: Honorable Mayor and Members of the City Council From: Councilmember Igor Tregub Subject: Additional Referral to the City Manager – Zoning Ordinance and General Plan Amendments Relating to Middle Housing

RECOMMENDATION Refer to the City Manager an effectiveness assessment of the Zoning Ordinance and General Plan Amendments Relating to Middle Housing. Not later than November 30, 2026, the City Manager shall submit to the Berkeley City Council a report that evaluates the effectiveness of the subject amendments with respect to the goals set forth in the item.

The report, as part of its review, should evaluate the effectiveness of implementing this ordinance against that of other jurisdictions in which similar middle housing ordinances have been implemented; evaluate any barriers to achieving the affordability goals contemplated in the proposal; and explore opportunities for the City Council to enact additional objective development standards in a manner that balances the City of Berkeley’s housing production goals with other goals in its General Plan.

BACKGROUND This supplemental is initiated because of a large number of resident communications we received through holding and participating in community meetings, email communications and other community engagement. The Berkeley City Council has

heard from various residents and stakeholder organizations in support of, opposition to, and with concerns and suggestions regarding the proposed Zoning Ordinance and General Plan Amendments Relating to Middle Housing. When decision-making bodies adopt major changes to land use development standards, it is not uncommon, and generally considered a best administrative practice, to schedule an effectiveness review of its implementation towards stated goals some time following the beginning of implementation. This supplemental referral directs the City Manager to, not later than November 30, 2026, to submit to the Berkeley City Council a report that evaluates the effectiveness of the subject amendments with respect to the goals set forth in the item. It is intended to complement, rather than serving as a substitute for, the item. The report, as part of its review, should evaluate the effectiveness of implementing this ordinance against that of other jurisdictions in which similar middle housing ordinance have been implemented (such as the City of Sacramento)

The proposed zoning changes are intended to increase the development potential of properties in low-density residential districts, in part, to increase the affordability of ownership and rental housing and provide opportunities for first-time homeownership and intergenerational living arrangements. The report should identify any barriers to achieving such goals based on the ordinance's implementation and recommend resolutions to these barriers, as necessary. Finally, the report should explore opportunities for the City Council to enact additional objective development standards in a manner that balances the City of Berkeley's housing production goals with other goals in its General Plan. Specifically, the report should evaluate whether commonly expressed concerns from some community members, such as around possible loss of open or permeable yard space, solar access, privacy, tree canopy, biodiversity, and opportunities for stormwater runoff mitigations can be mitigated through additional objective development standards in a manner that does not reduce the development potential of the ordinance as proposed.

**CURRENT SITUATION AND ITS EFFECTS** The proposed ordinance includes zoning changes to encourage the development of Multi-Family Residential Uses in the R-1, R-1A, R-2, R-2A and MU-R zoning districts, as directed by City Council at its meeting of July 23, 2024, and recommended by the Planning Commission. The proposed changes include:

- Permitting Single-Family Residential and Multi-Family Residential uses with a Zoning Certificate (ZC).
- Consolidating the R-1A and R-2 zoning districts.
- Revising development standards related to building height, lot coverage and setbacks, to permit larger residential buildings.

[www.cityofsacramento.gov/community-development/planning/housing/missing-middle-housing](http://www.cityofsacramento.gov/community-development/planning/housing/missing-middle-housing)

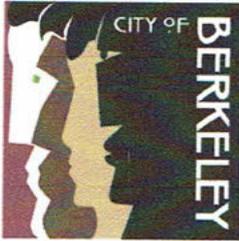
- Establishing new minimum and maximum density standards.
- Revising requirements related to Residential Additions and additional bedrooms;
- Regulating the

size of new single-family homes on a single lot. • Permitting demolition of single-family homes with a ZC if they are part of a project that includes a net increase in units. • Authorizing the Zoning Officer to attach Standard Conditions of Approval to projects approvable with a ZC.

FINANCIAL IMPLICATIONS Unknown staff time to conduct study and submit report to the City Council

ENVIRONMENTAL SUSTAINABILITY Consistent with any and all identifiable environmental effects or opportunities associated with the subject of the staff-proposed Ordinance

CONTACT Councilmember Tregub, 510-981-7140



Fair Campaign Practices Commission

### Complaint of Noncompliance Berkeley Election Reform Act ("BERA")\*

Full Name: Donna DeDiemar  
 Date: 7/3/25  
 Address: [REDACTED]  
 E-mail (optional but suggested): dediemar@sbcglobal.net  
 Phone (optional but suggested): [REDACTED]

Party or parties alleged to have committed or are about to commit a violation of BERA:  
Berkeley City Council (violation of Brown Act)

Clear, concise and accurate statement of the facts that constitute the violation of BERA.  
 If additional space is needed, you may attach additional pages:

CM Kesarwani's Supplemental Package was a major change to the zoning proposal, not a small one. (link attached)

1. Council threw out the density standards that were calibrated across existing zones. See page 14 of the 2022 power point presentation (link attached)
2. After July 2024 the hills overlay was removed altogether but the density of other zones still varied based roughly on current allowances. That is, R-1 had the lowest density and R-2A and MUR the highest. So anyone paying attention would have thought that this was what was going to be voted on June 26. It's what passed the Planning Commission. The revised density standards are on pages 19 and 20 in the October 2024 PP presented at the D1/D2 Community Meeting. So, instead of the different densities they substituted a single density for all existing zones at the last minute. There was no notice. (link attached)
3. They proposed 90 UNA (units per acre) across all existing affected zones, which was 50% higher than the densest zone (60) and more than doubled the lowest (40). There was no explanation for this number, and the compromise of 70 seemed to be pulled out of the hat on the dais.

Documents: Attach any documentation supporting the facts alleged.

Statements that are not based upon personal knowledge should identify the source of information that gives rise to the complainant's belief in the truth of such statements.

***I declare under penalty of perjury under the laws of the State of California that all information submitted hereon and in the attachments is true and correct.***

Signature Donna DeDiemar Date 7/3/25

\*Use this "Complaint of Noncompliance" form to allege a violation of BERA pursuant to Berkeley Municipal Code Section 2.12.225 and the *Procedures of the Fair Campaign Practices Commission* 85

Attachment to complaint filed 7/3/25 against the Berkeley City Council (violation of Brown Act)  
by Donna DeDiemar

CM Kesarwani's Supplemental Package:

<https://berkeleyca.gov/sites/default/files/documents/2025-06-26%20Special%20Item%2001%20Zoning%20Ordinance%20and%20General%20Plan%20-%20Supp%202%20Kesarwani.pdf>

2022 Power Point presentation (see page 14):

[https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2022-06-01\\_PC\\_MiddleHousingPresentation%20.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2022-06-01_PC_MiddleHousingPresentation%20.pdf)

2024 Power Point presentation at D1/D2 Public Workshop (see pages 19-20):

[https://berkeleyca.gov/sites/default/files/documents/2024\\_10\\_21\\_MH\\_Presentation.pdf](https://berkeleyca.gov/sites/default/files/documents/2024_10_21_MH_Presentation.pdf)

Information in this complaint was supplied by Toni Mester (tonispann@sonic.net).

**Harvey, Samuel**

---

**From:** Donna DeDiemar <dediemar@sbcglobal.net>  
**Sent:** Sunday, July 13, 2025 10:34 PM  
**To:** FCPC (Fair Campaign Practices Commission)  
**Subject:** Re: Open Government Commission Complaint

Commissioners,

In light of the ruling from the City Attorney given at the July 8, 2025 city council meeting clarifying the noticing rules required for Special Sessions of the city council under the Brown Act, I wish to withdraw my complaint of non-compliance under BERA filed July 3, 2025.

Thank you, and my apologies for not being aware of the rules.  
Donna DeDiemar

On Monday, July 7, 2025 at 11:19:25 AM PDT, FCPC (Fair Campaign Practices Commission) wrote:

**Restricted**

Dear Donna DeDiemar,

I am writing to confirm receipt of your complaint. The complaint will appear in the agenda packet for the upcoming July 17, 2025 meeting of the OGC.

Thank you,

Lauren



**Lauren Packard**

Deputy City Attorney

City Attorney's Office

2180 Milvia Street, Fourth Floor

Berkeley, CA 94704

[lpackard@berkeleyca.gov](mailto:lpackard@berkeleyca.gov)

(510) 926 – 1310

(she/her/hers)

CONFIDENTIALITY NOTICE

This message, including any attachments, is intended solely for the named addressee, and may contain information that is confidential, privileged, proprietary, or legally protected from disclosure. If you are not the intended recipient of this message, or if this message has been addressed to you in error, please immediately alert the sender and delete this message and any attachments from your system. If you are not the intended recipient, you are hereby notified that any use, dissemination, copying, or storage of this message or its attachments is strictly prohibited.

---

**From:** Donna DeDiemar  
**Sent:** Thursday, July 03, 2025 11:33 AM  
**To:** FCPC (Fair Campaign Practices Commission)  
**Subject:** Open Government Commission Complaint

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

Secretary of the Open Government Commission:

Attached please find a Complaint of Non-Compliance under the Berkeley Election Reform Act (BERA) pertaining to a Brown Act violation at the June 26, 2025 City Council meeting.

Sincerely,

Donna DeDiemar

- City offices and facilities are closed Monday, September 1 for Labor Day.

# City Council Special Meeting eAgenda June 26, 2025

*Printer-friendly PDF agenda*

## REVISED PROCLAMATION

### CALLING A SPECIAL MEETING OF THE

### BERKELEY CITY COUNCIL

**(REVISED TO UPDATE THE TELECONFERENCE LOCATION)**

In accordance with the authority in me vested, I do hereby call the Berkeley City Council in special session as follows:

**Thursday, June 26, 2025**

**6:00 PM**

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

TELECONFERENCE LOCATION - 1032 BANCROFT WAY, BERKELEY, CA 94710

Adena Ishii, Mayor

Councilmembers:

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District 1 – Rashi Kesarwani

District 5 – Shoshana O’Keefe

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District 2 – Terry Taplin

District 6 – Brent Blackaby

*This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. Live captioned broadcasts of Council meetings are available on B-TV (Channel 33) and via internet video stream at [http://berkeley.granicus.com/MediaPlayer.php?publish\\_id=1244](http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244). All Council meetings are recorded.*

*To access the meeting remotely use this URL: <https://cityofberkeley-info.zoomgov.com/j/1612354681>. To request to speak, use the “raise hand” function in Zoom. To join by phone: Dial **1-669-254-5252 or 1-833-568-8864 (Toll Free)** and enter **Meeting ID: 161 235 4681**. To provide public comment, Press \*9 and wait to be recognized by the Chair. To submit a written communication for the public record, email [council@berkeleyca.gov](mailto:council@berkeleyca.gov).*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting, however, if you are feeling sick, please do not attend the meeting in person. The City Council may take action related to any subject listed on the Agenda.*

*Pursuant to the City Council Rules of Procedure and State Law, the presiding officer may remove, or cause the removal of, an individual for disrupting the meeting. Prior to removing an individual, the presiding officer shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding officer may then remove the individual if they do not promptly cease their disruptive behavior. “Disrupting” means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, a failure to comply with reasonable and lawful regulations adopted by a legislative body, or engaging in behavior that constitutes use of force or a true threat of force.*

**Government Code Section 84308 (Levine Act)** - Parties to a proceeding involving a license, permit, or other entitlement for use are required to disclose if they made contributions over \$500 within the prior 12 months to any City employee or officer. Parties and participants with a financial interest are prohibited from making more than \$500 in contributions to a decisionmaker for the 12 months after the final decision is rendered on the proceeding. The above contribution disclosures and restrictions do not apply when the proceeding is competitively bid, or involves a personnel or labor contract. For more information, see Government Code Section 84308.

**Action Calendar**

*-The public may comment on each item listed on the agenda for action. For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again during the Action Calendar public comment period on the item*

*The Presiding Officer will request that persons wishing to speak line up at the podium, or use the "raise hand" function in Zoom, to determine the number of persons interested in speaking at that time. If ten or fewer persons are interested in speaking on an individual agenda item, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.*

*Action items may be reordered at the discretion of the Chair with the consent of Council.*

*The Presiding Officer may open and close an additional comment period for Action items on this agenda (excluding any public hearings, appeals, and/or quasi-judicial matters), at the start of the Action Calendar. Those who speak on an item during this comment period may not speak a second time when the item is taken up by Council.*

**Action Calendar – Public Hearings**

*-Staff shall introduce the public hearing item and present their comments. For certain hearings, this is followed by five-minute presentations each by first the appellant and then the applicant. The Presiding Officer will request that persons wishing to speak line up at the podium, or use the "raise hand" function in Zoom, to be recognized and to determine the number of persons interested in speaking at that time.*

*If ten or fewer persons are interested in speaking during a public hearing, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.*

*When applicable, each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Councilmembers shall also submit a report of such contacts in writing prior to the commencement of the hearing. Written reports shall be available for public review in the office of the City Clerk.*

**1.-Zoning Ordinance and General Plan Amendments Relating to Middle Housing**

Supplemental Material (Supp 2) (Planning Department)

Revised Material (Supp 2) (Councilmember Kesarwani)

Revised Material (Supp 2) (Councilmember Tregub)

Presentation

**From: City Manager**

**Recommendation:** Conduct a public hearing, and upon conclusion:

1. Adopt first reading of an ordinance amending Berkeley Municipal Code Title 23 (Zoning Ordinance) and the Zoning Map, for the purposes of encouraging development of “middle housing” in areas currently zoned R-1, R-1A, R-2, R-2A and MU-R (“low-density residential districts”), with an effective date of November 1, 2025; and
2. Adopt a Resolution amending the General Plan for the same purpose.

**Financial Implications:** See report

Contact: Jordan Klein, Planning and Development, (510) 981-7400

**Adjournment**

I hereby request that the City Clerk of the City of Berkeley cause personal notice to be given to each member of the Berkeley City Council on the time and place of said meeting, forthwith.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the City of Berkeley to be affixed on this 16<sup>th</sup> day of June, 2025.

/s/ Adena Ishii, Mayor

Public Notice – this Proclamation serves as the official agenda for this meeting.

ATTEST:

Date: June 16, 2025

Mark Numainville, City Clerk

***NOTICE CONCERNING YOUR LEGAL RIGHTS:*** *If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply: 1) No lawsuit challenging a City decision to deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c) (5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a use permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

Archived indexed video streams are available at:

ITEM NO. 13-ATTACHMENT 4

<https://berkeleyca.gov/your-government/city-council/city-council-agendas>.

Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

Communications to the City Council 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 the City Council, 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 to the City Clerk Department at 2180 Milvia Street. 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 City Clerk Department for further information.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the public counter at the City Clerk Department located on the first floor of City Hall located at 2180 Milvia Street, and through the City's online records portal: <https://records.cityofberkeley.info/>.

Agendas, agenda reports, and revised/supplemental material may be accessed via the online agenda for this meeting at:

<https://berkeleyca.gov/your-government/city-council/city-council-agendas>

and may be accessed at reference desks at the following locations:

City Clerk Department - 2180 Milvia Street, First Floor

Tel: 510-981-6900, TDD: 510-981-6903, Fax: 510-981-6901

Email: [clerk@berkeleyca.gov](mailto:clerk@berkeleyca.gov)

Libraries: Main – 2090 Kittredge Street,

Claremont Branch – 2940 Benvenue, West Branch – 1125 University,

North Branch – 1170 The Alameda, Tarea Hall Pittman South Branch – 1901 Russell

#### COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location.

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at [ada@berkeleyca.gov](mailto:ada@berkeleyca.gov), (510) 981-6418 (V), or (510) 981-6347 (TDD) at least three business days before the meeting date.

Please refrain from wearing scented products to this meeting.

Captioning services are provided at the meeting, on B-TV, and on the Internet. In addition, assisted listening devices for the hearing impaired are available from the City Clerk prior to the meeting, and are to be returned before the end of the meeting.

## **Communications**

*Council rules limit action on Communications to referral to the City Manager and/or Boards and Commissions for investigation and/or recommendations. All communications submitted to Council are public record. Copies of individual communications are available for viewing at the City Clerk Department and through Records Online.*

### Item #1: Zoning Ordinance and General Plan Amendments Relating to Middle Housing

1. Jennifer Fisher
2. Anne Weinberger
3. Lisa Friedlander
4. Leni Siegel
5. Aubrey Grove
6. Jane Martin
7. Lauren Parsons
8. Wade Skeels
9. Carol Hirth (2)
10. Lisa Bruce
11. Colleen Whitney
12. Virginia Browning
13. Eva Herzer and Dechen Tsering
14. Daniel Borgstrom
15. John Oram
16. Neelam Patil
17. Leah Kaizer
18. Bill Kristy
19. T.M. Scruggs
20. Jane Freeman
21. Kathy Stuart
22. Marissa Moss

23. Janice Murota
24. Kori Kody
25. Silvia Turchin
26. Lynn Sherrell
27. Micky Duxbury (4)
28. Julie Lamont
29. Matt Wickland
30. Julie Kramer
31. Merle Lustig
32. Julie Weeks
33. Barbara Erickson
34. Susan Brooks
35. Toni Mester
36. Janice Schroeder
37. Fred Krieger
38. Gael Alcock
39. Christopher Hamilton
40. Darlene Bronson
41. Chris Hudson
42. Jed Harris
43. Lance Williams
44. Kenneth Laws
45. Katherine de Runtz
46. Joan Garvin
47. Alison de Runtz
48. Berkeley Neighborhoods Council Executive Committee
49. Toni Casal
50. Laura Klein
51. Mimi Moungovan
52. David Whipple
53. Elsie Martinez
54. Stephanie Lim

55. Dr. Bruce Feingold

56. Lisa Vogel

57. Robert Riemer

58. Summer Brenner

59. Cindy Shamban

60. Helen Guerrant Toy

61. Dr. A. Boersma

62. Virginia Warheit

63. 36 Similarly worded form letters "I'm writing to urge you to pass..."

64. 95 Similarly worded form letters "Please DO NOT PASS..."

**CITY OF BERKELEY** 2180 Milvia St, Berkeley, CA 94704

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**From:** [Numainville, Mark L.](#)  
**To:** [Numainville, Mark L.](#)  
**Subject:** ePacket Distribution - Documents Ready for Download  
**Date:** Monday, June 16, 2025 4:03:04 PM

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This e-mail contains the links to download your agenda documents. Go to your City e-mail account on your device and tap the link below. After the documents have opened in the web browser, download the document, then open it to review.

-  
***City Council***

**June 26, 2025 City Council Special Meeting Agenda Packet**

**Link – <https://www.dropbox.com/scl/fi/a8h8pu68xv3vmuiiws14d/2025-06-26-Agenda-Packet-Council.pdf?rlkey=u3w5vgianp2h3w3n15tz9wolc&st=9ko5kqxz&dl=0>**

**June 17, 2025 City Council Regular Meeting Supplemental Communications #2**

**Link – <https://www.dropbox.com/scl/fi/lugx3mp0qcxvpdjfn23b/2025-06-17-Supplemental-Communications-2.pdf?rlkey=pjusc3xesvyolzp2zg2nmuj6g&st=g6p9monf&dl=0>**

Mark Numainville  
City Clerk  
City of Berkeley  
(510) 981-6909

**From:** [Durr, Jasmine](#)  
**To:** [Durr, Jasmine](#)  
**Cc:** [Thomsen, Rose](#)  
**Subject:** Berkeley City Council Regular, Special, Closed and/or Committee Meetings (Media)  
**Date:** Monday, June 16, 2025 4:10:19 PM  
**Attachments:** [image001.png](#)  
[2025-06-26 Special Agenda - Council.pdf](#)

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Please see the attached agenda.



**Jasmine Durr | Office Specialist III**

City of Berkeley | City Clerk Department

2180 Milvia St. Berkeley, CA 94704

Direct: (510) 981-6920 | 1<sup>st</sup> Floor

[JDurr@berkeleyca.gov](mailto:JDurr@berkeleyca.gov) | [berkeleyca.gov](http://berkeleyca.gov)

**From:** [Thomsen, Rose](#)  
**To:** [Taplin, Terry](#)  
**Cc:** [Hernandez Story, Ruben](#); [Numainville, Mark L.](#)  
**Subject:** Council/Committee Meeting Agendas for Posting  
**Date:** Monday, June 16, 2025 4:28:00 PM  
**Attachments:** [2025-06-26 Special Agenda - Council.pdf](#)  
**Importance:** High

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Good afternoon,

Attached, please find an agenda(s) for posting at your teleconference location. The agenda(s) includes your teleconference location, and must be posted at a location that is freely accessible to the public for the duration of the posting period.

**Special Meetings**

Per the Brown Act, agendas for special meetings must be posted at your teleconference location at least **24 hours prior to the meeting.**

**Regular Meetings**

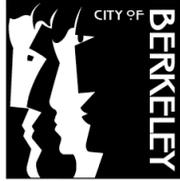
Per the Brown Act, agendas for regular meetings must be posted at your teleconference location at least **72 hours prior to the meeting.**

You will receive a Zoom panelist invitation, which will enable you to join and participate in the meeting(s) remotely.

Thank you,

Rose

Rose Thomsen - Deputy City Clerk  
City of Berkeley, City Clerk Department  
(510) 981-6915 (Phone) - (510) 981-6901 (Fax)  
Website: <https://berkeleyca.gov/>  
Email: [rthomsen@berkeleyca.gov](mailto:rthomsen@berkeleyca.gov)



**REVISED PROCLAMATION  
CALLING A SPECIAL MEETING OF THE  
BERKELEY CITY COUNCIL  
(REVISED TO UPDATE THE TELECONFERENCE LOCATION)**

In accordance with the authority in me vested, I do hereby call the Berkeley City Council in special session as follows:

**Thursday, June 26, 2025  
6:00 PM**

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

TELECONFERENCE LOCATION - 1032 BANCROFT WAY, BERKELEY, CA 94710

ADENA ISHII, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI  
DISTRICT 2 – TERRY TAPLIN  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – IGOR TREGUB

DISTRICT 5 – SHOSHANA O'KEEFE  
DISTRICT 6 – BRENT BLACKABY  
DISTRICT 7 – CECILIA LUNAPARRA  
DISTRICT 8 – MARK HUMBERT

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## Preliminary Matters

### Roll Call:

## Action Calendar

*The public may comment on each item listed on the agenda for action. For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again during the Action Calendar public comment period on the item*

*The Presiding Officer will request that persons wishing to speak line up at the podium, or use the "raise hand" function in Zoom, to determine the number of persons interested in speaking at that time. If ten or fewer persons are interested in speaking on an individual agenda item, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.*

*Action items may be reordered at the discretion of the Chair with the consent of Council.*

*The Presiding Officer may open and close an additional comment period for Action items on this agenda (excluding any public hearings, appeals, and/or quasi-judicial matters), at the start of the Action Calendar. Those who speak on an item during this comment period may not speak a second time when the item is taken up by Council.*

## Action Calendar – Public Hearings

*Staff shall introduce the public hearing item and present their comments. For certain hearings, this is followed by five-minute presentations each by first the appellant and then the applicant. The Presiding Officer will request that persons wishing to speak line up at the podium, or use the "raise hand" function in Zoom, to be recognized and to determine the number of persons interested in speaking at that time.*

*If ten or fewer persons are interested in speaking during a public hearing, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.*

*When applicable, each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Councilmembers shall also submit a report of such contacts in writing prior to the commencement of the hearing. Written reports shall be available for public review in the office of the City Clerk.*

### 1. **Zoning Ordinance and General Plan Amendments Relating to Middle Housing From: City Manager**

**Recommendation:** Conduct a public hearing, and upon conclusion:

1. Adopt first reading of an ordinance amending Berkeley Municipal Code Title 23 (Zoning Ordinance) and the Zoning Map, for the purposes of encouraging development of "middle housing" in areas currently zoned R-1, R-1A, R-2, R-2A and MU-R ("low-density residential districts"), with an effective date of November 1, 2025; and
2. Adopt a Resolution amending the General Plan for the same purpose.

**Financial Implications:** See report

Contact: Jordan Klein, Planning and Development, (510) 981-7400

## Adjournment

I hereby request that the City Clerk of the City of Berkeley cause personal notice to be given to each member of the Berkeley City Council on the time and place of said meeting, forthwith.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the City of Berkeley to be affixed on this 19<sup>th</sup> day of June, 2025.

/s/ Adena Ishii, Mayor

Public Notice – this Proclamation serves as the official agenda for this meeting.

ATTEST:



Date: June 19, 2025  
Mark Numainville, City Clerk

**NOTICE CONCERNING YOUR LEGAL RIGHTS:** *If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply: 1) No lawsuit challenging a City decision to deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a use permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

Archived indexed video streams are available at:

<https://berkeleyca.gov/your-government/city-council/city-council-agendas>.

Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

Communications to the City Council 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 the City Council, 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 to the City Clerk Department at 2180 Milvia Street. 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 City Clerk Department for further information.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the public counter at the City Clerk Department located on the first floor of City Hall located at 2180 Milvia Street, and through the City's online records portal:

<https://records.cityofberkeley.info/>.

Agendas, agenda reports, and revised/supplemental material may be accessed via the online agenda for this meeting at:

<https://berkeleyca.gov/your-government/city-council/city-council-agendas>

and may be accessed at reference desks at the following locations:

City Clerk Department - 2180 Milvia Street, First Floor  
Tel: 510-981-6900, TDD: 510-981-6903, Fax: 510-981-6901  
Email: [clerk@berkeleyca.gov](mailto:clerk@berkeleyca.gov)

Libraries: Main – 2090 Kittredge Street,  
 Claremont Branch – 2940 Benvenue, West Branch – 1125 University,  
 North Branch – 1170 The Alameda, Tarea Hall Pittman South Branch – 1901 Russell

**COMMUNICATION ACCESS INFORMATION:**

This meeting is being held in a wheelchair accessible location.

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at [ada@berkeleyca.gov](mailto:ada@berkeleyca.gov), (510) 981-6418 (V), or (510) 981-6347 (TDD) at least three business days before the meeting date.

Please refrain from wearing scented products to this meeting.



Captioning services are provided at the meeting, on B-TV, and on the Internet. In addition, assisted listening devices for the hearing impaired are available from the City Clerk prior to the meeting, and are to be returned before the end of the meeting.

## Communications

*Council rules limit action on Communications to referral to the City Manager and/or Boards and Commissions for investigation and/or recommendations. All communications submitted to Council are public record. Copies of individual communications are available for viewing at the City Clerk Department and through [Records Online](#).*

### **Item #1: Zoning Ordinance and General Plan Amendments Relating to Middle Housing**

1. Jennifer Fisher
2. Anne Weinberger
3. Lisa Friedlander
4. Leni Siegel
5. Aubrey Grove
6. Jane Martin
7. Lauren Parsons
8. Wade Skeels
9. Carol Hirth (2)
10. Lisa Bruce
11. Colleen Whitney
12. Virginia Browning
13. Eva Herzer and Dechen Tsering
14. Daniel Borgstrom
15. John Oram
16. Neelam Patil
17. Leah Kaizer
18. Bill Kristy
19. T.M. Scruggs
20. Jane Freeman
21. Kathy Stuart
22. Marissa Moss
23. Janice Murota
24. Kori Kody
25. Silvia Turchin

26. Lynn Sherrell
27. Micky Duxbury (4)
28. Julie Lamont
29. Matt Wickland
30. Julie Kramer
31. Merle Lustig
32. Julie Weeks
33. Barbara Erickson
34. Susan Brooks
35. Toni Mester
36. Janice Schroeder
37. Fred Krieger
38. Gael Alcock
39. Christopher Hamilton
40. Darlene Bronson
41. Chris Hudson
42. Jed Harris
43. Lance Williams
44. Kenneth Laws
45. Katherine de Runtz
46. Joan Garvin
47. Alison de Runtz
48. Berkeley Neighborhoods Council Executive Committee
49. Toni Casal
50. Laura Klein
51. Mimi Mougovan
52. David Whipple
53. Elsie Martinez
54. Stephanie Lim
55. Dr. Bruce Feingold
56. Lisa Vogel
57. Robert Riemer
58. Summer Brenner
59. Cindy Shamban
60. Helen Guerrant Toy
61. Dr. A. Boersma
62. Virginia Warheit
63. 36 Similarly worded form letters "I'm writing to urge you to pass..."
64. 95 Similarly worded form letters "Please DO NOT PASS..."



**From:** [Numainville, Mark L.](#)  
**To:** [Numainville, Mark L.](#)  
**Subject:** ePacket Distribution - Documents Ready for Download  
**Date:** Thursday, June 19, 2025 12:27:29 PM

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This e-mail contains the links to download your agenda documents. Go to your City e-mail account on your device and tap the link below. After the documents have opened in the web browser, download the document, then open it to review.

**City Council**

**June 24, 2025 City Council Special Meeting Agenda Packet**

**Link – <https://www.dropbox.com/scl/fi/iwl2j2xdt58hzsbf5c7zh/2025-06-24-Special-Agenda-Packet-Council.pdf?rlkey=naxuygxyg377m5sj1ho4k04e7&st=ix8t1rlu&dl=0>**

**June 24, 2025 City Council Regular Meeting **Revised** Agenda Packet** (Revised to add continued items from the June 17 meeting, and change a teleconference location.)

**Link – <https://www.dropbox.com/scl/fi/0iandyk7jewtures6hfya/2025-06-24-Agenda-Packet-Council.pdf?rlkey=oilg7i00ggh3k23dk09cqaa3g&st=bafoxz09&dl=0>**

**June 26, 2025 City Council Special Meeting **Revised** Agenda Packet** (Revised to change the teleconference location.)

**Link – <https://www.dropbox.com/scl/fi/a8h8pu68xv3vmuiiws14d/2025-06-26-Agenda-Packet-Council.pdf?rlkey=u3w5vgianp2h3w3n15tz9wolc&st=9ko5kqzx&dl=0>**

**June 17, 2025 City Council Regular Meeting Supplemental Communications #3**

**Link – <https://www.dropbox.com/scl/fi/fyceeyazraki4cqkxv4x/2025-06-17-Supplemental-Communications-3.pdf?rlkey=reiankwn2kwkoozub3azy1vym&st=nfp7nvk9&dl=0>**

**Policy Committee**

**June 23, 2025 Agenda & Rules Committee Meeting Agenda Packet**

**Link – <https://www.dropbox.com/scl/fi/8jo51yb8mdew0yfqppqwe/2025-06-23-Agenda-Packet-Agenda-Committee.pdf?rlkey=lwxqvjs94lle8u2ja4byobjkd&st=5ru7li1a&dl=0>**

Mark Numainville  
 City Clerk  
 City of Berkeley  
 (510) 981-6909

**From:** [Durr, Jasmine](#)  
**To:** [Durr, Jasmine](#)  
**Cc:** [Thomsen, Rose](#)  
**Subject:** Berkeley City Council Regular, Special, Closed and/or Committee Meetings (Media)  
**Date:** Thursday, June 19, 2025 12:44:54 PM  
**Attachments:** [image001.png](#)  
[2025-06-26 Revised Special Agenda - Council.pdf](#)  
[2025-06-24 Revised Agenda - Council.pdf](#)  
[2025-06-24 Special Agenda - Council.pdf](#)  
[06-23 Agenda - Agenda Committee.pdf](#)

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Please see the attached agendas.



**Jasmine Durr | Office Specialist III**

City of Berkeley | City Clerk Department  
2180 Milvia St. Berkeley, CA 94704

Direct: (510) 981-6920 | 1<sup>st</sup> Floor

[JDurr@berkeleyca.gov](mailto:JDurr@berkeleyca.gov) | [berkeleyca.gov](http://berkeleyca.gov)

**From:** [Thomsen, Rose](#)  
**To:** [Taplin, Terry](#)  
**Cc:** [Hernandez Story, Ruben](#); [Numainville, Mark L.](#)  
**Subject:** Council/Committee Meeting Agendas for Posting  
**Date:** Thursday, June 19, 2025 2:06:00 PM  
**Attachments:** [2025-06-24 Revised Agenda - Council.pdf](#)  
[2025-06-24 Special Agenda - Council.pdf](#)  
[2025-06-26 Revised Special Agenda - Council.pdf](#)  
**Importance:** High

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Good afternoon,

Attached, please find an agenda(s) for posting at your teleconference location. The agenda(s) includes your teleconference location, and must be posted at a location that is freely accessible to the public for the duration of the posting period.

**Special Meetings**

Per the Brown Act, agendas for special meetings must be posted at your teleconference location at least **24 hours prior to the meeting.**

**Regular Meetings**

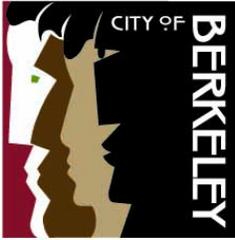
Per the Brown Act, agendas for regular meetings must be posted at your teleconference location at least **72 hours prior to the meeting.**

You will receive a Zoom panelist invitation, which will enable you to join and participate in the meeting(s) remotely.

Thank you,

Rose

Rose Thomsen - Deputy City Clerk  
City of Berkeley, City Clerk Department  
(510) 981-6915 (Phone) - (510) 981-6901 (Fax)  
Website: <https://berkeleyca.gov/>  
Email: [rthomsen@berkeleyca.gov](mailto:rthomsen@berkeleyca.gov)



Open Government Commission

Date: September 10, 2025

To: Open Government Commission

From: Lauren Packard, Stephen Hylas, Sam Harvey, Secretaries, Open Government Commission

Subject: Open Government Complaint Received

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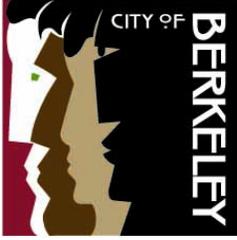
The following Open Government Complaint was sent via email to the staff Fair Campaign Practices Commission ("FCPC") email address on June 16, 2025 but was routed to the Spam folder. Staff received the complaint when they checked the Spam folder on July 10, 2025, after the agenda for the July 17, 2025 regular joint meeting of the FCPC and Open Government Commission ("OGC") had already been posted.

Staff then orally reported the contents of the complaint at the July 17 meeting and Commissioners directed staff to place the complaint on the agenda for the following regular meeting on September 18, 2025.

Pursuant to Section 2.06.190(A)(1) of the Berkeley Election Reform Act, the OGC shall:

- a) hear complaints by any person concerning alleged non-compliance with this Ordinance, the Brown Act, the Public Records Act, or the Lobbyist Registration Act, by the City or any of its legislative bodies, elected or appointed officials, officers or employees;
- b) consider ways to informally resolve those complaints and make recommendations to the Council regarding such complaints;
- c) seek advice from the City Attorney concerning those complaints;
- d) advise the City Council of its opinion, conclusion or recommendation as to any complaint; and
- e) take any action authorized by the Lobbyist Registration Act under Chapter 2.09.

Staff recommend the OGC direct staff to investigate the complaint and return to a future meeting with a recommendation.



Open Government Commission

Attachments

1. Complaint

**Harvey, Samuel**

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

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

To the members of the Fair Campaign Practices Commission,

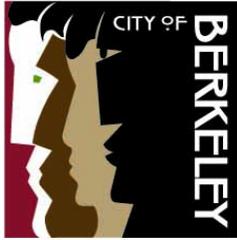
I would like to report the occurrence of a procedural irregularity at the April 28's Berkeley City Council special meeting ([https://berkeley.granicus.com/player/clip/5436?publish\\_id=c8e26584-251d-11f0-9f54-005056a89546&redirect=true](https://berkeley.granicus.com/player/clip/5436?publish_id=c8e26584-251d-11f0-9f54-005056a89546&redirect=true))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

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

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

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

Respectfully,  
Niloofar Shambayati  
Berkeley



Date: September 11, 2025

To: Open Government Commission

From: Lauren Packard, Stephen Hylas, Sam Harvey, Secretaries, Open Government Commission

Subject: Open Government Complaint Received re Remote Public Access to Board and Commission Meetings

---

The following Open Government Complaint was sent to the staff Fair Campaign Practices Commission (“FCPC”) email address on September 10, 2025. The complaint raises concerns regarding the availability to the public of remote access to City board and commission meetings. A copy of the complaint is included as Attachment 1. Commission staff have included copies of the documents hyperlinked in the complaint as Attachments 2 and 3.

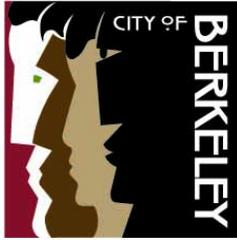
Pursuant to Section 2.06.190(A)(1) of the Berkeley Election Reform Act, the OGC shall:

- a) hear complaints by any person concerning alleged non-compliance with this Ordinance, the Brown Act, the Public Records Act, or the Lobbyist Registration Act, by the City or any of its legislative bodies, elected or appointed officials, officers or employees;
- b) consider ways to informally resolve those complaints and make recommendations to the Council regarding such complaints;
- c) seek advice from the City Attorney concerning those complaints;
- d) advise the City Council of its opinion, conclusion or recommendation as to any complaint; and

Staff recommend the OGC direct staff to investigate the complaint and return at a future meeting with a recommendation.

Attachments:

1. Complaint
2. Accommodations for Commissioners with Disabilities
3. Health and Safety Protocols for In-Person Meetings of Berkeley Boards and Commissions (Feb. 2023)



Open Government Commission

### Complaint of Noncompliance

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

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Mailing Address/  
Contact Info: \_\_\_\_\_

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

OGO

Brown Act

Public Records Act

Lobbyist Registration Act

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

Documents:

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

Complaints must be submitted to the Secretary of the Commission no less than 14 days prior to the Commission meeting at which it will be considered. Complaints may be submitted via email to [FCPC@berkeleyca.gov](mailto:FCPC@berkeleyca.gov)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Kelly hammargren

Berkeley Resident

## **CHAPTER II, C. ACCOMMODATIONS FOR COMMISSIONERS WITH DISABILITIES**

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

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

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

### **Appendix H**

## **RESPONDING TO REQUESTS FOR ACCOMMODATIONS FOR PERSONS WITH DISABILITIES**

### **Procedures for Members of Boards and Commissions and Staff**

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

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

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

1. Review of the accommodation request:

- a. Nature of the accommodation and why the accommodation is needed.
- b. Estimated duration of the requested accommodation.
- c. Commission assignment or meeting for which the accommodation is requested.
- d. Estimated duration of the assignment.

2. The ADA Program Coordinator and Commission Secretary will promptly act on the accommodation, determine the most effective way to provide an accommodation, coordinate the details with the individual with a disability and follow through to ensure the accommodation's success.

3. Any doubt should be resolved in favor of accommodation and accessibility.

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

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

### **CONSIDERATIONS FOR SELECTING ACCOMMODATION METHODS**

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

Examples of accommodations include but are not limited to:

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

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

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

### **REQUESTS TO ATTEND MEETINGS REMOTELY AS AN ACCOMMODATION**

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

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

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

## **WHAT THE ADA SAYS ABOUT ACCOMMODATIONS**

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

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

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

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

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

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

Auxiliary aids and services include:

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

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

(3) Acquisition or modification of equipment or devices.

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

**REASONABLE ACCOMMODATION REQUEST – SELF-ATTESTATION**

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

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

_____	I require an accommodation to attend meetings remotely due to a disability that sometimes or always prevents me from attending meetings in-person.
	If box is checked, please provide the following:
	1. Why accommodation is needed (a general description is sufficient; you need not disclose any particular medical diagnosis, disability, or personal medical information):
	2. Estimated duration for which accommodation is needed:
	<input type="checkbox"/> Ongoing
	<input type="checkbox"/> Specific duration: _____
_____	I further require that the City waive the requirements that I (a) post the address from which I am attending remotely on the meeting agenda; (b) post the agenda at the remote location; and (c) open the remote location from which I am attending to members of the public. By checking this box, I attest that I require an exemption from these requirements due to my disability.

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

_____ I understand and agree to this requirement	_____ I request an exemption from this requirement due to disability-related reasons
--	--

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

(Name) \_\_\_\_\_ (Title/Commission) \_\_\_\_\_

## Health and Safety Protocols for In-Person Meetings of Berkeley Boards and Commissions February 2023

The policy below applies to in-person meetings of Berkeley Boards and Commissioners held in accordance with the Government Code (Brown Act) after the end of the State-declared emergency on February 28, 2023.

**Issued By:** City Manager's Office

**Date:** February 14, 2023

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### **I. Vaccination Status**

All attendees are encouraged to be fully up to date on their vaccinations, including any boosters for which they are eligible.

### **II. Health Status Precautions**

For members of the public who are feeling sick, including but not limited to cough, shortness of breath or difficulty breathing, fever or chills, muscle or body aches, vomiting or diarrhea, or new loss of taste or smell, it is recommended that they do not attend the meeting in-person as a public health precaution. In these cases, the public may submit comments in writing in lieu of attending in-person.

If an in-person attendee has been in close contact, as defined below, with a person who has tested positive for COVID-19 in the past five days, they are advised to wear a well-fitting mask (N95s, KN95s, KF94s are best), test for COVID-19 3-5 days from last exposure, and consider submitting comments in writing in lieu of attending in-person.

Close contact is defined as someone sharing the same indoor airspace, e.g., home, clinic waiting room, airplane, etc., for a cumulative total of 15 minutes or more over a 24-hour period within 2 days before symptoms of the infected person appear (or before a positive test for asymptomatic individuals); or having contact with COVID-19 droplets (e.g., being coughed on while not wearing recommended personal protective equipment).

A voluntary sign-in sheet will be available at the meeting entry for in-person attendees. This will assist with contact tracing in case of COVID-19 contact resulting from the meeting.

Members of City Commissions are encouraged to take a rapid COVID-19 test on the day of the meeting.

**Health and Safety Protocols for In-Person Meetings of  
Berkeley Boards and Commissions  
February 2023**

**III. Face Coverings/Mask**

Face coverings or masks that cover both the nose and mouth are encouraged for all commissioners, staff, and attendees at an in-person City Commission meeting. Face coverings will be provided by the City and available for attendees to use at the meeting. Members of Commissions, city staff, and the public are encouraged to wear a mask at all times, except when speaking publicly from the dais or at the public comment podium, although masking is encouraged even when speaking.

**IV. Physical Distancing**

Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a Commission meeting.

Audience seating capacity will be at regular allowable levels per the Fire Code. Capacity limits will be posted at the meeting location. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as “distanced seating” to accommodate persons that need to distance for personal health reasons.

Distancing will be implemented for the dais as space allows.

**V. Protocols for Teleconference Participation by Commissioners**

Upon the repeal of the state-declared emergency, all standard Brown Act requirements will be in effect for Commissioners participating remotely due to an approved ADA accommodation. For Commissioners participating remotely, the agenda must be posted at the remote location, the remote location must be accessible to the public, and the public must be able to participate and give public comment from the remote location.

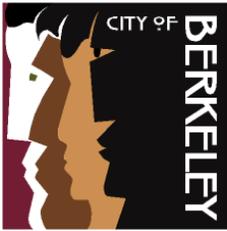
- A Commissioner at a remote location will follow the same health and safety protocols as in-person meetings.
- A Commissioner at a remote location may impose reasonable capacity limits at their location.

**VI. Hand Washing/Sanitizing**

Hand sanitizing stations are available at the meeting locations. The bathrooms have soap and water for handwashing.

**VII. Air Flow/Circulation/Sanitizing**

Air filtration devices are used at all meeting locations. Window ventilation may be used if weather conditions allow.



City Clerk Department

Date: November 18, 2024

To: Sam Harvey, Secretary, Open Government Commission

From: Mark Numainville, City Clerk

Subject: Referral of Non-Filing by Quarterly Lobbyist Filer

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

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

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

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

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

**From:** [Kitt Saginor](#)  
**To:** [FCPC \(Fair Campaign Practices Commission\)](#); [Harvey, Samuel](#); [Hylas, Stephen](#); [Packard, Lauren](#)  
**Cc:** [Brown, Farimah F.](#)  
**Subject:** City Council Rules of Procedure and Order Issue: about the procedure for yielding time during public comment at City Council meetings  
**Date:** Thursday, September 11, 2025 8:18:35 AM

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

For the Open Government Commission -

There appears to be inconsistency how persons making public comment can yield speaking time to each other.

At the September 9th City Council meeting, I went to the podium to make public comment on an action agenda item. I was speaking as an individual, not on behalf of Fair Campaign Practices/Open Government. I asked to be given an additional minute yielded by a member of the public who had raised her hand on zoom. The Mayor informed me that I could only receive time from a member of the public present in the room. This surprised me because I had used a minute from the same Zoom participant to speak in person at a City Council meeting in July. I pointed this out and was allowed to receive the minute, but it was unclear to me - and remains unclear to me - whether I was being given an exception for just that meeting or what the general rule is. The procedures for public comment provided in the meeting agendas and in the *City Council Rules of Procedure and Order* contain no such requirement.

Implementing a change in practice without documentation of it in the *City Council Rules of Procedure and Order* and the meeting agendas fails to provide the public with information that is needed when members of the public prepare beforehand for making comments.

For convenience, I am including below the instructions on public comment on the Action Calendar from the City Council Agenda.

Thank you,  
 Kitt Saginor

#### **Action Calendar**

*The public may comment on each item listed on the agenda for action. For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again during the Action Calendar public comment period on the item*

*The Presiding Officer will request that persons wishing to speak line up at the podium, or use the "raise hand" function in Zoom, to determine the number of persons interested in speaking at that time. If ten or fewer persons are interested in speaking on an individual agenda item, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.*



City Clerk Department

June 27, 2025

To: Commission Secretaries

From: Mark Numainville, City Clerk

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

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

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

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

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

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

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

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

Report to OGC: Web Content Accessibility Guidelines: improving compliance on the  
City of Berkeley website

Kitt Saginor, OGC Chair  
July 10, 2025

At the June 23rd meeting of the Agenda and Rules Policy Committee, I learned that the Commission for Disability has made a recommendation to City Council concerning the accessibility of the City of Berkeley website. Having access to materials concerning the Berkeley City government is key for Open Government, so I attended the July 9th meeting of the Commission for Disability to learn about the issues they are working on.

Many materials are created in formats that are not accessible to persons with disabilities. Unfortunately, some materials go on Berkeley City webpages without the work needed to provide meaningful access for persons with disabilities. There have especially been problems with forms and with pdfs. Standards for accessibility are set by *Web Content Accessibility Guidelines (WCAG)*. A revised version (WCAG 2.1) has been adopted and will become required for ADA (Americans with Disabilities Act) in April, 2026, meaning that the City of Berkeley can be sued if not in full compliance at that point.

At the July 9 Commission on Disability meeting, CoB Crystel Hadley, Digital Communications Coordinator; CoB Public Works Director Terrance Davis; CoB Public Works Deputy Director Wahid Amiri; and Matthai Chakko of the City Manager's Office Communications Division discussed the work they have done and are planning for improving compliance. Although the new (as of a few years ago) city website was built to WCAG standards, problems with the webpages have been identified and mostly fixed. Extensive training has been provided to city employees. Changes to the html content of City webpages are reviewed for compliance before they are made public. Most ongoing issues are with materials linked to web pages: documents attached for Council, Committee or Commission meetings and forms. Even materials produced under contracts requiring WCAG compliance are often not compliant.

Members of the Commission on Disability highlighted major issues and suggested a roadmap for coming into full compliance. It was a productive dialog. City staff pledged to provide more specifics on actions to be taken with timelines in the near future.

Attached to this report are the Commission on Disability's recommendation concerning **City Compliance with Web Content Accessibility Guidelines (WCAG)** and **Notes on WCAG Compliance and the City of Berkeley Website** prepared by Vice Chair Rena Fischer.

Attachments:

1. Notes on WCAG Compliance and the City of Berkeley Website, Commission on Disability meeting, June 9, 2025
2. City Compliance with the Web Content Accessibility Guidelines, Consent Item, June 3, 2025

## Notes on WCAG Compliance and the City of Berkeley Website

Commission on Disability meeting: June 9, 2025

The Commission on Disability (CoD) recommendation to the Berkeley City Council on Web Content Accessibility Guidelines (WCAG) took a two-pronged approach to realizing an accessible and WCAG-compliant City of Berkeley (CoB) website.

**The first prong: inclusion of a contract clause that obligates City vendors/contractors to create WCAG-compliant content**, is, we believe, clear and requires no additional explanation. **It is essential to achieving our goal of a WCAG-compliant website.**

**The second prong** that: “Relevant City staff should be informed of WCAG requirements, and systems put in place to ensure that documents available on the City of Berkeley website, whether submitted by vendors or created by City staff, meet current WCAG standards,” is more complex. **An initial suggested approach is outlined below: a deliberate, systematic City commitment that is also essential to achieving our goal of a WCAG-compliant website.**

The following roadmap is intended to help reach the Commission’s and the City’s mutual goal of WCAG compliance. It includes a thorough assessment, remediation, validation, and continued maintenance of the remediated website. It also follows the four principles of WCAG: the CoB website must be *perceivable, operable, understandable, and robust*.

The following is an initial suggested roadmap to getting there.

### PRELIMINARIES

#### The Legal Requirements

- Today, the CoB is required to meet WCAG 2.1 AA.
- By April 24, 2026, this standard will be legally enforceable.
- In addition, WCAG 2.0 AA was previously accepted as the accessibility benchmark and the City self-committed to meeting this standard referenced in Section 508 of the Rehabilitation Act.
- Though not legally required, when feasible, implementing WCAG 2.2 AA is a proactive and beneficial strategy that will better serve more people with disabilities.
- WCAG applies to both desktop and mobile versions and use of the website.
- WCAG includes exceptions for archived web material and other limited content. However, even with these exceptions, the City must ensure effective communication and provide accessible alternatives upon request as part of its broader ADA obligations.

#### Scope of Website

- Includes all pages, features, graphics and images
- Includes all attachments (PDFs, informational documents, fillable forms, videos, embedded apps, etc.)
- Includes all third-party tools and products

## A WCAG ROADMAP FORWARD

### Staffing Needs

- .25 FTE in IT Dept. with requisite skills, job description to include WCAG compliance. (CoD was told that an accessibility contact existed within IT until a staffing change in 2023.)
- .50 FTE contract support by an IT accessibility specialist to conduct the initial assessment, remediation, validation and continue to serve as a resource on WCAG compliance until robust CoB systems are in place. This is a new—and necessary—request. The total number of hours needed has not been thoroughly researched.
- This technology project would be best supervised by leadership staff within IT who have the personnel and staff expertise to effectively move WCAG compliance forward. (This project does not fit well within the current ADA compliance structure housed within the Public Works Dept.)

### Assessment

- An initial, thorough assessment is needed to gauge current WCAG compliance of the website, both desktop and mobile.
- First step is **Automated Testing**
- Check for:
  - Overall structure: sections, navigation and content flow
  - Missing alt text
  - Color contrast issues
  - Accessible navigation
  - Heading structure that creates correct hierarchy within a page
  - Form label associations
  - ARIA usage
  - All other necessary compliance issues
- Second step is **Manual Testing**: using keyboard only (Tab, Shift+Tab, Enter, Space, Esc, Arrow keys) to test navigation. This tests real world use of the website. Automated testing alone is insufficient.

### Screen Reader Testing on

- VoiceOver (Mac/iOS)
- TalkBack (Android)
- JAWS (Windows)
- NVDA (Windows)

### Attachment Evaluation

- For PDFs: ensure correct tagging, reading order, alt text, logical structure and other necessary compliance issues.
- For other formats
  - Forms: descriptive labels that are programmatically associated with their fields; consistent keyboard navigation; correct HTML input types; and other necessary compliance features.
  - Videos: ensure that captions, transcripts, and audio descriptions are provided.
  - Other formats: as needed to meet the effective communication standard.

### **Remediation and Design Fixes**

- For the website, attachments, and third-party apps that are identified in the assessments and evaluations identified above.

### **Final Testing**

- Re-run automated and manual tests.
- Perform usability tests with users of screen readers.

### **Validate and Document Compliance**

- Create an Accessibility Conformance Report (ACR) using the Voluntary Product Accessibility Template (VPAT).
- Maintain an internal log of WCAG fixes and test results.

### **Establish Policies and Workflows**

- Accessibility policy and authoring guidelines
- Define standards for new content and attachments
- Embed WCAG accessibility into the City's ongoing IT processes
- Ensure that a tested screen reader is available on Berkeley Public Library computers

### **Staff Training — questions and suggestions here**

- Identify a staff position within each City department to receive WCAG consciousness raising or some variety of WCAG training.
- Develop a staff webpage with WCAG resources.
- Who has authority within City departments to upload to the website?
- Develop a “this-is-WCAG-compliant” message that must be acknowledged by staff before posting to the City website?
- Create (or find) a WCAG training video?
- “how to WCAG” vs “who to contact about WCAG” training?

### **Ongoing Monitoring**

- Set up a continuous monitoring tool.
- Retest annually and as an integrated part of any site update.

### **Documentation and Transparency**

- Create a more informative Website Accessibility webpage ([Accessibility | City of Berkeley](#))
  - Provide a posted accessibility statement on WCAG compliance.
  - Outline the level of WCAG compliance.
  - Identify specific screen readers tested for accessibility.
  - Reference screen reader availability at Berkeley Public Libraries.
  - Include contact methods and an online form for accessibility feedback or issues.

**The Commission on Disability is committed to providing advice to Council and, in this case, collaborative work with staff, that achieves a WCAG-compliant website—one that provides users of screen readers full participation in the online life of the City of Berkeley.**



Commission on Disability

CONSENT CALENDAR

Meeting Date: June 3, 2025

To: Honorable Mayor and Members of the City Council  
 From: Commission on Disability  
 Submitted by: Kathi Pugh, Chairperson  
 Subject: City Compliance with Web Content Accessibility Guidelines (WCAG)

RECOMMENDATION

The Berkeley City Council shall refer to the City Attorney the requirement to include a clause in all relevant City of Berkeley contracts that obligates City vendors to supply digital content, intended for or likely to be posted to the City website, that is compliant with the Web Content Accessibility Guidelines (WCAG) standard mandated by the U.S. Department of Justice. WCAG defines web content technical standards that, when implemented, meet legal requirements of the Americans with Disabilities Act (ADA).

In addition, relevant City staff should be informed of WCAG requirements, and systems put in place to ensure that documents available on the City of Berkeley website, whether submitted by vendors or created by City staff, meet current WCAG standards. When the City is informed that documents posted to its website do not meet current WCAG standards, remediation is recommended to be made within 30 days.

FISCAL IMPACTS OF RECOMMENDATION

The City of Berkeley is legally obligated to meet federally-mandated accessibility standards. This should be made explicit in boilerplate contract language that is readily available on legal websites to which the Office of the City Attorney has access. City staff time is needed to select or craft a contract clause. Additionally, a system for reviewing compliance reports, and/or testing documents for compliance must be implemented to ensure that both vendor and staff-created documents are WCAG compliant. The City of Berkeley incurs the significant financial risk of legal action if it continues to fail to comply with existing, legally-mandated WCAG standards.

CURRENT SITUATION AND ITS EFFECTS

Within the City of Berkeley, compliance with ADA regulations in the built environment (ramps, tactile curb cuts, minimum door widths, etc.) is expected and enforced in new construction. However, for disabled users of screen readers—people who are blind or low vision, or who have limited dexterity, reading or cognitive differences—obstacles in the newly constructed digital world are frequently encountered and access is routinely denied. Just as the City of Berkeley enforces vendor compliance with requirements of

the ADA in the built environment, the same must be true for both City vendors and City staff who provide digital content for the City website, in City programs, and in City presentations. Yet it is not.

While the pages of the City of Berkeley website are largely WCAG compliant, attachments, i.e., documents that can be directly viewed and downloaded from the website, are often not compliant, *even though they are equally legally required to meet WCAG standards*. These are documents that, for example, provide essential safety information, explain City projects, request feedback from the public or otherwise invite public participation. All users must have equal access to the information they contain.

The message that inaccessible documents sends to Berkeley residents who use screen readers is that their participation in the life of the City of Berkeley is neither valued nor desired. Documents containing vital information must be made accessible to all users, not only when brought to the attention of City staff, but from their initial availability to the public. When users do encounter non-compliant, inaccessible documents, remediation must be taken seriously and made quickly.

The problem of digital inaccessibility is most acute when City vendors or City staff create image-rich documents. The majority of these files lack alternative text tags (alt text) that can be read by a screen reader. Without these descriptions—long descriptions when necessary—essential information for disabled Berkeley residents and visitors is simply unavailable. Meaningful alt text must be included on complex documents, photos, and images, including PDFs, maps, diagrams, and infographics.

Increasingly, Artificial Intelligence (AI) is being used to create descriptions of image-rich documents, lowering costs, increasing the quality of alt text, and significantly improving the experience for people using screen readers. The City of Berkeley should be at the forefront of WCAG implementation—yet we lag behind.

Other WCAG requirements address underlying document structure, tab order, and color contrast. The City's webpages are significantly in compliance with these standards, but forms and other documents attached to it are not. WCAG-compliant attachments will result in a City website with content that is fully accessible and legally mandated.

## BACKGROUND

The City of Berkeley must comply with Title II of the ADA. This title requires that local governments ensure that all services, programs and activities are accessible to people with disabilities. The U.S. Department of Justice has confirmed that Title II applies to services, programs and activities provided via the web and mobile applications.

A year ago, specific technical standards were newly updated and clearly defined. On April 24, 2024, the final rule of the U.S. Department of Justice regarding specific

standards to ensure web and mobile app accessibility—including access to all online sites, programs and digital documents retrieved through local governments—were published in the Federal Register. This rule updates requirements of Title II of the ADA, specifying compliance with WCAG 2.1 Level AA. The City of Berkeley has until April 24, 2026 to fully comply with the higher technical specifications, but the legal requirement that City websites, apps, digital programs and documents be accessible to the previous WCAG standard currently exists—and even this standard is frequently ignored.

The expectation of a fully accessible website also exists within the Berkeley Municipal Code on Technology Standards (2.06.170), which states that the City will “meet or exceed the guidelines for accessibility specified by the Federal General Services Administration pursuant to section 508 of the Rehabilitation Act.” Under Section 508, disabled employees and disabled users must be afforded access to information that is comparable to the access available to others. This recommendation seeks to realize the mandate of the City’s own Municipal Code.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

#### RATIONALE FOR RECOMMENDATION

This recommendation is a Strategic Plan Priority Project, advancing the City’s goals in multiple areas:

- provide state-of-the-art, well-maintained infrastructure, amenities, and facilities—in this case the infrastructure, amenities, and facilities are digital;
- create a resilient, safe, connected, and prepared city—with information available for disabled residents and visitors;
- champion and demonstrate social and racial equity—including the City’s disabled residents and visitors;
- be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community—including disabled residents and visitors.

Berkeley, a birthplace of the movement for independent living and disability rights, must take a multi-pronged approach to WCAG compliance. The City would not construct or renovate a City building without complying with accessible guidelines for the built environment; we must be equally vigilant regarding accessible, digital construction and use of the City’s online environment.

Moving forward, inclusion of a contract clause requiring compliance with the current WCAG standard is one of several critical approaches that will result in an accessible and legally-compliant City website. City staff must follow the same principle when creating documents available on the City website. The goal of this recommendation is an accessible website that equitably serves all of its users.

ALTERNATIVE ACTIONS CONSIDERED

None, if the City fails to address on-going issues of non-compliance it is open to litigation that can force a more costly and time-consuming solution.

CITY MANAGER

The City Manager [TYPE ONE] concurs with / takes no position on the content and recommendations of the Commission's Report. [OR] Refer to the budget process.

**Note: If the City Manager does not (a) concur, (b) takes any other position, or (c) refer to the budget process, a council action report must be prepared. Indicate under the CITY MANAGER heading, "See companion report."**

CONTACT PERSON

Thomas Gregory, ADA Program Coordinator, Public Works, 510-981-6418