



Civic Arts Commission
Office of Economic Development

Agenda

Civic Arts Commission

Wednesday, January 22, 2020 at 6:00 – 8:00 p.m.

Tarea Hall Pittman South Branch Library, 1901 Russell St., Berkeley, CA 94703

Please refrain from wearing scented products to public meetings.

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **PUBLIC COMMENT**
4. **APPROVAL OF MINUTES**
 - a) November 20, 2019 Draft Minutes (Attachment 1)
5. **CHAIR'S REPORT**
6. **ACTION ITEMS** *(All items for discussion and possible action)*
 - a) Council Information Report on Civic Arts Grants (Attachment 2)
 - b) Approval of Grant Application Review Panelists for FY21 Civic Arts Grants
7. **PRESENTATIONS and DISCUSSION** *(All items for discussion only and no action)*
 - a) Presentation on T1 update on Phase 1 and info on Phase 2 (Attachment 3)
 - b) Presentation of Findings on 1.5% for Public Art Funding Audit (Attachment 4)
8. **STAFF REPORT**
 - a) Reminder about elections of Chair and Vice Chair in February
 - b) Private Percent for Art Quarterly Report
9. **COMMITTEE REPORTS**
 - a. Grants
 - John Slattery, Chair
 - Kim Anno
 - b. Policy
 - Kim Anno, Chair

- Lisa Bullwinkel
- Liz Ozol
- Jennifer Ross

c. Public Art

- Matt Passmore, Chair
- Kim Anno
- Dana Blecher
- Modesto Covarrubias

d. Berkeley Cultural Trust Representative

- Lisa Bullwinkel

e. Berkeley Arts Education Steering Committee Representative

- Liz Ozol

f. Design Review

- Modesto Covarrubias

g. Civic Center Vision Subcommittee

- Dana Blecher
- Lisa Bullwinkel
- Liz Ozol
- Hiroko Tamano

10. COMMUNICATIONS

- a) Lobbyist Ordinance (Attachment 5)

11. ADJOURNMENT

Attachments:

1. Draft Minutes November 20, 2019 Civic Arts Commission Meeting
2. Council Information Report on Civic Arts Grants
3. T1 Update (Schedule and Funding)
4. 1.5% for Public Art Funding Audit
5. Lobbyist Ordinance

Staff Contact:

Jennifer Lovvorn

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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 Civic Arts Office located at 2180 Milvia Street, Fifth Floor, Berkeley, CA 94704.

ADA Disclaimer

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Civic Arts Commission
Office of Economic Development

Minutes Civic Arts Commission

Wednesday, November 20, 2019 at 6:00–8:00 p.m.

Tarea Hall Pittman South Branch Library, 1901 Russell St., Berkeley, CA 94703

1. **CALL TO ORDER** 6:02 p.m.
2. **ROLL CALL**
Commissioners Present: Blecher, Bullwinkel, Covarrubias, Ozol, Passmore, Ross, Slattery
Commissioners Absent: Anno, Tamano
Staff Present: Jennifer Lovvorn, Commission Secretary/Chief Cultural Affairs Officer and Mara Engelson, Civic Arts Analyst.
3. **PUBLIC COMMENT**
None
4. **CHAIR REPORT**
 - a) The chair gave a debriefing on the November 19, 2019 Council Meeting regarding Short Term Rental Revenue and Arts Funding.
5. **STAFF REPORT**
 - a) Civic Arts Grant
 - i. Grant applications are open – Deadline to apply: January 16, 2020.
 - ii. Upcoming Topic Workshop on Cultural Equity Wednesday, December 11, 2019 from 6–8 p.m. The Technical Workshop was on Monday, November 25, 2019 and was well received by 26 attendees.
 - iii. Call for Grants Panelists open – Application on Civic Arts website. Deadline to apply is January 17, 2020.
 - b) Update on Berkeley Big People deaccession: The City will provide the artist with additional time to support his effort to find a buyer for the artwork.
 - c) “Earhsong” by Wang Po Shu has been repainted and reinstalled on Shattuck Avenue. The artist is working on a design for the bell to be integrated into the artwork plaque. This design will be coming to the Commission for approval in the coming months.

6. **ACTION ITEMS** *(All items for discussion and possible action)*

a) **2020 Civic Arts Commission meeting schedule. (Attachment 2)**

Action: M/S/C (Blecher/Covarrubias) to approve the 2020 Civic Arts Commission meeting schedule.

Vote: Ayes — Blecher, Bullwinkel, Covarrubias, Ozol, Passmore, Ross, Slattery; Nays — None; Abstain — None; Absent — Anno, Tamano.

7. **APPROVAL OF MINUTES**

a) **October 23, 2019 Draft Minutes (Attachment 3)**

Action: M/S/C (Ozol/Ross) to approve the October 23, 2019 Minutes.

Vote: Ayes — Blecher, Bullwinkel, Ozol, Passmore, Ross, Slattery; Nays — None; Abstain — Covarrubias; Absent — Anno, Tamano.

8. **PRESENTATIONS AND DISCUSSION** *(All items for discussion only and no action)*

a) Measure T1 Infrastructure Bond Program Update: Postponed to January's Commission meeting.

b) Actors Ensemble Discussion of John Hinkel Park: Jerome Solberg, President/Secretary of the Actors Ensemble, (which has been in Berkeley since 1957 as a community theater) stated they and all other performance companies that have been performing at John Hinkel Park have become displaced due to construction on the park and Live Oak Theater. They expressed concerns regarding the planning of the park. Some of their concerns include: not having been consulted or considered in the plans; that there may be ADA issues with how the theater is used; that the installed pole holes used for staging purpose during their productions may be removed; and they'd like to request permanent storage be built to be shared by all theatrical companies performing there. They've written a letter and made several attempts to contact Parks but still do not feel that they've been heard. They asked for assistance in connecting with Parks and would like their concerns to be considered. The Commission agreed to ask Civic Arts Staff to contact the Parks, Recreation and Waterfront Department to try to arrange a meeting to further communications.

9. **COMMITTEE REPORTS**

a) Grants — No Meeting

- John Slattery, Chair
- Kim Anno

b) Policy — Next meeting set for December 15, 2019

- Kim Anno
- Lisa Bullwinkel
- Liz Ozol
- Jennifer Ross

- c) Public Art — Met on November, 15, 2019 to select a new Cube Space Curator. Leila Weefur was selected and will be invited to attend the January Commission meeting.
- Matt Passmore, Chair
 - Kim Anno
 - Dana Blecher
 - Modesto Covarrubias
- d) Berkeley Cultural Trust Representative — An invitation is extended for all Commissioners to attend the next meeting on December 11, 2019. The topic will be Cultural Equity. The Space Committee and the Steering Committee have been very active.
- Lisa Bullwinkel
- e) Berkeley Arts Education Steering Committee Representative — BAESC took the lead in coordinating the submission of a California Arts Council grant application on behalf of the Civic Arts Program for \$10,500 to expand the BEARS Summer Art Program from one month to two. The initial funding of \$15,000 from the Chancellor’s Community Partnership fund has been augmented by an award of \$3,000 from the Berkeley Public Schools Fund so that month one is fully funded. Another grant application will be submitted to the Berkeley Public Schools Fund in December requesting additional funds for month two in order to increase the California Arts Council’s required local match.
- Liz Ozol
 - Jennifer Ross (Alternate)
- f) Design Review — This month’s meeting is November 21, 2019. At last month’s meeting the committee reviewed a number of buildings in the pipeline.
- Modesto Covarrubias
- g) Civic Center Vision Subcommittee — This month’s meeting is November 21, 2019.
- Dana Blecher
 - Lisa Bullwinkel
 - Liz Ozol
 - Hiroko Tamano

10. COMMUNICATIONS

11. ADJOURNMENT Motion to adjourn at 7:39 p.m.

Action: M/S/C (Covarrubias/Blecher) to adjourn.

Vote: Ayes — Blecher, Bullwinkel, Covarrubias, Ozol, Passmore, Ross, Slattery; Nays — None; Abstain — None; Absent — Anno, Tamano.

Staff Contact:

Jennifer Lovvorn
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[Commission Name]

DRAFT
INFORMATION CALENDAR
[Meeting Date (Month Day, yyyy)]

To: Honorable Mayor and Members of the City Council
From: Civic Arts Commission
Submitted by: Lisa Bullwinkel, Chairperson, Civic Arts Commission
Subject: Civic Arts Grants Program

INTRODUCTION

In the recently updated Arts & Culture Plan, 5 primary goals were identified:

- Goal 1: Increase Access to Affordable Housing and Affordable Spaces for Artists and Arts Organizations
- Goal 2: Increase Investment in a Vibrant Arts Community
- Goal 3: Expand High Quality and Equitable Arts Education
- Goal 4: Produce More Public Art Throughout Berkeley
- Goal 5: Expand the City of Berkeley’s Organizational Capacity to Better Serve the Arts Community

The Civic Arts Grants Program is a tool to meet these goals. Several additional grant types have been or are being created to further this process. Funding is still needed to support the newer grants.

CURRENT SITUATION AND ITS EFFECTS

• The Civic Arts Grants Program, under the auspices of the Arts Commission is working to achieve all of the Goals listed above.

• The program has successfully allotted funding to **Arts Organizations** since 1991 and to **Individual Artists** since 2016, achieving Goal 2 which is to Increase Investment in a Vibrant Arts Community. The current allotment from the General Fund for these combined grants now has a funding baseline of \$500,000. In 1999 Grants were awarded to 54 organizations and 12 individuals as follows:

| | |
|-------------------------------|-----------|
| 17 Large Art Organizations | \$171,687 |
| 20 Mid-Size Art Organizations | \$171,747 |
| 17 Small Art Organizations | \$105,488 |
| 12 Individual Artists | \$44,411 |

• In 2018, a **Festival Grant** program was created, specifically allocating prior General Funds budgeted for 17 festivals at \$157,000 (??). In 2019 grants were awarded to 24

festivals as follows:

| | |
|-----------------------|-----------|
| 2 Large Festivals | \$15,062 |
| 21 Mid-Size Festivals | \$139,985 |
| 1 Small Festival | \$1,189 |

- At the Council’s request, the Commission is creating a fourth program, a **Creative Spaces Capital Improvement Grant**. Funding will need to be appropriated from the General Fund as these one-time grants will be in the \$50,000-\$100,000 range for 3-5 applicants annually.
- The Commission is also working on an **Arts in Education Grant** which is currently unfunded. However, this program initially will only require approximately \$50,000 to make a large impact quickly.
- In 2019, for the first time, independent grant readers were hired and compensated from the grant money. Prior to this, members of the Art Commission Grant Committee were reading the grants. This new method is more equitable and transparent.

BACKGROUND

These grant programs have been established to provide equity, transparency, and accountability throughout the art community.

Before the Festival Grant Program existed, event producers lobbied individual council members for funding for their events. This resulted in General Funds in the amount of 158,315 being distributed randomly to seventeen festivals. If one was not an insider to the process for obtaining funding, nothing on the City’s website provided any help. Furthermore, there was no accountability required from festival producers once they received the funding. This new Festival Grant Program resolved these issues. However, more festivals than before are now applying for the funding. The need for a larger budget in this category is apparent.

The Creative Spaces Capital Improvement Grant will work to solve Goal 1 above: Increase Access to Affordable Housing and Affordable Spaces for Artists and Arts Organizations. In the past, when an organization suddenly discovered a leak in the roof or needed to come into ADA compliance, or was given the opportunity to purchase its building, it came directly to council to ask for a large sum of money. The council has been quite generous and has helped many organizations with these problems. However, that funding was usually unbudgeted and resulted unexpended hits to the existing General Fund. In addition, many groups did not even realize they could ask the council for this type of funding. Establishing an equitable, transparent, and accountable program will resolve this. The Art Commission is hoping to fund it with a base amount from the General Fund of \$250,000 annually.

An Arts in Education Grant is being developed by the Art Commission. Its aim is to achieve Goal #3 above: Expand High Quality and Equitable Arts Education. To maintain the city of Berkeley’s thriving arts scene and “grow our own” art makers and art patrons, exposure and education in the arts should begin when Berkeleyites are very young (0-5) and continue through the teenage years when youth are college and career-ready. An Arts Education grant category could pair teaching artists with teams of classroom teachers to develop integrated and repeatable units incorporating visual and performing arts as ways to deepen learning in science, math, English and social studies as well as increase arts exposure.

Arts education can be a powerful equity tool to address disproportionate achievement, for example the urgent challenge of African American student underperformance on the Vision 2020 indicators. Targeted strategies like arts integration and STEAM (science, technology, engineering, arts, math) units can increase students’ academic engagement and performance, attendance and reduce disciplinary referrals.

Furthermore, when an arts education grant category is created, additional funding can be tapped, as the California Arts Council requires a one-to-one funding match.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

POSSIBLE FUTURE ACTION

The Council will need to approve the new grant programs created by the Art Commission.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

The Council will need to designate additional funding:

| | |
|---|--|
| Festival Grants | \$91,685 (to bring it up to \$250,000) |
| Creative Spaces Capital Improvement Grant | \$250,000 annually |
| The Arts in Education Grant | \$50,000 |

CONTACT PERSON

[Name], [Title], [Department], [Phone Number]

Attachments: [Delete if there are NO Attachments]

1: Resolution and/or Ordinance

Exhibit A: [Title or Description of Exhibit]

- Exhibit B: [Title or Description of Exhibit]
- 2: [Title or Description of Attachment]
- 3: [Title or Description of Attachment]

Attachment 1- T1 Project Schedule, Funding and Project Management

Update on Measure T1

November 2019

| DEPT | PROJECT NAME | PROJECT TYPE | PROJECT DESCRIPTION | T1 FUNDING | OTHER FUNDING | OTHER FUNDING AMOUNT | APPROXIMATE TOTAL FUNDING | PM | STATUS UPDATE |
|--------------------------------------|--|---------------------------------|--|---------------------|---|----------------------|---------------------------|----|--|
| FACILITIES/BUILDINGS | | | | \$17,882,319 | | \$7,671,143 | \$25,553,462 | | |
| PW/ PRW | Citywide Restrooms Citywide Needs Assessment | Conceptual | Perform needs and feasibility assessment of location for citywide restrooms; will include consideration of Ohlone Park restroom. | \$148,215 | | | \$148,215 | RM | Consultant compiling database of existing restroom inventory, 311 data, PD calls, and infrastructure. Four community meetings scheduled (two in Oct., two in Nov.) |
| PW | Old City Hall/ Veteran's Building/ Civic Center Park | Conceptual | Structural analysis and visioning of possible conceptual design alternatives, in concert with Civic Center Park, to help determine a direction for future capital improvements to restore and secure these facilities to maximize their community benefit. | \$376,430 | | | \$376,430 | EH | Updated seismic reports for Old City Hall and Veteran's building were completed in April 2019. Council awarded architectural contract to Gehl Studios on July 16, 2019. Public process to start in winter 2019. |
| PW | Transfer Station - Master Plan | Planning | Developing a Master Plan for modernization of the City's Waste Transfer Station, including the recycling center, with the goal of creating a new facility that promotes recycling and promotes elimination of solid waste. | | Zero Waste Fund | \$500,000 | \$500,000 | GA | Alternate funding source secured for project. |
| PW | West Berkeley Service Center Planning and Conceptual Design | Conceptual | Structural analysis and visioning of possible conceptual design alternatives, to help determine a direction for future capital improvements. | | | | | - | Scope was revised and removed from T1 funded projects. Alternate funding source from Measure O. |
| PRW | Frances Albrier Community Center Planning and Design | Planning & Design | Evaluation of site conditions, facility and structural assessments, and recreation programming to determine what improvements to move forward with to upgrade the center as a Care and Shelter facility and for improved recreation programming and opportunities. | \$741,075 | | | \$741,075 | WK | A Community Work Session for the Frances Albrier Community Center Redesign Project was held on October 23rd to share goals, desired activities, and four plan options currently open for public comments and feedback. |
| PRW | Tom Bates (Gilman) Fields North Field House and Restroom | Planning & Design | Evaluation of needs for restroom and storage, analysis of utility and supporting infrastructure needed, and development of detailed design and construction documents. | \$247,025 | | | \$247,025 | NL | Staff provided information regarding this project and received input from the community at a Field Users Meeting in April 2018. Conceptual design has been completed. Wrapping up schematic. Next step: cost estimate for Phase 2. Remaining balance to ACTC for sewer. |
| PRW | Willard Clubhouse Renovation Planning and Design | Conceptual | Planning and design to renovate or expand the Willard Clubhouse. | \$247,025 | | | \$247,025 | WK | A Community Work Session was held on October 2nd to share goals and desired activities from public comments and solicit feedback on proposed project. |
| PRW | Live Oak Community Center Seismic Upgrade and Renovations | Planning, Design & Construction | Seismic retrofit, deferred maintenance upgrades, and programming improvements to upgrade the center as a Care and Shelter facility and enable improved recreation programming. | \$6,041,690 | | | \$6,041,690 | TL | Groundbreaking Ceremony November 4, 2019. Community Center is anticipated to be under construction for approximately 1 year. |
| PW | North Berkeley Senior Center Seismic Upgrades and Renovations | Planning, Design & Construction | Seismic retrofit, deferred maintenance upgrades, and programming improvements to upgrade the center as a Care and Shelter facility and enable improved senior programming, generator hook up. | \$8,219,080 | FEMA | \$1,875,000 | \$10,094,080 | EK | Construction started in May 2019. Interior demolishing and asbestos removal almost complete. Expect substantial completion by end of June 2020. |
| PRW | Strawberry Creek Park Restroom Replacement | Planning, Design & Construction | Replace restroom at Strawberry Creek Park. | \$385,579 | Parks Tax & PRW Capital Improvement Fund | \$500,000 | \$885,579 | WK | Another community meeting held 9/26/2019. Consultant working on final design. Project is bundled with FY 19 Strawberry Creek Phase 2 to leverage additional funding from Parks Tax and Capital Improvement fund. Construction anticipated to begin in Spring 2020. |
| HHCS/ PW | Mental Health Services Center | Planning, Design & Construction | Renovate interior for safety and energy efficiency. A Net Zero Energy project with anticipated payback savings of less than ten years. | \$1,476,200 | Capital Improvement Fund, Mental Health Services Act, Mental Health State Aid Realignment Fund, Community Development Block Grant | \$4,796,143 | \$6,272,343 | SG | Construction started in April 2019. Expected completion by June 2020. On track. |
| CITY WIDE SAFETY IMPROVEMENTS | | | | \$966,445 | | | \$966,445 | | |
| PW | Berkeley Health Clinic Electrical Assessment | Planning and Design | Electrical upgrades to main switchboard, two panel boards, conduit, wiring, and wiring devices. | \$7,000 | | | \$7,000 | EK | Project has been completed. |
| PW | Corporation Yard Roof and Electrical Upgrades | Planning, Design & Construction | Roof and electrical improvements | \$568,990 | | | \$568,990 | IL | In permit review. |
| PW | Marina Corporation Yard Electrical Upgrades | Planning, Design & Construction | Electrical upgrades to main switchboard, two panel boards, and wiring devices. | \$370,693 | | | \$370,693 | IL | In permit review. |
| PW | Public Safety Building Mechanical and HVAC Efficiency Assessment | Planning & Design | Mechanical/HVAC upgrades | \$19,762 | | | \$19,762 | EK | Completed feasibility study to assess cost and effort to install a HVAC back up system. T1 scope is complete. |
| PARKS IMPROVEMENT PROJECTS | | | | \$7,299,853 | | \$3,003,271 | \$10,303,155 | | |
| PRW | Aquatic Park - Tide Tubes | Planning & Design | Final design, acquiring regulatory permits and environmental documents, and preparation of construction documents for repair of the tide tubes connecting the main lagoon with the Bay. | \$385,579 | | | \$385,579 | NL | Work underway to include cleaning, inspection, environmental permits/clearance, and construction docs. |
| PRW | Berkeley Municipal Pier | Planning & Design | Final design, acquiring regulatory permits and environmental documents, and preparation of construction documents for structural repairs to restore the pier for recreational use. | \$889,290 | Water Emergency Transportation Authority | \$250,000 | \$1,139,290 | NL | Draft pier study and conceptual design alternatives presented for discussion at P&W Commission/Public Meeting in January 2018. A Memorandum of Understanding (MOU) agreement was approved by both the City Council and the Water Emergency Transportation Authority (WETA) to focus on the planning phase for the viability of a potential WETA ferry service and public recreation pier at the Berkeley Marina. |
| PW | Berkeley Rose Garden Repair of Erosion | Planning, Design & Construction | Improvements to Codornices Creek to repair erosion damage at the downstream end of Rose Garden site. | \$881,323 | | | \$881,323 | SM | Staff processing environmental permits. Construction is anticipated to start summer of 2020, pending receipts of environmental permits. |

Attachment 1- T1 Project Schedule, Funding and Project Management

Update on Measure T1

November 2019

| DEPT | PROJECT NAME | PROJECT TYPE | PROJECT DESCRIPTION | T1 FUNDING | OTHER FUNDING | OTHER FUNDING AMOUNT | APPROXIMATE TOTAL FUNDING | PM | STATUS UPDATE |
|--------------------------------------|--|---------------------------------|---|---------------------|---|----------------------|---------------------------|----|--|
| PRW | Berkeley Rose Garden Pathways, Tennis Courts | Planning, Design & Construction | Renovation of existing site pathways and construction of new pathways to provide an accessible path of travel to the center of the trellis. Reconstruction of portions or all of the tennis courts for safety. | \$1,321,984 | Parks Tax & PRW Capital Improvement Fund | \$1,092,499 | \$2,414,483 | EC | Work bundled with Phase 2 of Trellis reconstruction to leverage additional funding from Parks Tax and Capital Improvement Fund. Coordination with drainage project and LPC is ongoing. Submitted for permit. Construction anticipated to begin in early 2020. |
| PRW | Citywide Irrigation System | Planning, Design & Construction | Current irrigation system requires individual programming and daily monitoring by City staff. This project includes the replacement of Irrigation Control Software and Controllers and the establishment of wireless software that controls all irrigation clocks, which will conserve water and control costs. | \$591,075 | | | \$591,075 | BP | Project has been completed. |
| PRW | Grove Park Field and Restroom Renovation of ballfield backstop, dugout, lights, and irrigation | Planning, Design & Construction | Improvements to the ballfield, dugouts, site lighting and accessibility for safety and energy savings, including improvements to site drainage; partial renovation of the restroom building. | \$1,101,654 | | | \$1,101,654 | TL | Next public meeting on 11/7/2019 to present final design and next steps. |
| PRW | George Florence Mini-Park Play Equipment Upgrade | Planning, Design & Construction | Renovate age 2-5 play structures and age 5-12 play structures and complete ADA improvements. | \$660,992 | Parks Tax | \$125,000 | \$785,992 | TL | Construction has started and anticipated to be completed in February 2020. . Public meetings were held on 10/20/18 and 11/27/18. |
| PRW | San Pablo Park Play Equipment Upgrade and Tennis Court Renovations | Planning, Design & Construction | Renovate ages 2-5 and 5-12 play structures and complete ADA improvements. Renovate existing lighted tennis courts. | \$1,156,736 | Capital Improvement Fund and Parks Tax | \$400,000 | \$1,556,736 | WK | Play Equipment Renovation project bundled with San Pablo Park Tennis Renovation and Totlot Renovation to leverage funding and design effort. Coordination ongoing with Civic Arts for inclusion of functional art to the project site. Construction anticipated in 2020. |
| PRW | Tom Bates (Gilman) Fields Artificial/Synthetic Turf Replacement | Planning, Design & Construction | Replace artificial turf on two existing fields to include organic infill, shock pad and upgraded turf. | \$311,220 | JPA, Gilman Reserve Account, Parks Tax, User Fees | \$1,135,772 | \$1,447,023 | NL | Project has been completed. |
| GREEN INFRASTRUCTURE PROJECTS | | | | \$821,984 | | | \$821,984 | | |
| PW | Page Street, Channing Way, Dwight Way, Grayson Street, Piedmont Avenue Median and Traffic Circle | Planning, Design & Construction | Installation of green infrastructure such as bioswales. | \$821,984 | | | \$821,984 | SM | Council approved removal of King School Park project and addition of 12 replacement green infrastructure projects. Design and geotechnical investigation underway. |
| PW | Jones Street, Heinz Avenue, Tenth Street, Ninth Street, Sacramento Street center median | Planning | Installation of green infrastructure such as bioswales. | | | | | | |
| COMPLETE STREETS PROJECTS | | | | \$9,867,625 | | \$1,160,667 | \$10,528,291 | | |
| PW | Adeline Street & Hearst Avenue | Planning, Design & Construction | Complete streets projects to include needed upgrades to curbs, sidewalks, storm drains, bicycle/ped improvements, and pavement, as appropriate. | \$3,198,365 | | | \$3,198,365 | SM | Construction is underway. |
| PW | Monterey Avenue, Ward Street | Planning, Design & Construction | Complete streets projects to include needed upgrades to curbs, sidewalks, bicycle/ped improvements, and pavement, as appropriate. Ward Street to include green infrastructure. | \$2,538,060 | State Transportation Tax | \$960,667 | \$3,274,139 | SM | Survey and design is underway. |
| PW | 2nd Street | Planning, Design & Construction | Improvements to pavement condition , sidewalks, storm drain, and curb ramp upgrades from Addison Street to Delaware Street. | \$275,413 | | | | SM | Survey and design is underway. |
| PW | Hopkins Street | Planning | Improvements to pavement condition, bicycle lanes, sidewalks, curb ramp upgrades, and other improvements as identified in the corridor & placemaking study. | | Council Referral | \$200,000 | \$200,000 | SM | Unable to complete construction in Phase 1. Hopkins Corridor & Placemaking Study needs to be completed before design. This study is anticipated to start in 2020. |
| PW | Bancroft Way | Planning | Improvements to pavement condition and bicycle and bus lanes from Milvia Street to Fulton Street. | | | | | SM | Unable to complete construction in Phase 1. Utility coordination is underway and expected to be completed in 2020. |
| PRW | University Avenue (West Frontage Rd to Marina Blvd), Marina Blvd, and Spinnaker Way Renovation | Planning, Design & Construction | Final design, obtaining permits, and pavement reconstruction. Design will be based on the preferred alternative identified in the Feasibility Study on Mitigation of Undulating Pavement at University Avenue. | \$3,855,787 | | | \$3,855,787 | NL | Conceptual design and public process for all three streets have been completed. Final design is in progress. Construction is anticipated to begin May 2020. |
| TOTAL | | | | \$36,838,226 | | \$11,835,081 | \$48,173,337 | | |

| | | | |
|---|--|---|---|
| BP - Bruce Pratt x6632 BPratt@cityofberkeley.info | GA - Greg Apa x6359 GApa@cityofberkeley.info | RM - Roger Miller x6704 RMiller@cityofberkeley.info | WK - Wendy Wellbrock x5214 WWellbrock@cityofberkeley.info |
| EH - Eleanor Hollander x7536 EHollander@cityofberkeley.info | IL - Ingrid Lin x6633 ILin@cityofberkeley.info | SM - Srinivas Muktevi x6420 SMuktevi@cityofberkeley.info | |
| EK - Elmar Kapfer x6435 EKapfer@cityofberkeley.info | NL - Nelson Lam x6395 NeLam@cityofberkeley.info | SG - Steve Grolnic x5249 SGrolnic@cityofberkeley.info | |
| EC - Evelyn Chan x6430 EChan@cityofberkeley.info | NC - Nick Cartagena x6338 NCartagena@cityofberkeley.info | TL - Taylor Lancelot x6421 MTLancelot@cityofberkeley.info | |

Actual Cost

Key: Planning and Design Projects
Construction Projects
Alternative Funding Source

| FY 2020 | | | | | | | | | | FY 2021 | | | | | | | | | | |
|--|--------|--------|--------|--------|--------|--------|--------|--------|--------|---------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--|
| Conceptual/ Planning and Design | | | | | | | | | | | | | | | | | | | | |
| Nov-19 | Dec-19 | Jan-20 | Feb-20 | Mar-20 | Apr-20 | May-20 | Jun-20 | Jul-20 | Aug-20 | Sep-20 | Oct-20 | Nov-20 | Dec-20 | Jan-21 | Feb-21 | Mar-21 | Apr-21 | May-21 | Jun-21 | |
| Veteran's Building/Old City Hall/Civic Center Park Master Plan | | | | | | | | | | | | 85% | | | | | | | | |
| Willard Clubhouse | | | | | | | | | | | | | | | | | | | | |
| Berkeley Municipal Pier/Ferry Study | | | | | | | | | | | | | | | | | | | | |
| Frances Albrier Community Center | | | | | | | | | | | | | | | | | | | | |
| Aquatic Park Tide Tubes | | | | | | | | | | | | | | | | | | | | |
| Citywide Restroom Assessment | | | | | | | | | | | | | | | | | | | | |
| Hopkins Street (San Pablo- Alameda) Corridor Study | | | | | | | | | | | | | | | | | | | | |
| Transfer Station Masterplan | | | | | | | | | | | | | | | | | | | | |
| West Berkeley Service Center | | | | | | | | | | | | | | | | | | | | |
| Green Infrastructure* (Jones Street, Heinz Ave., Tenth St., Ninth St., Sacramento St. center median) | | | | | | | | | | | | | | | | | | | | |

| Construction | | | | | | | | | | | | | | | | | | | | | | | | |
|---|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--|--|--|--|--|
| Nov-19 | Dec-19 | Jan-20 | Feb-20 | Mar-20 | Apr-20 | May-20 | Jun-20 | Jul-20 | Aug-20 | Sep-20 | Oct-20 | Nov-20 | Dec-20 | Jan-21 | Feb-21 | Mar-21 | Apr-21 | May-21 | Jun-21 | | | | | |
| North Berkeley Senior Center Seismic Upgrade and Renovation | | | | | | | | | | | | | | | | | | | | | | | | |
| Berkeley Mental Health Services Center Renovation | | | | | | | | | | | | | | | | | | | | | | | | |
| Live Oak Community Center Seismic Upgrade and Renovation | | | | | | | | | | | | | | | | | | | | | | | | |
| Rose Garden Tennis Courts, Pathways, and Pergola | | | | | | | | | | | | | | | | | | | | | | | | |
| Rose Garden: Repair of Erosion | | | | | | | | | | | | | | | | | | | | | | | | |
| San Pablo Park Play Areas Renovation | | | | | | | | | | | | | | | | | | | | | | | | |
| San Pablo Tennis Courts Renovation | | | | | | | | | | | | | | | | | | | | | | | | |
| Grove Park Fields | | | | | | | | | | | | | | | | | | | | | | | | |
| Strawberry Creek Park Restroom | | | | | | | | | | | | | | | | | | | | | | | | |
| George Florence Play | | | | | | | | | | | | | | | | | | | | | | | | |
| Marina Streets: University Avenue, Marina Blvd, and Spinnaker Way | | | | | | | | | | | | | | | | | | | | | | | | |
| Adeline Street (Derby to Ashby) | | | | | | | | | | | | | | | | | | | | | | | | |
| Hearst Avenue (Milvia to Henry) | | | | | | | | | | | | | | | | | | | | | | | | |
| Monterey Avenue (Alameda to Hopkins) | | | | | | | | | | | | | | | | | | | | | | | | |
| Ward Street (San Pablo to Acton) | | | | | | | | | | | | | | | | | | | | | | | | |
| 2nd Street (Delaware to Addison) | | | | | | | | | | | | | | | | | | | | | | | | |
| Bancroft Way (Milvia to Shattuck) | | | | | | | | | | | | | | | | | | | | | | | | |
| Corporation Yard Roof/Electrical Upgrade | | | | | | | | | | | | | | | | | | | | | | | | |
| Marina Corporation Yard Electrical Upgrade | | | | | | | | | | | | | | | | | | | | | | | | |
| Green Infrastructure* | | | | | | | | | | | | | | | | | | | | | | | | |

Completed

- Tom Bates Field Synthetic Turf Replacement
- Tom Bates Field House Conceptual Design
- Citywide Irrigation System
- Ann Chandler Health Clinic Electrical Design
- Public Safety Building AC Assessment

* Project authorized by Council on 7/23/19. Green infrastructure at Page Street, Channing Way, Dwight Way, Graywon Street, Piedmon Ave median and traffic circle will be constructed in Phase 1.



Office of Economic Development

December 26, 2019

To: David White, Deputy City Manager
From: Jordan Klein, Economic Development Manager
Subject: Public Art Funding from City of Berkeley Construction Projects

Introduction

Over the past five years, the annual contribution to the Public Art Fund has decreased, even as the City’s Capital Improvement Program (CIP) budget has generally increased (see Table 1).

The Civic Arts Commission has requested that staff provide clear and transparent information regarding the determination of the Public Art Fund budget, and that the City Auditor audit the determination of the Public Art Fund budget. In response, the Office of Economic Development, working in collaboration with staff from the Budget Division in the City Manager’s Office, the Public Works Department (PW) and the Parks, Recreation, and Waterfront Department (PRW), has prepared this memo to (1) summarize the current situation regarding funding for the City of Berkeley’s public art program; (2) identify outstanding issues regarding the Public Art program budgeting; and (3) make recommendations for near-term and longer-term actions to address those issues.

Table 1: CIP and Public Art Budget, 2016-2021

| Fiscal Year | Capital Improvement Plan, Original Budget | Public Art Fund, Original Budget ¹ |
|-------------|---|---|
| 2021 | \$59,765,721 | \$65,164 |
| 2020 | 111,962,162 | 65,164 |
| 2019 | 39,926,908 | 65,164 |
| 2018 | 81,571,653 | 69,364 |
| 2017 | 32,908,296 | 70,940 |
| 2016 | 36,151,639 | 71,502 |

Background

On June 1, 1999, the Berkeley City Council adopted Resolution No. 60,048-N.S. (Attachment 1, hereafter referenced as ‘the 1999 Resolution’), thereby establishing the City’s current public art policy and program, and the Public Art Fund.² Under this policy and program, each of the City of Berkeley’s eligible capital projects must dedicate 1.5% of the project’s construction costs for the commissioning of a public art element for incorporation into the project, or to contribute an equivalent amount to the City’s Public Art Fund for the creation of off-site works of public art.

1: This table does not include the public art contribution for the Center Street Garage, which comprised fund transfers to the Public Art Fund in FY2017 (\$222,860) and FY2019 (\$51,924), and design and construction of the Cube Gallery (\$106,060).

2: In 2017 the City of Berkeley established the Public Art in Private Development policy and program, which requires qualifying private development projects to either incorporate a public art element or pay an in lieu fee to the Private Percent for Art fund. That program is distinct from the program described in this memo.

The 1999 Resolution establishes that as part of the development of the City’s budget, City staff should engage with the Civic Arts Commission in a planning process to determine the list of eligible capital projects; the ultimate determination of the list is left to the discretion of the City Manager. It also notes that the policy should not be applied to “any improvement for which the source of funding, or any applicable law or regulation, prohibits or restricts the use of funds for [public art].” The Resolution also establishes that a project’s ‘soft costs’—including project management, architectural and engineering costs, planning costs, environmental review, legal fees, and feasibility studies—are not eligible for application of the policy.

In practice, the Budget Office has determined an annual contribution to the Public Art Fund by applying the 1.5% calculation to the original budget figures for a limited number of capital funding sources and project categories. For some (but not all) of those ‘off the top’ funding contributions, a deduction is made for soft costs. The vast majority of public art projects are implemented as off-site works of art. For some major capital projects (including Center Street Garage as the most recent example), the determination of the public art contribution is determined at the project level, and the funding is used for an on-site public art element, a supplemental contribution to the Public Art Fund, or a combination of the two approaches.

Staff Review of 2020 CIP and Public Art Budget

Office of Economic Development (OED) staff, in consultation with staff from the Budget Office, PW, and PRW, reviewed the Fiscal Year (FY) 2020 capital program by project, together with the FY 2020 Public Art Fund calculation spreadsheet provided by the Budget Office, to determine which projects had been identified as eligible capital projects for application of the public art requirement, and which projects had been excluded (see Attachment 2). Staff found the following:

- FY 2020 eligible capital projects. The following list includes those projects that were funded by expense accounts from which a contribution to the Public Art Fund was made.
 - ADA Building Improvements
 - FY 2020 Street Rehabilitation Projects
 - ADA Curb Ramp Repairs
 - Traffic Calming Program
 - Finger Dock & Piling Replacement
 - Rose Garden-Phase II
 - San Pablo Play Structure
 - West Campus Pool Filter
 - George Florence Play Equipment
 - King School Play Area
 - Ohlone Basketball Court
 - Parks Minor Maintenance Projects
 - Public Works Building Maintenance Projects

The total budget amount for these projects is \$4,894,278, or 4.4% of the total FY 2020 CIP budget. Capital Planning staff observed that the budgets for several of these projects include soft costs; thus if the guidelines established in the Resolution were more strictly enforced, it could result in a reduction of the Public Art Fund contribution.

- Staff identified the following capital projects that could be eligible for application of the public art policy, but to which the policy has not yet been applied.
 - EV Charging stations (\$600,000)
 - Police Parking Marina facility (\$481,570)

- Sacramento Street Complete Street Project (\$47,000)
- Telegraph Channing Elevator Replacement (\$300,000)

The total budget for these projects is \$1,428,570. Application of the public art policy would require a contribution of up to \$21,429 to the Public Art Fund.³

- Many of the funding streams that are used to finance CIP projects prohibit the use of funds for public art projects. These funding streams include state and regional gas taxes (e.g., Measure B, Measure BB, and Vehicle Registration Fees), special property assessments (e.g., Street Lighting Fee, Sanitary Sewer Fee, Storm Drain Fee), certain grant funds, development agreement proceeds, and insurance claims for camp repairs. In FY 2020, these funding streams accounted for \$79,730,929, or 71.2% of the total CIP budget.
- Sixteen CIP projects, totaling \$14,106,220 or 12.6% of the total CIP budget, are funded through Measure T1 Bond proceeds. One (1) percent of the total bond proceeds have been dedicated to public art projects; those funds are managed separately from the general Public Art Fund, and are being used to implement public art projects at North Berkeley Senior Center and San Pablo Park. The Civic Arts Commission has expressed frustration and disappointment that the public art contributed was calculated at 1% rather than 1.5% in accordance with the 1999 Resolution.

In staff's review of the CIP, we noted that some of the Measure T1 Bond proceeds are being used to fund non-construction projects (e.g., conceptual plans and studies) and project management costs. In addition, each of the construction projects has associated soft costs that are ineligible for application of the public art policy. Therefore, if staff used the 1999 Resolution methodology (1.5% of construction costs) rather than the current methodology (1% of total bond proceeds), the resulting contribution to public art might actually be less.

- The CIP includes non-construction projects and soft costs that are ineligible for application of the public art policy, including debt service, vehicle and other equipment replacement, software, and design and engineering costs. In FY 2020 the budget for these projects totaled \$10,116,148, or 9.0% of the total CIP budget.

Outstanding Issues

- The process for calculation of the annual contribution to the Public Art Fund that is outlined in the 1999 Resolution is not compatible with the City's other regular processes for budgeting and capital planning. The consensus among staff—including staff from the Civic Arts program, PW and PRW capital planning, and Budget Office—is that except for major projects (e.g., projects greater than \$10 million) the Budget Office's current process (a flat application to qualifying funding streams and project categories) should be maintained.
- Staff also observes that budget appropriations that occur in November and spring typically exclude funds for the public art program. At least two of the FY 2020 projects noted above, where the public art requirement has not been applied but may warrant application, fall into this category – Police Parking Marina Facility, and Sacramento Street Complete Streets.

3: The total budget for these projects (\$1,428,570) may include soft costs, or other costs that are ineligible for application of the public art calculation. Those costs would need to be excluded from the calculation, which could reduce the Public Art Fund contribution.

- Actual expenditures on major projects sometimes exceed budgeted amounts, and those additions are often excluded from the public art program. For example, actual expenditures on construction of the Center Street Garage increased by roughly \$5.4 million over the originally budgeted expenditures; however, the project's public art contribution was calculated based on the original budget. The project's compliance with the public art policy required an additional contribution of \$81,306 to the Public Art Fund, which was allocated by City Council on December 3, 2019.
- The public art policy was applied to the majority of, but not all, maintenance projects and expenditures from qualifying funding sources. Capital planning staff noted the vast deferred maintenance needs of the City's infrastructure and capital assets, and the urgent need to direct as much funding as possible towards the completion of those projects. Parks staff observed that the application of the policy to Measure F funds expended on 'Minor Maintenance' projects is incorrect and should be reversed for FY21.

Civic Arts program staff noted that the City's public art collection also suffers from deferred maintenance issues, and that there is a nexus for application of the public art policy to expenditures on maintenance projects in order to provide a reliable funding source for collection maintenance.

Recommendations

The following near-term and mid-term activities could address and resolve the outstanding issues identified above.

Near-term actions:

- Include allocations to the Public Art Fund, for the purpose of bringing the projects referenced above into compliance with the public art policy, for inclusion in the mid-cycle budget update. This would include an allocation of \$21,429 to the Public Art Fund for the EV Charging Stations, Police Parking Marina facility, Sacramento Street Complete Street Project, and Telegraph Channing Elevator Replacement.
- Establish as a regular practice that staff from the Budget Office, Civic Arts Program, and PW and PRW capital planning teams engage twice per year to review and plan for public art policy implementation.
- Incorporate into any mid-year budget expenditures on capital projects a review by Budget Office staff for public art policy applicability.
- Consider whether and how the policy should be applied to minor maintenance projects (versus major projects and new improvements).

Longer-term actions:

- Amend the 1999 Resolution to update the public art policy, in collaboration with the City Manager's Office, Capital Planning staff from PW and PRW, and the Civic Arts Commission, and with careful consideration of the following:

- Update the process and timing for the determination of the annual contribution to the Public Art Fund to be better aligned with the City's budgeting and capital planning processes, and with consideration of staffing and budget constraints.
- Establish more clear criteria to determine which projects and capital funding sources are eligible for application of the public art policy, especially with regards to expenditures on maintenance and repairs.

- Establish as a regular practice that grant applications for capital projects include expenditures on public art in the proposed budget, whenever possible without jeopardizing the application.

- For future bond measures for public construction projects, ensure that the public art policy is appropriately incorporated into the final bond language.

Attachments:

- 1- Resolution No. 60,048-N.S. Establishing the Percent for Art Program
- 2- FY2020 Capital Improvement Plan Budgeted Expenditures By Project By Fund, with Percent for Art Applicability

Cc:

Paul Buddenhagen, Deputy City Manager
Teresa Berkeley-Simmons, Budget Manager
Scott Ferris, Director, Parks, Recreation & Waterfront
Phil Harrington, Director, Public Works
Civic Arts Commission

RESOLUTION NO. 60,048-N.S.

ESTABLISHING A PROGRAM TO FUND THE DEVELOPMENT OF VISUAL ART IN PUBLIC PLACES, INCLUDING ART DEVELOPED IN CONJUNCTION WITH CITY CONSTRUCTION PROJECTS

WHEREAS, the cultivation and development of a livable community is enhanced by the presence of works of art and creative expression available for the enjoyment of all citizens; and

WHEREAS, in 1985, the City Council adopted Ordinance No. 5603-N.S., Berkeley Municipal Code Chapter 6.14, to promote the cultivation and creation of works of visual art in public places; and

WHEREAS, in 1980, the City Council adopted Ordinance No. 5253-N.S., Berkeley Municipal Code Chapter 3.12, establishing the Civic Arts Commission, and charged it with a variety of duties related to fostering programs for the cultural enrichment of the City; and

WHEREAS, the development of the physical infrastructure of the City provides numerous opportunities for creative expression by integrating artistic features into said infrastructure; and

WHEREAS, developing works of art in conjunction with City construction projects can contribute elements of beauty and creativity to all neighborhoods of the City; and

WHEREAS, a successful City-wide program to foster the development of works of art requires the collaboration of various City departments which are commonly involved in the construction of public improvements, the City Manager, the Civic Arts Commission and members of the community; and

WHEREAS, in those circumstances in which it is not feasible to incorporate artistic features into a particular public improvement, the public interest will be served by allocating sufficient funding to develop works of art separate from the public improvement; and

WHEREAS, the terms of this Resolution should be applied in a manner consistent with the requirements of Chapters 3.12 and 6.14 of the Berkeley Municipal Code.

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

Section 1. DEFINITIONS

“Administrative Costs” shall mean the expenditures necessary for implementation of the requirements of this Resolution, including, but not limited to, project management, soliciting proposals, public education, promotion, maintenance and risk management.

“Annual City Public Art Plan” shall mean the annual planning document which sets forth goals and objectives for development of works of art, including, art developed in conjunction with City construction projects during that Fiscal Year and any expenditures from the City’s Public Art Fund.

“Artist” shall mean a person who has completed works of art which meet contemporary artistic standards prevailing in major metropolitan areas.

“City Manager” shall mean the City Manager or his, or her, designee.

“Eligible Capital Project” shall mean any improvement to public property which the City Manager has approved for application of the requirements of this Resolution. This term shall not be interpreted to include any improvement for which the source of funding, or any applicable law or regulation, prohibits or restricts the use of funds for the purposes of this Resolution.

“Public Art Element” shall mean that component, feature, characteristic, or portion of a public improvement incorporated for artistic purposes.

“Public Art Fund” shall mean the budget account established by the City for receipt of funds derived from Eligible Capital Projects which may be expended for the purpose of incorporating artistic elements into public improvements or acquiring, creating, installing, presenting or displaying Off-Site Works of Art.

“Project Budget” shall mean the costs attributable to constructing a public improvement subject to the terms of this Resolution, including, construction, hazardous materials abatement, and procurement of goods intended for incorporation into the improvement. Project Budget shall not be interpreted to include costs associated with land use planning consultants, feasibility studies, environmental review, land acquisition costs, legal fees, architecture/engineering costs, construction management, geotechnical surveys, and historical surveys.

“Off-Site Work of Art” shall mean Works of Art as defined in Chapter 6.14 of the Berkeley Municipal Code which are acquired, created, installed, presented or displayed at a location other than the site of the Eligible Capital Project from which funds were derived under Section III of this Resolution.

Section 2. ANNUAL PLANNING

A. As part of the City’s budget process, the City Manager shall submit to the Civic Arts Commission a report identifying all public improvements which satisfy both of the following criteria: 1) expenditures will be made from the Project Budget during the following budget cycle, and 2) designation as an Eligible Capital Project would not result in detriment to the project.

B. Pursuant to Chapter 6.14 of the Berkeley Municipal Code, the Civic Arts Commission shall thereafter assign a different rank to each public improvement identified pursuant to Section A above based on the potential benefits to the community of designating the improvement as an Eligible Capital Project.

C. Pursuant to Chapter 6.14 of the Berkeley Municipal Code, the Civic Art Commission shall issue to the City Manager an Annual City Public Art Plan presenting its recommendations: 1) for public improvement projects which should be designated as Eligible Capital Projects, and 2) any expenditures from the Public Art Fund for the acquisition, creation, installation, presentation or display of Off-Site Works of Art during that Fiscal Year. The Annual City Public Art Plan shall include an explanation of the benefits and detriments, if any, associated with each proposal.

D. The City Manager shall then identify which, if any, of the recommended public improvements shall be finally designated as Eligible Capital Projects for that Fiscal Year.

Section 3. FUNDING

A. A sum equal to one percent (1%) of the Project Budget for each Eligible Capital Project shall be transferred to the Public Art Fund and utilized solely to develop and install a work of art integrated into the completed improvement, regardless of whether it contributes to the purpose and function of the improvement, including, but not limited to, color, shape, design, texture, general appearance, or decoration which is designed and constructed integrally with the public improvement itself.

B. In addition to the amount specified in Section III(A), above, a sum equal to one half percent (0.5%) of the Project Budget for each Eligible Capital Project shall be transferred to the Public Art Fund and utilized solely for Administrative Costs.

C. Funds designated for the Public Art Fund shall be transferred not later than the date on which funds for the Project Budget have been encumbered.

D. In the event that the final cost of designing and constructing the Public Art Element is less than one and one half percent (1.5%) of the Project Budget, the unused funds will be retained in the Public Art Fund and utilized for the creation of Off-Site Works of Art.

E. In the event that the Eligible Capital Project will result in a public improvement which is inaccessible to the public, such as an underground structure, or for which it is not feasible to incorporate the Public Art Element, the funds designated for the Public Art Element shall be transferred to the Public Art Fund and may be used for the creation of Off-Site Works of Art.

Section 4. MANAGEMENT OF PUBLIC ART ELEMENT

The City Manager is authorized to manage the development and implementation of the Public Art Element in accordance with Chapter 6.14 of the Berkeley Municipal Code governing Visual Art in Public Places. The City Manager may use any reasonably efficient means and methods to design a Public Art Element, including, but not limited to, the following:

- A. Retain an artist to design the Public Art Element independently of the architects/engineers who are responsible for designing the public improvement.
- B. Require as part of the selection process that the architects/engineers who are responsible for designing the public improvement retain an artist as a functioning member of the design team to design the Public Art Element concurrently with the design of the public improvement.
- C. Require as part of the competitive solicitation process that the contractor responsible for building the public improvement retain an artist to design the Public Art Element.

Section 5. PUBLIC ART FUND

- A. The City Manager shall establish budget accounts to receive funds transferred pursuant to Sections III(A) and (B), above. Monies in the Public Art Fund, if not expended in any particular Fiscal Year, shall be carried over to the next Fiscal Year, unless the source of the funds, or applicable laws or regulations, prohibit such action. Generally accepted accounting principles will be utilized to ensure that the funds are utilized in a manner consistent with this Resolution.
- B. Nothing herein shall be interpreted to prohibit the City from soliciting and receiving grants, donations, bequests, or gifts from any source, public or private, for deposit in the Public Art Fund to be expended in a manner consistent with this Resolution.
- C. Monies in the Public Art Fund shall not be expended for the purposes of awarding grants to artists or arts organizations under City Council Resolution No. 55,832-N.S.

Section 6. OFF-SITE WORKS OF ART

- A. Pursuant to Section 3.12.060(F) of the Berkeley Municipal Code, the Civic Arts Commission shall review and make recommendations for expenditures from the Public Art Fund for the acquisition, creation, installation, presentation or display of Off-Site Works of Art.
- B. The City Manager shall manage the acquisition, creation, installation, presentation and display of Off-Site Works of Art.

Section 7. GRANTS

All City departments shall include in any application for grant funds for an Eligible Capital Project an amount sufficient for the Public Art Element, unless said inclusion would be detrimental to the City.

Section 8. RULES AND REGULATIONS

It is the intent of the City Council to allow the City Manager flexibility in attaining the goals of this Resolution; therefore, the City Manager is authorized to establish rules and regulations consistent with the intent of this Resolution and the Berkeley Municipal Code for the purposes of implementing this Resolution.

Section 9. EFFECTIVE DATE

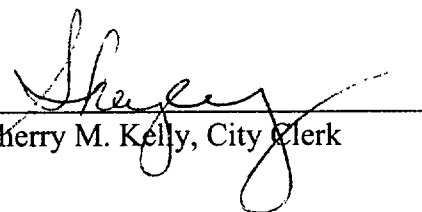
This resolution shall become effective June 1, 1999.


The foregoing Resolution was adopted by the Berkeley City Council on May 25, 1999 by the following vote:

Ayes: Councilmembers Armstrong, Breland, Maio, Olds, Shirek, Spring, Woolley, Worthington and Mayor Dean.

Noes: None.

Absent: None.

Attest: 
Sherry M. Kelly, City Clerk


Shirley Dean, Mayor

Citywide Capital Program By Project, with Public Art Requirement Applicability

| Citywide Capital Program by Project, by Fund | | | | | | | | |
|--|---------------------------|--|--|--|----------------------|--|-------------------------------------|------|
| Public Art Policy Applicability | | | | | | | | |
| Fund | Category | Project Name | FY2020 Total | Funds Eligible for Public Art Policy Application | Ineligible Funds | Notes / Rationale for Ineligibility | FY2020 Public Art Fund Contribution | |
| | Transportation | Pavement Markings (incl. Roadway Thermo Marking) | \$ 50,000 | \$ - | \$ 50,000 | Funded by Excess Property Transfer Tax | \$ - | |
| | | EV Charging Stations @ Corp Yard and Marina | \$ 600,000 | \$ - | \$ 600,000 | Funded by Excess Property Transfer Tax; may warrant policy application | \$ - | |
| 10 Total | General Fund | | \$ 650,000 | \$ - | \$ 650,000 | | \$ - | |
| 330 | PRW | Berkeley Tuolumne Camp (BTC) | \$ 49,795,822 | \$ - | \$ 49,795,822 | Funding source prohibition | \$ - | |
| | | Cazadero Camp - Landslide Repair | \$ 854,306 | \$ - | \$ 854,306 | Funding source prohibition | \$ - | |
| 330 Total | Camp Fund | | \$ 50,650,128 | \$ - | \$ 50,650,128 | | \$ - | |
| 369 | Unallocated | Transportation | Traffic Calming Devices Replacement & Maintenance | \$ 50,000 | \$ - | \$ 50,000 | Funding source prohibition | \$ - |
| 369 | | Streets | Street Rehabilitation FY 2020 State Transportation Tax | \$ 445,303 | \$ - | \$ 445,303 | Funding source prohibition | \$ - |
| | | | Street Rehabilitation FY 2020 SB1 | \$ 1,500,000 | \$ - | \$ 1,500,000 | Funding source prohibition | \$ - |
| | | | Street Rehabilitation FY 2021 State Transportation Tax | \$ 50,000 | \$ - | \$ 50,000 | Funding source prohibition | \$ - |
| 369 Total | Gas Tax | | \$ 2,045,303 | \$ - | \$ 2,045,303 | | \$ - | |
| | | | Pavement Marking Program | \$ 150,000 | \$ - | \$ 150,000 | Funding source prohibition | \$ - |
| 391 | | Streets | Street Rehabilitation FY2020 | \$ 700,000 | \$ - | \$ 700,000 | Funding source prohibition | \$ - |
| 391 Total | Measure B LS&R | | \$ 850,000 | \$ - | \$ 850,000 | | \$ - | |
| 392 | | | Milvia Bikeway Project | \$ 76,000 | \$ - | \$ 76,000 | Funding source prohibition | \$ - |
| 392 | | | Citywide Bicycle Parking | \$ 13,334 | \$ - | \$ 13,334 | Funding source prohibition | \$ - |
| 392 | | | Transportation Impact Fee Nexus Study & Transportation Impact Study Guidelines | \$ 28,183 | \$ - | \$ 28,183 | Funding source prohibition | \$ - |
| | | | Bike & Ped CIP (Contingency) | \$ 75,000 | \$ - | \$ 75,000 | Funding source prohibition | \$ - |
| 392 Total | Measure B B&P | | \$ 192,517 | \$ - | \$ 192,517 | | \$ - | |

Citywide Capital Program By Project, with Public Art Requirement Applicability

| Fund | Category | Project Name | FY2020 Total | Funds Eligible for Public Art Policy Application | Ineligible Funds | Notes / Rationale for Ineligibility | FY2020 Public Art Fund Contribution |
|------------------|----------------------------|--|---------------------|--|---------------------|-------------------------------------|-------------------------------------|
| 397 | Streets | Street Rehabilitation FY2020 | \$ 155,000 | \$ - | \$ 155,000 | Funding source prohibition | \$ - |
| 397 | Sidewalks | Proactive and Responsive Sidewalk Repair Projects | \$ 200,000 | | \$ 200,000 | Funding source prohibition | \$ - |
| 397 Total | Measure F | | \$ 355,000 | | \$ 355,000 | | \$ - |
| 406 | Transportation | San Pablo/Ashby Intersection Traffice Signal Improvements | \$ 76,000 | \$ - | \$ 76,000 | Funding source prohibition | \$ - |
| 406 | Streets | Street Rehabilitation FY2020 - BB LSR Sales Tax | \$ 2,200,000 | \$ - | \$ 2,200,000 | Funding source prohibition | \$ - |
| 406 | Sidewalks | Proactive and Responsive Sidewalk Repair Projects | \$ 100,000 | \$ - | \$ 100,000 | Funding source prohibition | \$ - |
| 406 | Transportation | Traffic Calming Program | \$ 50,000 | \$ - | \$ 50,000 | Funding source prohibition | \$ - |
| 406 | Transportation | Traffic Signal Maintenance | \$ 250,000 | \$ - | \$ 250,000 | Funding source prohibition | \$ - |
| 406 | Transportation | Transportation Impact Fee Nexus Study & Transportation Impact Study Guidelines | \$ 28,183 | \$ - | \$ 28,183 | Funding source prohibition | \$ - |
| 406 Total | Measure BB LS&R | | \$ 2,704,183 | \$ - | \$ 2,704,183 | | \$ - |
| 407 | Transportation | Shattuck Reconfiguration | \$ 118,354 | \$ - | \$ 118,354 | Funding source prohibition | \$ - |
| 407 | Transportation | Ninth Street Pathway Phase II | \$ 83,557 | \$ - | \$ 83,557 | Funding source prohibition | \$ - |
| 407 | | San Pablo/Ashby Intersection Traffice Signal Improvements | \$ 110,000 | \$ - | \$ 110,000 | Funding source prohibition | \$ - |
| 407 | | Sacramento St./North Berkeley BART Complete Sts | \$ 273,253 | \$ - | \$ 273,253 | Funding source prohibition | \$ - |
| 407 | | Citywide Bicycle Parking | \$ 26,664 | \$ - | \$ 26,664 | Funding source prohibition | \$ - |
| 407 Total | Mesure BB B&P | | \$ 611,828 | \$ - | \$ 611,828 | | \$ - |
| 450 | | Minor Maintenance | \$ 550,000 | \$ 412,500 | \$ 137,500 | Soft costs excluded | \$ 6,188 |
| 450 | | Gilman Reserve/ Facility Assmt./ Sewer-Laterals | \$ 100,000 | \$ 75,000 | \$ 25,000 | Soft costs excluded | \$ 1,125 |
| 450 | | W. Campus Pool Filter | \$ 175,000 | \$ 131,250 | \$ 43,750 | Soft costs excluded | \$ 1,969 |
| 450 | | Rose Garden-Phase II (see Meas. T1 proj wksht) | \$ 50,000 | \$ 37,500 | \$ 12,500 | Soft costs excluded | \$ 563 |
| 450 | | San Pablo Play Equipment (see Meas. T1 proj wksht) | \$ 200,000 | \$ 150,000 | \$ 50,000 | Soft costs excluded | \$ 2,250 |
| 450 | | George Florence Play Equipment (see Meas. T1 proj wksht) | \$ 125,000 | \$ 93,750 | \$ 31,250 | Soft costs excluded | \$ 1,406 |
| 450 | | King School Park Play Area | \$ 50,000 | \$ 37,500 | \$ 12,500 | Soft costs excluded | \$ 563 |
| 450 | | Ohlone Basketball | \$ 300,000 | \$ 225,000 | \$ 75,000 | Soft costs excluded | \$ 3,375 |
| 450 Total | Parks Tax | | \$ 1,550,000 | \$ 1,162,500 | \$ 387,500 | | \$ 17,438 |

Citywide Capital Program By Project, with Public Art Requirement Applicability

| | | | | | Funds Eligible for Public Art Policy Application | Ineligible Funds | Notes / Rationale for Ineligibility | FY2020 Public Art Fund Contribution |
|------------------|------------------------|--------------|--|----------------------|--|----------------------|--|-------------------------------------|
| Fund | Category | Project Name | | FY2020 Total | | | | |
| 607 | T1 | PRW | AQUATIC PARK TIDE TUBES | \$ 220,835 | \$ - | \$ 220,835 | 1% for Public Art Accounted Separately | \$ - |
| 607 | | PRW | FRANCES ALBRIER COMMUNITY CENTER | \$ 425,000 | \$ - | \$ 425,000 | 1% for Public Art Accounted Separately | \$ - |
| 607 | | PRW | GROVE PARK PHASE 2 | \$ 880,325 | \$ - | \$ 880,325 | 1% for Public Art Accounted Separately | \$ - |
| 607 | | PRW | LIVE OAK COMMUNITY CENTER | \$ 4,232,106 | \$ - | \$ 4,232,106 | 1% for Public Art Accounted Separately | \$ - |
| 607 | | PRW | UNIVERSITY AVE,MARINA,SPINNAKER ST | \$ 83,022 | \$ - | \$ 83,022 | 1% for Public Art Accounted Separately | \$ - |
| 607 | | PRW | MUNICIPAL PIER | \$ 2,056,908 | \$ - | \$ 2,056,908 | 1% for Public Art Accounted Separately | \$ - |
| 607 | | PRW | GEORGE FLORENCE PLAY STRUC | \$ 531,703 | \$ - | \$ 531,703 | 1% for Public Art Accounted Separately | \$ - |
| 607 | | PRW | SAN PABLO PLAY EQUIP | \$ 1,056,715 | \$ - | \$ 1,056,715 | 1% for Public Art Accounted Separately | \$ - |
| 607 | | PRW | STRAWBERRY CREEK PARK PH 2 | \$ 1,131,389 | \$ - | \$ 1,131,389 | 1% for Public Art Accounted Separately | \$ - |
| 607 | | PRW | ROSE GRDN PTHWAYS,TENNIS CRT,PERG | \$ 345,835 | \$ - | \$ 345,835 | 1% for Public Art Accounted Separately | \$ - |
| 607 | | PRW | GILMAN N. FLDHOSE/RSTRM | \$ 172,025 | \$ - | \$ 172,025 | 1% for Public Art Accounted Separately | \$ - |
| 607 | | PRW | WILLARD CLUBHOUSE RENO | \$ 197,025 | \$ - | \$ 197,025 | 1% for Public Art Accounted Separately | \$ - |
| 607 | | Facilities | Veteran's Building | \$ 148,215 | \$ - | \$ 148,215 | 1% for Public Art Accounted Separately | \$ - |
| 607 | | | Corporation Yard | \$ 50,467 | \$ - | \$ 50,467 | 1% for Public Art Accounted Separately | \$ - |
| 607 | | | Public Safety Building | \$ 19,762 | \$ - | \$ 19,762 | 1% for Public Art Accounted Separately | \$ - |
| 607 | | Streets | Street Rehabilitation FY 2020 | \$ 2,554,888 | \$ - | \$ 2,554,888 | 1% for Public Art Accounted Separately | \$ - |
| 607 Total | T1 Bonds | | | \$ 14,106,220 | \$ - | \$ 14,106,220 | | \$ - |
| 609 | | IT | ERP Replacement Fund | \$ 2,734,552 | | \$ 2,734,552 | Non-construction project | \$ - |
| 609 Total | ERP Replacement | | | \$ 2,734,552 | | \$ 2,734,552 | | \$ - |
| 891 | | IT | PC Replacement (PC-R) and Server Replacement | \$ 540,370 | | \$ 540,370 | Non-construction project | \$ - |
| 891 Total | | | | \$ 540,370 | | \$ 540,370 | | \$ - |

Citywide Capital Program By Project, with Public Art Requirement Applicability

| Fund | Category | Project Name | FY2020 Total | Funds Eligible for Public Art Policy Application | Ineligible Funds | Notes / Rationale for Ineligibility | FY2020 Public Art Fund Contribution |
|------|---------------|---|--------------|--|------------------|---|-------------------------------------|
| 610 | Facilities | Roof Replacement | \$ 290,000 | \$ 164,773 | \$ 125,227 | Emergency repairs and maintenance - included at approximately 58% | \$ 2,472 |
| 610 | | Building Assesment (Contingency) | \$ 70,000 | \$ 39,773 | \$ 30,227 | Emergency repairs and maintenance - included at approximately 58% | \$ 597 |
| 610 | | Civic Center Carpet Replacement | \$ 440,000 | \$ 250,000 | \$ 190,000 | Emergency repairs and maintenance - included at approximately 58% | \$ 3,750 |
| 610 | | Fire Station 6 Drill Tower | \$ 45,000 | \$ 25,568 | \$ 19,432 | Emergency repairs and maintenance - included at approximately 58% | \$ 384 |
| 610 | | HazMat Storage Upgrade | \$ 35,000 | \$ 19,886 | \$ 15,114 | Emergency repairs and maintenance - included at approximately 58% | \$ 298 |
| 610 | | Police Parking Enforcement Marina Facility and Parking Lot Improver | \$ 250,000 | | \$ 250,000 | May warrant policy application | \$ - |
| 610 | | ADA Building Improvements | \$ 100,000 | \$ 100,000 | \$ - | | \$ 1,500 |
| 610 | PRW | Rose Garden-Phase II | \$ 100,000 | \$ 75,000 | \$ 25,000 | Soft costs excluded | \$ 1,125 |
| 610 | PRW | San Pablo Play Structure | \$ 300,000 | \$ 225,000 | \$ 75,000 | Soft costs excluded | \$ 3,375 |
| 610 | Debt Svc | Ball Fields Acquisition Debt Service | \$ 249,971 | | \$ 249,971 | Non-capital project | \$ - |
| 610 | Debt Svc | Animal Shelter Debt Service/2010 COP Animal Shelter | \$ 402,613 | | \$ 402,613 | Non-capital project | \$ - |
| 610 | Debt Svc | Theater Debt Service | \$ 249,971 | | \$ 249,971 | Non-capital project | \$ - |
| 610 | Debt Svc | University Ave. W/C Debt Service | \$ 406,952 | | \$ 406,952 | Non-capital project | \$ - |
| 610 | Streets | Street Rehabilitation FY2020 | \$ 1,825,050 | \$ 1,725,000 | \$ 100,050 | Soft costs excluded | \$ 25,875 |
| 610 | | Street Rehabilitation FY2021 | \$ 99,950 | \$ - | \$ 99,950 | Design costs | \$ - |
| 610 | 5302-431-6520 | Sidewalks | \$ 100,000 | \$ - | \$ 100,000 | Project deemed ineligible (sidewalk repairs) | \$ - |
| 610 | | Sidewalks | \$ 500,000 | \$ - | \$ 500,000 | Project deemed ineligible (sidewalk repairs) | \$ - |
| 610 | | Sidewalks | \$ 285,000 | | \$ 285,000 | Project deemed ineligible (sidewalk repairs) | \$ - |
| 610 | | Sidewalks | \$ 50,000 | | \$ 50,000 | Project deemed ineligible (sidewalk repairs) | \$ - |
| 610 | | Sidewalks | \$ 200,000 | \$ 200,000 | \$ - | | \$ 3,000 |
| 610 | | Transportation | \$ 119,278 | \$ 119,278 | | | \$ 1,789 |
| 610 | | Transportation | \$ 606,662 | | \$ - | Bayer Mitigation \$ - Funding source prohibition | \$ - |

Citywide Capital Program By Project, with Public Art Requirement Applicability

| | | | | FY2020 Total | Funds Eligible for Public Art Policy Application | Ineligible Funds | Notes / Rationale for Ineligibility | FY2020 Public Art Fund Contribution |
|------------------|-------------------------------|----------------------|--|---------------------|--|---------------------|--|-------------------------------------|
| Fund | Category | Project Name | | | | | | |
| 610 | | Transportation | Sacramento St Complete Streets/North Berkeley BART | \$ 47,000 | | \$ 47,000 | May warrant policy application | \$ - |
| 470 | 5307 | Other Infrastructure | Coucil Supp. - Funding for Street Lighting | \$ 416,608 | | \$ 416,608 | Property Fee - 218 Funding source prohibition | \$ - |
| | | Other Infrastructure | Underground Utility Distrcit No. 48 Project | \$ 250,000 | | \$ 250,000 | Placeholder for fire safety project w/PG&E; monies gathered from unspent fund balances (where art funds have already been taken), salary savings, etc. | \$ - |
| | | Transportation | Traffic Calming Program | \$ 50,000 | \$ 50,000 | \$ - | | \$ 750 |
| 610 Total | Capital Improvement | | | \$ 7,489,055 | \$ 2,994,278 | \$ 4,494,777 | Rama's spreadsheet for Public Art calculation shows \$2,994,278 from this fund. Please indicate which additional projects were included. | \$ 44,914 |
| 613 | | Bay Area Air Quality | Citywide Bicycle Parking | \$ 60,000 | | \$ 60,000 | Funding source prohibition | \$ - |
| 613 Total | | | | \$ 60,000 | | \$ 60,000 | | \$ - |
| 642 | | Sidewalks | 50/50 Program | \$ 100,000 | | \$ 100,000 | Funding source prohibition (Money is from private property owners for sidewalk repairs) | \$ - |
| 642 Total | Private Party Sidewalk | | | \$ 100,000 | | \$ 100,000 | | \$ - |
| | | | Milvia Bikeway Project | \$ 273,000 | | \$ 273,000 | Funding source prohibition | \$ - |
| | | | Sacramento St./North Berkeley BART Complete Sts | \$ 1,364,202 | | \$ 1,364,202 | Funding source prohibition | \$ - |
| | | | Southside Complete Streets | \$ 506,640 | | \$ 506,640 | Funding source prohibition | \$ - |
| 674 Total | CALTRANS | | | \$ 2,143,842 | | \$ 2,143,842 | | \$ - |
| 820 | | Facilities | Transfer Station AirCo building upgrade for office use | \$ 385,000 | | \$ 385,000 | Design, planning and other soft costs | \$ - |
| 820 | | Facilities | Transfer Station Rebuild Final Geotechnical Site investigation to support engineering design | \$ 100,000 | | \$ 100,000 | Design, planning and other soft costs | \$ - |
| | | | Solid Waste & Recycling Transfer Station Rebuild CEQA process | \$ 1,200,000 | | \$ 1,200,000 | Design, planning and other soft costs | \$ - |
| 820 Total | Zero Waste | | | \$ 1,685,000 | | \$ 1,685,000 | | \$ - |

Citywide Capital Program By Project, with Public Art Requirement Applicability

| Fund | Category | Project Name | FY2020 Total | Funds Eligible for Public Art Policy Application | Ineligible Funds | Notes / Rationale for Ineligibility | FY2020 Public Art Fund Contribution |
|------------------|---------------------------|--|----------------------|--|----------------------|--|-------------------------------------|
| 825 | | Finger Dock & Piling Replacement | \$ 250,000 | \$ 187,500 | \$ 62,500 | Soft costs excluded | \$ 2,813 |
| 825 | | Sewer Lateral Work | \$ 100,000 | | \$ 100,000 | | \$ - |
| 825 | | Marina Debt Service | \$ 485,719 | | \$ 485,719 | Non-capital project | \$ - |
| 825 | PRW | Minor Maintenance | \$ 150,000 | | \$ 150,000 | | \$ - |
| 825 Total | Marina Operations | | \$ 985,719 | \$ 187,500 | \$ 798,219 | | \$ 2,813 |
| 830 | Sewers | Sewer Rehab - Sanitary Sewer Master Plan | \$ 623,106 | | \$ 623,106 | Enterprise Fund - 218 Funding source prohibition | \$ - |
| 830 | Sewers | San Pablo (City's Limit to Limit) | \$ 3,256,112 | | \$ 3,256,112 | Enterprise Fund - 218 Funding source prohibition | \$ - |
| 830 | | Neilson, Berryman, et al | \$ 4,515,649 | | \$ 4,515,649 | Enterprise Fund - 218 Funding source prohibition | \$ - |
| 830 | | Seawall Dr, Seventh St, et al | \$ 5,099,864 | | \$ 5,099,864 | Enterprise Fund - 218 Funding source prohibition | \$ - |
| 830 | | West Frontage (Caltrans ROW) | \$ 182,617 | | \$ 182,617 | Enterprise Fund - 218 Funding source prohibition | \$ - |
| 830 | | Urgent Repairs FY 2020 | \$ 503,457 | | \$ 503,457 | Enterprise Fund - 218 Funding source prohibition | \$ - |
| 830 | | MH Rehab FY 2020 | \$ 503,457 | | \$ 503,457 | Enterprise Fund - 218 Funding source prohibition | \$ - |
| 830 | | Parker St, MLK Wy, et al | \$ 1,035,441 | | \$ 1,035,441 | Enterprise Fund - 218 Funding source prohibition | \$ - |
| 830 | | MLK Wy, Cedar St, et al | \$ 782,526 | | \$ 782,526 | Enterprise Fund - 218 Funding source prohibition | \$ - |
| 830 | | Walnut St, The Alameda, et al | \$ 593,927 | | \$ 593,927 | Enterprise Fund - 218 Funding source prohibition | \$ - |
| 830 | | Urgent Repairs FY 2021 | \$ 84,731 | | \$ 84,731 | Enterprise Fund - 218 Funding source prohibition | \$ - |
| 830 | | MH Rehab FY 2021 | \$ 84,731 | | \$ 84,731 | Enterprise Fund - 218 Funding source prohibition | \$ - |
| 830 Total | Sanitary Sewer | | \$ 17,265,619 | | \$ 17,265,619 | | \$ - |
| 831 | | Berkeley Rose Garden Drainage | \$ 679,239 | | \$ 679,239 | Property Fee - 218 Funding source prohibition | \$ - |
| 831 | | GI Allston Way Permeable Paver Maintenance | \$ 200,000 | | \$ 200,000 | Property Fee - 218 Funding source prohibition | \$ - |
| 831 | | Storm Drainage Repairs - Wildcat/Shelby Trail | \$ 75,000 | | \$ 75,000 | Property Fee - 218 Funding source prohibition | \$ - |
| 831 | | Piedmont Avenue Green Infrastructure | \$ 25,000 | | \$ 25,000 | Property Fee - 218 Funding source prohibition | \$ - |
| 831 | | Storm Drain Planning & Studies | \$ 750,000 | | \$ 750,000 | Property Fee - 218 Funding source prohibition | \$ - |
| 831 Total | Clean Storm | | \$ 1,729,239 | | \$ 1,729,239 | | \$ - |
| | | Telegraph Channing Elevator Replacement | \$ 300,000 | | \$ 300,000 | May warrant policy application | \$ - |
| 835 Total | Off Street Parking | | \$ 300,000 | | \$ 300,000 | | \$ - |
| | | Police Parking Enforcement Marina Facility and Parking Lot Improvement | \$ 231,570 | | \$ 231,570 | May warrant policy application | \$ - |
| 840 Total | Parking Meter Fund | | \$ 231,570 | | \$ 231,570 | | \$ - |
| 860 | Equipment | Vehicle Replacement | \$ 2,611,000 | | \$ 2,611,000 | Non-construction project | \$ - |

Citywide Capital Program By Project, with Public Art Requirement Applicability

| Fund Category Project Name | | | FY2020 Total | Funds Eligible for Public Art Policy Application | Ineligible Funds | Notes / Rationale for Ineligibility | FY2020 Public Art Fund Contribution |
|----------------------------|--------------------|--|-----------------------|--|-----------------------|-------------------------------------|-------------------------------------|
| 860 Total | Equip. Replacement | | \$ 2,611,000 | | \$ 2,611,000 | | \$ - |
| Grand Total | | | \$ 111,591,145 | \$ 4,344,278 | \$ 107,246,867 | | \$ 65,164 |

Lobbyist Registration Act (BMC 2.09)

Talking Points

Beginning on January 1, 2020 every **local governmental lobbyist** must register with the City prior to any lobbying activity taking place. Under the Act, lobbyists will be required to register (**\$500 Annual Fee**), and file disclosure reports of lobbying activity on a quarterly or annual basis. The registration fee will be waived for all non-profit organizations.

What is the Lobbyist Registration Act?

The Act is intended to ensure that the public has an adequate opportunity to be informed of the City's activities and to communicate its concerns to its elected and appointed officials by requiring that local governmental lobbyists register with the City and publicly report on their lobbying activities.

When was it adopted?

October 2, 2018

Did we vote for this?

The Lobbyist Registration Act (Berkeley Municipal Code Chapter 2.09) was adopted by City Council action via Ordinance 7,629-N.S.

Who is a lobbyist?

A person qualifies as a local governmental lobbyist if they receive \$1,000 or more in economic consideration in a calendar month to communicate directly or through agents with any elected or appointed City official or City employee, for the purpose of influencing any proposed or pending governmental action of the City; **or**

If they are a salaried employee, officer, or director of a corporation, organization or association, whose duties include communication directly or through agents with any elected or appointed City official or City employee, for the purpose of influencing any proposed or pending governmental action of the City. (This could include community agencies)

What does it mean to lobby?

Lobbying activities that fall within the scope of the Act include any direct or indirect communication by a lobbyist with any appointed or elected City official or City employee, including permanent staff, temporary employees, City Councilmembers, Rent Board members, School Board members, City Council aides, and appointed commissioners, for the purpose of influencing any proposed or pending governmental action of the City. In other words, the communications are for the purpose of promoting, supporting, modifying, opposing, causing the delay or abandonment of conduct, or otherwise intentionally affecting the official government actions.

What is governmental action?

Governmental actions are discretionary administrative or legislative actions of the City, other than actions which are ministerial (conforming to prescribed procedures) in nature.

What requirements does the Act place on lobbyists?

The Act requires both registration and mandatory disclosure reports. Additionally, each registered lobbyist must complete a training, offered online at either the Open Government Commission homepage or the City Clerk website.

When must reports be filed?

Most lobbyists will file quarterly reports. Lobbyists who are sole proprietorships or lobbying firms with four or fewer employees may file annually.

How are reports filed?

Reports are filed with the City Clerk. Lobbyists can upload their reports through NetFile, the City's online filing portal.

Where can the public view this information?

Reports will be available online through the NetFile portal on the City's website and through the City Clerk Department. All of the information required to be reported is public information.

Do I need to register?

The Lobbyist Registration Act exempts certain types of individuals and communications from registration. For further clarification, please review the Lobbyist Manual which provides examples and background information. Please submit questions to elections@cityofberkeley.info as the Act is very fact specific and staff will need time to evaluate each case individually.

Does my organization or company need to register?

Currently, the Act only requires individuals to register and not companies or organizations.

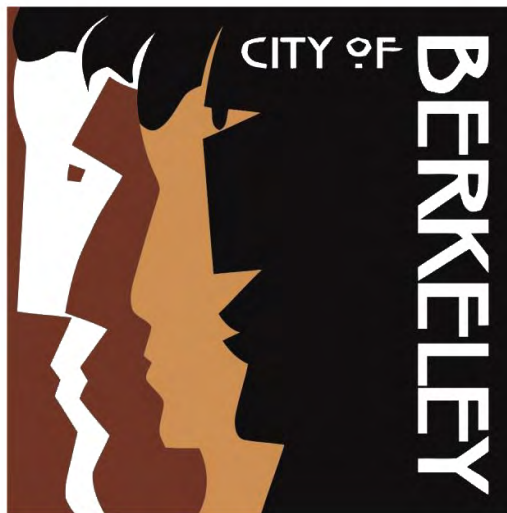
How do I register?

Lobbyists can register either in person at the City Clerk Department or by submitting a registration form and payment by U.S. Mail. Checks can be made out to the City of Berkeley. Email and online payments will not be accepted. Registration forms can be found on the City Clerk website. A **handwritten signature** is required on the registration form; electronic signatures are not allowed.

Where can I find more information?

The Lobbyist Manual provides all of the background information, rules and procedures associated with the Act.

- Lobbyist Manual
- City Clerk/Open Government Commission Website



LOBBYIST MANUAL 2020 EDITION

BACKGROUND INFORMATION
RULES AND PROCEDURES

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

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## CHAPTER I. INTRODUCTION

### CHAPTER I. INDEX

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- B. The Open Government Commission
- C. Who must Register?
- D. What are Lobbying Activities?
- E. What kind of Communication falls within these Lobbying Activities?
- F. Who Are The Officers of the City of Berkeley?
- G. What Kind of Communications are Exempt?

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

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

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

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

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

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

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

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

### C. Who must Register?

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

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

#### *Examples:*

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

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

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

### D. What are Lobbying Activities?

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

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

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

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

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

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

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

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

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

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

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

*Examples:*

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

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

*Examples:*

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

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

## CHAPTER II. GETTING STARTED: REGISTRATION

### CHAPTER II. INDEX

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### CHAPTER III. INDEX

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

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

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

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

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

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

#### C. General Disclosure Requirements

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

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

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

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

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

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

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

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

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

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

**4. Schedule D: Contribution Solicitations.** Lists information regarding any solicitations by the local governmental lobbyist for contributions to an elected City officeholder, candidate for City office, or committee or campaign fund controlled by such officeholder or candidate, including:

- a. The names of the persons whom the local governmental lobbyist solicited.
- b. The officeholder or candidate for whose benefit each solicitation was made.

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

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

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

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

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

## CHAPTER IV. PROHIBITED ACTIVITIES

### CHAPTER IV. INDEX

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

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

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

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

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

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

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

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

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

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

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

The following are exempt from the restrictions in 2.09.220:

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

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

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

The following types of payments are prohibited under 2.09.220:

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

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

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

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

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

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

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

## CHAPTER V. ENFORCEMENT

### CHAPTER V. INDEX

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

## APPENDIX A: RESOURCE DIRECTORY

1. OPEN GOVERNMENT COMMISSION

2180 Milvia Street, Fourth Floor

Berkeley, CA 94704

(510) 981-6998

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

2. CITY CLERK

2180 Milvia Street, First Floor

Berkeley, CA 94704

(510) 981-6900

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

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

3. BERKELEY MUNICIPAL CODE

Lobbyist Registration and Regulations

Chapter 2.09

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

**APPENDIX B: FULL TEXT OF ORDINANCE**

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

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

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

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

**Chapter 2.09  
LOBBYIST REGISTRATION AND REGULATIONS**

Sections:

**Article 1. General Provisions**

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

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

- 2.09.040 Words and phrases.
- 2.09.050 Definitions.

**Article 3. Registration of Lobbyists**

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

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

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

**Article 5. Prohibitions**

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

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

**Article 6. Enforcement**

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

**Article 1. General Provisions**

**2.09.010 Title.**

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

**2.09.020 Findings.**

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

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

**2.09.030 Purpose.**

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

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

**2.09.040 Words and phrases.**

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

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

**2.09.050 Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**2.09.070 Cessation of employment.**

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

**2.09.080 Lobbyist training.**

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

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

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

**2.09.090 Exceptions.**

The provisions of this Act shall not apply:

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

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

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

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



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

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

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

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

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

**2.09.100 Failure to Register.**

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

**2.09.110 Availability of information.**

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

**2.09.120 Filing under penalty of perjury.**

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

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

**2.09.130 Records.**

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

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

**2.09.140 Quarterly disclosure.**

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

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

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

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

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

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

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

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

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

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

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

#### **2.09.160 Audits**

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

### **Article 5. Prohibitions**

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

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

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

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

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

**2.09.190 Deception prohibited.**

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

**2.09.200 False appearances prohibited.**

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

**2.09.210 Prohibited representations.**

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

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

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

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

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

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

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

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

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

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

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

B. This prohibition shall not apply to:

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

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

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

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

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

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

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

## **Article 6. Enforcement**

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

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

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

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

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

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

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

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

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

**2.09.270 Violations – commission action.**

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

**2.09.280 Civil actions.**

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

**2.09.290 Civil penalties.**

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

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

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

**2.09.300 Criminal violation.**

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

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

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

**2.09.310 Joint and several liability.**

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

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

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

**2.09.320 Effective date.**

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

**2.09.330 Severability.**

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

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

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

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

1) The Open Government Commission shall:

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

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

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



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

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

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

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

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

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

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

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



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### [PUBLIC ACCESS PORTAL](#)

The Public Access Portal contains financial information provided by candidates and committees. It can answer questions about who is contributing money, who is receiving money, and how it is being spent.

Use the Public Access Portal to research campaign contributions and expenditures, review campaign statements filed, or examine a committee's filing history.

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### [FILER ACCESS PORTAL](#)

The Filer Access Portal is a web-based, data entry filing system that allows candidates and campaign committees to submit disclosure reports mandated to the City of Berkeley EFS, free of charge.

Use the Filer Access Portal to create electronic campaign statements. Before you begin you must have received your EFS filer identification number and password. To get a filer identification number and password, contact the City Clerk. Tel: (510) 981-6900, TDD: (510) 981-6903.

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2180 Milvia Street, Berkeley, CA 94704

Questions or comments? Email: [clerk@ci.berkeley.ca.us](mailto:clerk@ci.berkeley.ca.us)