



Fair Campaign Practices Commission  
Open Government Commission

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

**MEETING AGENDA**

**June 15, 2023**

**6:30 p.m.**

**North Berkeley Senior Center – 1901 Hearst Ave. – Aspen Room**

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

Secretary: Samuel Harvey

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

1. Call to Order 6:30 p.m.
2. Roll Call.
3. Public Comment. *Comments on subjects not on the agenda that are within the Commissions' purview are heard at the beginning of meeting. Speakers may comment on agenda items when the Commission hears those items.*
4. Approval of minutes for May 18, 2023 FCPC-OGC Regular Meeting

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

5. Reports.
  - a. Report from Chair.
  - b. Report from Staff.
6. Report from subcommittee on contribution limits under Berkeley Municipal Code § 2.12.415; discussion and possible action.
7. FCPC Work Plan; discussion and possible action.

**Open Government Commission (OGC) Agenda**

8. Reports.
  - a. Report from Chair.
  - b. Report from Staff.
9. Report from subcommittee reviewing policies and practices related to City Council meeting public commenting, access and public participation; discussion and possible action.
10. OGC Work Plan; discussion and possible action
11. Background information on Public Records Act compliance: City Public Records Act Training Presentation; discussion and possible action.
12. Adjournment.

**Communications**

- None

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



Fair Campaign Practices Commission  
Open Government Commission

## DRAFT MINUTES

May 18, 2023

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

North Berkeley Senior Center  
1901 Hearst Ave.  
Aspen Room

Secretary: Samuel Harvey

Members Present: Patrick O'Donnell, Janis Ching, Kitt Saginor, Pedro Hernandez,  
James Hynes

Also Present: Samuel Harvey, Staff Secretary

1. **Call to Order**

Chair called the meeting to order at 6:30 p.m.

2. **Roll Call**

Roll call taken.

3. **Public Comment**

Two speakers.

4. **Approval of Minutes:**

a. April 20, 2023 FCPC-OGC Concurrent Regular Meeting

a. Public comment: none.

b. Commission discussion and action.

*Motion to approve minutes* (M/S/C: O'Donnell/Ching; Ayes: O'Donnell, Ching, Saginor, Hernandez, Hynes; Noes: none; Abstain: none; Absent: Blome.)

**FCPC Agenda**

5. **Reports**
  - a. **Report from Chair**
  - b. **Report from Staff**
  
6. **City Clerk Department referral to Commission regarding failure of Mike Chang for Berkeley School Board 2022 to file campaign report covering Oct. 23, 2022 to Dec. 31, 2022**
  - a. Public comment: No speakers.
  - b. Commission discussion and action.

*Motion to direct Secretary to return at a future meeting with a report making a recommendation regarding whether the Commission should make a finding of probable cause that Mike Chang for Berkeley School Board 2022 has violated the Berkeley Election Reform Act (“BERA”) (M/S/C: Ching/Saginor; Ayes: O’Donnell, Ching, Saginor, Hernandez, Hynes; Noes: none; Abstain: none; Absent: Blome.)*

7. **Amendments to Berkeley Election Reform Act (“BERA”) related to public financing, campaign reporting and other topics**
  - a. Public comment: No speakers.
  - b. Commission discussion and action

*Motion to approve the proposed amendments to BERA and submit to Council for adoption (M/S/C: Saginor/Ching; Ayes: O’Donnell, Ching, Saginor, Hernandez, Hynes; Noes: none; Abstain: none; Absent: Blome.)*

8. **Report from subcommittee on contribution limits under Berkeley Municipal Code § 2.12.415**
  - a. Public comment: No speakers
  - b. Commission discussion

**OGC Agenda**

9. **Reports**
  - a. **Report from Chair.**
  - b. **Report from Staff.**
  
10. **Report from subcommittee reviewing policies and practices related to City Council meeting public commenting, access and public participation**
  - a. Public comment: No speakers.

b. Commission discussion.

11. **Annual staff report pursuant to Berkeley Municipal Code section 2.06.190.C**

a. Public comment: No speakers.

12. **Adjournment**

*Motion to adjourn* (M/S/C: Ching/O'Donnell; Ayes: O'Donnell, Ching, Saginor, Hernandez, Hynes; Noes: none; Abstain: none; Absent: Blome.)

The meeting adjourned at 8:23 p.m.



Fair Campaign Practices Commission

To: Fair Campaign Practices Commission

From: Sam Harvey, Secretary, Fair Campaign Practices Commission

Subject: Fair Campaign Practices Commission FY2023-2024 Work Plan

City boards and commissions are required to update their work plans at the start of each fiscal year (July 1 – June 30). Work plans are then submitted to the City Council as information items.

Commission work plans should contain the commission's mission statement, goals, resources, activities, outputs, and desired outcomes. The work plan should also specify how and when the commission plans to accomplish its objectives (by specifying outcomes) during the fiscal year. Goal statements explain the nature and scope of the work to be performed and the time needed to accomplish the goal.

Attached is the Commission's prior work plan adopted and submitted to the City Council for fiscal year 2022-2023. Staff recommends that the Commission review the attached work plan and update the document to reflect the Commission's goals and scope of work for fiscal year 2023-2024. The work plan is not binding on the Commission, but rather serves as a guiding document for the Commission's work and as a means of communicating to the City Council about the Commission's plans and goals.



Fair Campaign Practices Commission

INFORMATION CALENDAR  
XXXXXX XX, 2022

To: Honorable Mayor and Members of the City Council  
From: Fair Campaign Practices Commission  
Submitted by: Sam Harvey, Secretary, Fair Campaign Practices Commission  
Subject: Fair Campaign Practices Commission FY2022-2023 Work Plan

INTRODUCTION

The Fair campaign Practices Commission (FCPC) has updated its work plan, which outlines Commission objectives for the upcoming fiscal year. This work plan includes ongoing compliance review of campaign statements; ongoing review of alleged violations of the Berkeley Election Reform Act (BERA); receiving trainings on various topics including due process, complaint hearings processes, the Brown Act, conflicts of interest, BERA and campaign reporting obligations, and legislative vs. quasi-judicial roles of the Commission; developing recommendations for removing barriers to access for candidates by streamlining and simplifying City's campaign rules, regulations and procedures; reviewing BERA enforcement procedures; and working collaboratively with the City Council to develop policy related to Officeholder Accounts.

CURRENT SITUATION AND ITS EFFECTS

At the regular meeting on June 16, 2022, the Fair Campaign Practices Commission unanimously approved the FY2022-2023 Work Plan, which will be used to guide the Commission's work throughout the year.

**Action:** M/S/C (Tsang/Hernandez) to approve work plan with changes.

**Vote:** Ayes: Blome, Ching, Hernandez, Newman, O'Donnell, Tsang, Hynes; Noes: none; Abstain: none; Absent: Humbert, Sheahan.

BACKGROUND

See attached Work Plan.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

No environmental or climate impacts or opportunities were identified as a result of this recommendation.



Fair Campaign Practices Commission

POSSIBLE FUTURE ACTION

Based on Commission research and public hearings, new initiatives and recommendations to City Council may be submitted to City Council at such time deemed necessary.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Unknown, but none expected.

CONTACT PERSON

Samuel Harvey, Commission Secretary, City Attorney's Office (510) 981-6998  
James Hynes, Chairperson, (510) 981-6998

Attachment: 1: Fair Campaign Practices Commission Work Plan





Fair Campaign Practices Commission

**Work Plan for FY2022-2023 (July 1, 2022- June 30, 2023)  
Approved June 16, 2022**

- Ongoing compliance review of campaign statements.
- Ongoing review of alleged violations of BERA.
- Receive trainings on various topics including:
  - Due process and complaint hearings processes
  - Brown Act
  - Conflicts of interest
  - Berkeley Election Reform Act and campaign reporting obligations
  - Legislative vs. quasi-judicial roles of the Commission
- Develop recommendations for removing barriers to access for candidates by streamlining and simplifying City's campaign rules, regulations and procedures.
- Review BERA enforcement procedures.
- Work collaboratively with the City Council to develop policy related to Officeholder Accounts.

**Situation:** The Open Government Commission (OGC) would like to work with the City Council to explore improvements to the way city council meetings offer opportunities for public comment. The two main problems identified are 1) that meetings run long, often ending late at night; and 2) long wait times make it difficult for members of the public to comment on issues being discussed, especially when there are last minute substantive changes.

Mayor Arreguín has already implemented some changes to address these issues:

1. Meetings now start at 6pm instead of 7pm so they can end earlier; and
2. More special meetings are held to discuss single issues.

**Background:** On March 14, 2023, City Council amended the way public comment is taken at City Council meetings to allow two periods of public comment on Action Items, one at the beginning of the Action Calendar and a second at the time each Action Item is discussed.<sup>1</sup> Members of the public may speak at only one of these two periods on any Action Item.

**Assessment:** The OGC agrees with this policy as it provides the public two options to participate. We thank the City Council for maintaining public comment at the time each Action Item is discussed as this allows the public to hear comments, questions, and proposed changes from City Councilmembers before making public comment.

At the March 14 meeting, the council voted to “Refer the suggestions regarding improvements to the meeting process to the Agenda & Rules Committee and the Open Government Commission for consideration.”

**Below are our recommendations based on those comments.**

**I. For immediate implementation or rejection:**

<b>Suggested Change</b>	<b>Intended Result</b>
1. Continue to allow the public to participate remotely via videoconference.	Removes barriers to participation, especially for those with disabilities.
2. Enable live transcription at all meetings with a videoconference component.	People joining remotely can better understand what is being said.
3. Limit councilmember comments to 5 minutes/person and enforce this rule.	
4. Minimize discussion of items on the Consent Calendar.	Bring practice into alignment with City Council Rules of Procedure, Sec. IV, Conduct of Meeting, Sub. B,
5. Require that supplemental materials be submitted earlier.	Allows everyone to review materials before the meeting.
6. Acknowledge and encourage comments received via email	Demonstrates that the council is receptive to written correspondence.

**II. For further consideration and/or research:**

<b>Suggested Change</b>	<b>Intended Result</b>
1. Schedule more meetings with fewer items on the agenda at each meeting	Members of the public would wait less long to speak on an item.
2. Have separate meetings for city department reports and/or informational items.	Agenda items at these meetings would be time certain.
3. Limit to 20 minutes any city department reports included within a regular meeting.	
4. Have Special Meetings on a different day from Regular Meetings	Regular Meetings can start on time and end earlier.

**III. Suggestions NOT recommended by subcommittee**

<b>Suggested Change</b>	<b>Reason to reject</b>
1. Limit the number of speakers at public comment	Public comment is an integral part of our democracy.
2. Make all staff presentations "pre-reads" so that Council could open with questions and then public comment	Not possible to require councilmembers and public to "pre-read"
3. Move the Consent Calendar to the end of the meeting	Moving an item from Consent to action would require either a second Action section or deferring the item to a subsequent meeting
4. Canvass public members on which item(s) they've come to address and reorder agenda to place those items first.	Impractical, especially with many joining on zoom.
5. Agendize items to "time certain" (a time, not just a date).	Length of items - including length of public - comment, cannot be predicted accurately
6. Evaluate changes introduced at the March 14th meeting after they've been in use for some time and "sunset" unless a decision is made to continue them.	Reconsideration as needed is recommended, but not a formal evaluation. Action to discontinue changes can be taken if needed.
7. Remove ceremonial matters from the agenda.	I think there's zero chance Council will accept this recommendation.

<sup>1</sup> Resolution No. 70,725–N.S, revised “Option 2”, which includes providing “for public comment on the Action Calendar at the onset of the Action Calendar, and as the Action Calendar items are taken up, with exceptions. The changes to the procedures are effective April 11, 2023, available at <https://berkeleyca.gov/sites/default/files/documents/2023-03-14%20Item%2020%20Supp2%20Robinson.pdf>. <sup>2</sup> City Council Rules of Procedure, Sec. IV, Conduct of Meeting, Sub. B, pg. 26, available at <https://berkeleyca.gov/sites/default/files/2022-04/City%20Council%20Rules%20of%20Procedure.pdf>.



Open Government Commission

To: Open Government Commission

From: Sam Harvey, Secretary, Open Government Commission

Subject: Open Government Commission FY2023-2024 Work Plan

City boards and commissions are required to update their work plans at the start of each fiscal year (July 1 – June 30). Work plans are then submitted to the City Council as information items.

Commission work plans should contain the commission's mission statement, goals, resources, activities, outputs, and desired outcomes. The work plan should also specify how and when the commission plans to accomplish its objectives (by specifying outcomes) during the fiscal year. Goal statements explain the nature and scope of the work to be performed and the time needed to accomplish the goal.

Attached is the Commission's prior work plan adopted and submitted to the City Council for fiscal year 2022-2023. Staff recommends that the Commission review the attached work plan and update the document to reflect the Commission's goals and scope of work for fiscal year 2023-2024. The work plan is not binding on the Commission, but rather serves as a guiding document for the Commission's work and as a means of communicating to the City Council about the Commission's plans and goals.



Open Government Commission

INFORMATION CALENDAR  
XXXXX XX, 2022

To: Honorable Mayor and Members of the City Council  
From: Open Government Commission  
Submitted by: Samuel Harvey, Secretary, Open Government Commission  
Subject: Open Government Commission FY2022-2023 Work Plan

INTRODUCTION

The Open Government Commission (OGC) has updated its work plan, which outlines Commission objectives for the upcoming fiscal year. This work plan includes the ongoing review of complaints concerning alleged non-compliance with the Open Government Ordinance, the Brown Act, the Public Records Act, or the Lobbyist Registration Act; proposing legislation or procedures to ensure the City's compliance with the Open Government Ordinance, the Brown Act, the Public Records Act, and the Lobbyist Registration Act; administering and making more effective the Lobbyist Registration Ordinance; advising the City Council of any action or policy that would enhance open and effective government in the City; reviewing, approving, and forwarding to City Council the annual report submitted to the Open Government Commission by the City Manager regarding compliance with the Open Government Ordinance, the Public Records Act, the Brown Act, the Lobbyist Registration Act, and any other information the City Manager deems appropriate for open and effective government in the City of Berkeley; working collaboratively with the City Council to monitor and evaluate policies related to Council District (D-13) accounts; and receiving trainings on topics including the Brown Act, conflicts of interest, the Public Records Act, the Open Government Ordinance, and the Berkeley Lobbyist Registration Act.

CURRENT SITUATION AND ITS EFFECTS

At the regular meeting on June 16, 2022, the Open Government Commission unanimously approved the FY2022-2023 Work Plan, which will be used to guide the Commission's work throughout the year.

M/S/C (Blome/Hernandez) to adopt work plan with amendments regarding work related to D-13 accounts

Ayes: Blome, Ching, Hernandez, Newman, O'Donnell, Tsang, Hynes; Noes: none; Abstain: none; Absent: Humbert, Sheahan.



Open Government Commission

BACKGROUND

See attached Work Plan.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

No environmental impacts or opportunities were identified as a result of this recommendation.

POSSIBLE FUTURE ACTION

Based on Commission research and public hearings, new initiatives and recommendations to City Council may be submitted to City Council at such time deemed necessary.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Unknown, but none expected.

CONTACT PERSON

Samuel Harvey, Commission Secretary (510) 981-6998  
James Hynes, Chairperson (510) 98106998

Attachment: 1: Open Government Commission FY2022-2023 Work Plan



Open Government Commission

Attachment 1

**Work Plan for FY2022-2023 (July 1, 2022- June 30, 2023)  
Approved June 16, 2022**

- Ongoing review of complaints concerning alleged non-compliance with the Open Government Ordinance, the Brown Act, the Public Records Act, or the Lobbyist Registration Act.
- Propose legislation or procedures to further ensure the City of Berkeley's compliance with the Open Government Ordinance, the Brown Act, the Public Records Act, and the Lobbyist Registration Act.
- Administer and make more effective the Lobbyist Registration Ordinance.
- Advise the City Council of any action or policy that would enhance open and effective government in the City of Berkeley.
- Review, approve, and forward to the City Council the annual report submitted to the Open Government Commission by the City Manager regarding compliance with the Open Government Ordinance, the Public Records Act, the Brown Act, the Lobbyist Registration Act, and any other information the City Manager deems appropriate for open and effective government in the City of Berkeley.
- Work collaboratively with the City Council to monitor and evaluate policies related to Council District ("D-13") accounts.
- Receive trainings on various topics including:
  - Brown Act
  - Conflicts of Interest
  - Public Records Act
  - Open Governance Ordinance
  - Berkeley Lobbyist Registration Act





Open Government Commission

# The California Public Records Act

City of Berkeley

Office of the City Attorney

November 12, 2020

# The Public Records Act (PRA)

- Guarantees the right of the public to inspect and receive copies of public records
- Requires City employees to make requested records “promptly available”

*“[A]ccess to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.”* (Cal. Gov. Code § 6250.)

# What is a Public Record?

- All records “relating to the conduct of the public’s business” that are “prepared, owned, used, or retained” by the City “regardless of physical form or characteristics”
  - Documents
  - Papers
  - Maps
  - Reports
  - Spreadsheets
  - Photographs
  - Email
  - Voicemail
  - Text messages
  - Video and audio
  - Digital information
  - Transcripts

Basically every format in which information is stored!

However, you do not have to create records that don't exist.

# What is a Public Record? (cont.)

- Public records can exist on personal computers, cell phones, email accounts
- All records relating to the public's business

*“[A] city employee's communications related to the conduct of public business do not cease to be public records just because they were sent or received using a personal account.”* (City of San

Jose v. Superior Court (2017) 2 Cal.5th 608, 625.)

# Who is responsible for each request?

- Each department is responsible for handling their own PRA requests
- The City Attorney's office handles:
  - Requests to the Council
  - Requests to the City Manager's office
  - Multi-departmental requests:
    - Each department is responsible for providing the requested documents in a timely manner
    - CAO will coordinate response, but departments should feel free to respond directly to requestor as well
- CAO available to answer staff questions about any and all PRA requests

# Required Responses

- 10-Day response – Legally required
  - Within 10 days of receipt of the request, you must notify the requester whether records will be disclosed. (Cal. Gov. Code § 6253(c).)
  - Not required to produce records within 10 days. But if you can that's great.
- 10 days from the date the request was received - not from the date entered into the system
- If the request was sent on a weekend or holiday, the date received is next business day.
- If 10<sup>th</sup> day falls on a weekend or holiday, response is due the next business day
- City reduced service days are still technically “business days” for the PRA

# 10-Day Response

The 10-day response must be one of the following:

1. Tell the requestor that responsive records exist and give them a date by which you expect to be able to provide them:  
*“We have identified responsive records and expect to be able to provide them by Tuesday, October 5, 2021”*
2. Provide the records:  
*“Attached are the records you requested” or “Attached are some of the records you requested. We expect to produce the remaining records by February 2, 2021.”*
3. *“We have determined that responsive records do not exist”*
4. Tell the requestor the City needs 14 more days to determine whether there are responsive records:  
*“The City requires an additional 14 calendar days to determine whether responsive records exist based upon the volume of records that must be reviewed.”*



# The 14-Day Extension

- If you need more time to determine whether you have responsive records, you can assert a 14-day extension in your 10-day response.
- Gives you an extra 14 days (24 total days from date of request) to determine whether you have responsive documents.
- Can assert a 14-day extension for the following reasons:
  1. To search for, collect, and examine a voluminous amount of records
  2. To consult with another agency with an interest in the request (either another City department or external agency)
  3. To search for and collect records from off-site facilities
  4. To compile data, write computer programming, or create a computer report to extract data.
- You must provide the reason(s) for the 14-day extension in your written 10-day response.
- After 14 day extension (24 days from the date the request was received) you must do one of the following:
  - Provide the records
  - Tell the requestor you have responsive records and provide an estimated date of production
  - Inform the requestor that no responsive records exist

# How soon do you have to produce records?

- The 10-day (or 14-day) response does not need to include documents if they are not yet ready
- You do need to provide an estimated date by which the documents will be produced.
  - “We have identified documents which are responsive to your request and expect to be able to produce all documents by January 15, 2021.”
- Documents must be provided “promptly”
- In practice— provide reasonable estimated dates of production that you will be able to meet

# Narrowing the request

- If a request is vague or overly broad, contact the requestor and ask them if they are willing to narrow the request. Inform the requestor that narrowing the request can ensure that they receive their documents sooner.
- Some ways to narrow a request:
  - By date “records from 1/1/1999 to 6/3/2004”
  - By department “from Public Works and Parks”
  - By subject matter “relating to building permits for multi-unit residential properties”
- Even if the requestor is not responsive or is unwilling to narrow the request, you still must adhere to the response timeline (e.g., 10-day response, estimated date of production)

# Privileged/Exempt Documents and Redactions

- Certain documents or portions of documents are protected from disclosure
- The PRA contains a strong policy in favor of disclosure. Where possible:
  - Only withhold single pages of documents that are otherwise disclosable
  - Redact sensitive information and provide remainder of document
- Sometimes entire documents should be withheld. Sometimes only protected information within documents should be redacted.

# Common Privileges and Exemptions

- There are many exemptions to the PRA that allow the City to withhold certain documents. Some include:
  - Attorney-client privilege
  - Personal medical information
  - Personal financial records
  - Copyrighted materials
  - Library records
  - Certain law enforcement records
  - Trade secrets
  - And many more . .

# Privileges and Exemptions (cont.)

## Protecting the decisionmaking process

- Drafts
  - PRA exempts “[p]reliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure.”
    - Policy: protecting City employees’ decision making processes
    - A “draft” document that functions as a final document is not exempt
- Deliberative process
  - “Pre-decisional” communications between City employees/officials
  - Policy: the public’s interests are served when City employees and officials feel free to discuss policy matters frankly without fear of public scrutiny. Encouraging a variety of opinions and points of view.

# Privileges and Exemptions

- There are many different protections and exemptions that can apply to public records.
- Familiarize yourself with the common exemptions applicable to your department's records
- If you encounter a record that you feel unsure about, contact the City Attorney's office.

# Privileges and Exemptions

- When withholding or redacting documents, you must explain in writing which exemptions are being used:
  - E.g, “Certain documents have been withheld based upon the attorney-client privilege”
- You do not need to list or describe the withheld documents or information
- Response needs to be in writing and carry the name and title of the individual responsible for the determination to withhold information:
  - Ex. A signature block with your name and title



# Questions?

City Attorney's office:

- Sam Harvey: [sharvey@cityofberkeley.info](mailto:sharvey@cityofberkeley.info)
- Keith Nesbit: [knesbit@cityofberkeley.info](mailto:knesbit@cityofberkeley.info)