



Planning Commission

# AGENDA

## REGULAR MEETING OF THE PLANNING COMMISSION

This meeting is held in a wheelchair accessible location.

[Click here to view the entire Agenda Packet](#)

Wednesday, December 4, 2019  
7:00 PM

South Berkeley Senior Center  
2939 Ellis Street

See “*MEETING PROCEDURES*” below.

All written materials identified on this agenda are available on the Planning Commission webpage: <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=13072>

### PRELIMINARY MATTERS

- 1. Roll Call:** Wiblin, Brad, appointed by Councilmember Kesarwani, District 1  
Martinot, Steve, appointed by Councilmember Davila, District 2  
Schildt, Christine, Chair, appointed by Councilmember Bartlett, District 3  
Lacey, Mary Kay, appointed by Councilmember Harrison, District 4  
Beach, Benjamin, appointed by Councilmember Hahn, District 5  
Kapla, Robb, Vice Chair appointed by Councilmember Wengraf, District 6  
Shane Krpata, appointed by Councilmember Robinson, District 7  
Vincent, Jeff, appointed by Councilmember Droste, District 8  
Wrenn, Rob, appointed by Mayor Arreguin
- 2. Order of Agenda:** The Commission may rearrange the agenda or place items on the Consent Calendar.
- 3. Public Comment:** Comments on subjects not included on the agenda. Speakers may comment on agenda items when the Commission hears those items. (See “*Public Testimony Guidelines*” below):
- 4. Planning Staff Report:** In addition to the items below, additional matters may be reported at the meeting. **Next Commission meeting: January 15, 2020.**
- 5. Chairperson’s Report:** Report by Planning Commission Chair.
- 6. Committee Reports:** Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.
- 7. Approval of Minutes:** [Approval of Draft Minutes from the meeting on November 6, 2019.](#)
- 8. Future Agenda Items and Other Planning-Related Events:** None.

**AGENDA ITEMS:** All agenda items are for discussion and possible action. Public Hearing items require hearing prior to Commission action.

9. **Discussion:** ***Proposed Transportation Demand Management Program and Reduction of Parking Requirements***  
**Recommendation:** Review report and provide feedback on a proposed Transportation Demand Management (TDM) program. Consider recommendation to eliminate minimum parking requirements for certain multi-family projects.  
**Written Materials:** [Attached](#)  
**Web Information:** N/A  
**Continued From:** N/A
10. **Discussion:** ***2740 and 2744 Telegraph Avenue Proposal for General Plan Re-designation and Zoning Map Amendment***  
**Recommendation:** Consider proposal to re-designate and rezone portions of parcels at 2740 and 2744 Telegraph Avenue  
**Written Materials:** [Attached](#)  
**Web Information:** N/A  
**Continued From:** N/A

**ADDITIONAL AGENDA ITEMS:** In compliance with Brown Act regulations, no action may be taken on these items. However, discussion may occur at this meeting upon Commissioner request.

**Information Items:**

- [October 15- Referral: Modifications to Zoning Ordinance to Support Small Businesses](#)
- [November 12- SB 2 Planning Grant Authorization](#)
- [November 19- Priority Development Area Nomination – North Berkeley Bart Station](#)

**Communications:**

- [November 13– Planning Staff, BeST Plan](#)
- [November 18- City Clerk, Berkeley Lobbyist Registration Ordinance](#)

**Late Communications:** (Received after the packet deadline): *None*.

**Late Communications:** (Received and distributed at the meeting): *None*.

**ADJOURNMENT**

## **Meeting Procedures**

### ***Public Testimony Guidelines:***

Speakers are customarily allotted up to three minutes each. The Commission Chair may limit the number of speakers and the length of time allowed to each speaker to ensure adequate time for all items on the Agenda. ***To speak during Public Comment or during a Public Hearing, please line up behind the microphone.*** Customarily, speakers are asked to address agenda items when the items are before the Commission rather than during the general public comment period. Speakers are encouraged to submit comments in writing. See “Procedures for Correspondence to the Commissioners” below.

### ***Consent Calendar Guidelines:***

The Consent Calendar allows the Commission to take action with no discussion on projects to which no one objects. The Commission may place items on the Consent Calendar if no one present wishes to testify on an item. Anyone present who wishes to speak on an item should submit a speaker card prior to the start of the meeting, or raise his or her hand and advise the Chairperson, and the item will be pulled from the Consent Calendar for public comment and discussion prior to action.

### ***Procedures for Correspondence to the Commissioners:***

To distribute correspondence to Commissioners prior to the meeting date, submit comments by 12:00 p.m. (noon), eight (8) days before the meeting day (Tuesday) (email preferred):

- If correspondence is more than twenty (20) pages, requires printing of color pages, or includes pages larger than 8.5x11 inches, please provide 15 copies.
- Any correspondence received after this deadline will be given to Commissioners on the meeting date just prior to the meeting.
- Staff will not deliver to Commissioners any additional written (or emailed) materials received after 12:00 p.m. (noon) on the day of the meeting.
- Members of the public may submit written comments themselves early in the meeting. To distribute correspondence at the meeting, please provide 15 copies and submit to the Planning Commission Secretary just before, or at the beginning, of the meeting.
- Written comments should be directed to the Planning Commission Secretary, at the Land Use Planning Division (Attn: Planning Commission Secretary).

***Communications are Public Records:*** Communications to Berkeley boards, commissions, or committees are public records 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.

***Written material*** may be viewed in advance of the meeting at the Department of Planning & Development, Permit Service Center, **1947 Center Street, 3<sup>rd</sup> Floor**, during regular business hours, or at the Reference Desk, of the Main Branch Library, 2090 Kittredge St., or the West Berkeley Branch Library, 1125 University Ave., during regular library hours.

**Note:** *If you object to a project or to any City action* or procedure relating to the project application, any lawsuit which you may later file may be limited to those issues raised by you or someone else in the public hearing on the project, or in written communication delivered at or prior to the public hearing. The time limit within which to commence any lawsuit or legal challenge related to these applications is governed by Section 1094.6, of the Code of Civil Procedure, unless a shorter limitations period is specified by any other provision. Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred.

**Meeting Access:** 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 (3) business days before the meeting date.

***Please refrain from wearing scented products to public meetings.***

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I hereby certify that the agenda for this regular/special meeting of the Berkeley City Commission on Commissions was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on **November 27, 2019**.

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Alene Pearson  
Planning Commission Secretary





Planning Commission

1                   **DRAFT MINUTES OF THE REGULAR PLANNING COMMISSION MEETING**  
2   **November 6, 2019**

3 The meeting was called to order at 7:02 p.m

4 **Location:** South Berkeley Senior Center, Berkeley, CA

5 **1. ROLL CALL:**

6       **Commissioners Present:** Benjamin Beach, Robb Kapla, Shane Krapata, Mary Kay Lacey,  
7       Steve Martinot, Christine Schildt, Jeff Vincent, Brad Wiblin, and Rob Wrenn.

8       **Commissioners Absent:** None.

9       **Staff Present:** Secretary Alene Pearson, Katrina Lapira, Sarah Lana, and Beth Thompson.

10 **2. ORDER OF AGENDA:** No changes.

11 **3. PUBLIC COMMENT PERIOD:**

- 12           • Kelsie Kerr- Zoning changes to support small businesses

13 **4. PLANNING STAFF REPORT:** None.

14 **Information Items:** None.

15 **Communications:**

- 16           • October 14- Chimey Lee, Referencing European Cities  
17

18 **Late Communications** (Received after the Packet deadline):

- 19           • November 1- Planning Staff, Item 11 Written Materials  
20           • November 5- Kelsie Kerr, Small Business Support  
21           • November 5- Kelsie Kerr, Berkeleyside Article

22 **Late Communications** (Received and distributed at the meeting):

- 23           • November 6- Office of Emergency Services Staff, Item 9 Presentation  
24           • November 6- Transportation Division Staff, Item 10 Presentation  
25           • November 6- Ben Paulos, Final LHMP Comments

26 **5. CHAIR REPORT:**

- 27           • Adeline Event

28 **6. COMMITTEE REPORT:**  
29

- 30 • Joint Subcommittee for Implementation of State Housing Laws (JSISHL): During the last  
31 meeting was on October 23, 2019 the subcommittee discussed the approach to the final  
32 recommendation to City Council and objective standards for shadows. At the next  
33 meeting on December 11, 2019 JSISHL will revisit form of the final recommendation  
34 approach and objective design standards.  
35
- 36 • Adeline Corridor Specific Plan Subcommittee- At the next meeting on November 21,  
37 2019 the subcommittee will review draft zoning code language for the proposed Adeline  
38 overlay. On Saturday, November 16 from 10am-1pm the subcommittee will host a  
39 Community Meeting at The Black Repertory Group Theater.  
40
- 41 • Zoning Ordinance Revision Project (ZORP): The subcommittee will review the  
42 reformatted manufacturing and commercial district chapters at next meeting on  
43 November 19.  
44
- 45 • Southside EIR Subcommittee: Members of subcommittee include Commissioners Shane  
46 Krapata, Robb Kapla, Mary Kay Lacey.

47 **7. APPROVAL OF MINUTES:**

48 Motion/Second/Carried (Lacey/Vincent) to approve the Planning Commission Meeting  
49 Minutes from October 6, 2019. Ayes: Beach, Kapla, Lacey, Martinot, Vincent, Wrenn, and  
50 Wiblin. Noes: None. Abstain: Krapata, Schildt. Absent: None. (7-0-2-0)

51  
52 **FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:** At the next meeting,  
53 December 4, 2019 the following items may be presented.

- 54
- 55 • Draft Parking Reform Proposal – TDM and Parking Standards
- 56 • Introduction to Project Re-Zone Request

57 **AGENDA ITEMS**

58 **9. Action: Public Hearing: Local Hazard Mitigation Plan (LHMP)**

59 Office of Emergency Services (OES) Staff presented an overview of the Final Draft Plan of the  
60 2019 LHMP, describing the purpose of the document and its relationship to hazard mitigation  
61 and federal grant funding. Staff also highlighted both the public feedback process and the  
62 technical review of the plan its final iteration. During their discussion, the Planning Commission  
63 commented on the recent PG&E planned power outages and questioned how the needs of  
64 vulnerable communities were addressed and defined in the LHMP.  
65

66 **Public Comments: 2**

67 Motion/Second/Carried (Kapla /Wrenn) to close public hearing at 8:17pm and recommend to  
68 City Council adoption of the 2019 LHMP, make the General Plan findings, and recommend  
69 amending the General Plan to reference the updated LHMP.  
70 Ayes: Beach, Hernandez, Kapla, Krapata, Lacey, Martinot, Vincent, Wiblin, and Wrenn. Noes:  
71 None. Abstain: Schildt. Absent: None. (8-0-1-0)

72

73 **10. Discussion:                    Transportation Impact Fee (TIF)**

74 Transportation Division Staff provided information on 1) the upcoming nexus study required for  
75 the calculation and potential adoption of a transportation impact fee (TIF) and 2) work related to  
76 the transportation impact study guidelines, per the California Environmental Quality Act (CEQA).  
77 Staff will findings on the transportation impact study guidelines in early Spring 2020.  
78 Commission provided feedback, requesting coordination and collaboration between the Land  
79 Use Planning Division and the Transportation Division on this work and Parking Reform.

80 **Public Comments: 0**

81 **11. Discussion:                    2019 California Housing Legislation**

82 Planning staff presented a summary of the staff report covering four key housing bill passed in  
83 the 2019 California Housing Bills and answered questions from the Commission.

84 **Public Comments: 3**

85 **12. Action:                         2020 Planning Commission Calendar**

86 Staff shared the tentative meeting dates for the Planning Commission in 2020.

87 **Public Comments: 0**

88 Motion/Second/Carried (Schildt /Kapla) to adopt Adopt 2020 Planning Commission calendar,  
89 confirming January 15 and adding three additional meeting dates: February 19, March 18,  
90 and April 15.  
91 Ayes: Beach, Hernandez, Kapla, Krapata, Lacey, Martinot, Vincent, Schildt, Wiblin, and  
92 Wrenn. Noes: None. Abstain: None. Absent: None. (9-0-0-0)

93 **The meeting was adjourned at 10:07pm**

94 **Commissioners in attendance: 9**

95 **Members in the public in attendance: 10**

96 **Public Speakers: 5 speakers**

97 **Length of the meeting: 3 hours and 5 minutes**





Planning and Development Department  
Land Use Planning Division

## STAFF REPORT

DATE: December 4, 2019  
TO: Members of the Planning Commission  
FROM: Justin Horner, Associate Planner  
SUBJECT: Proposed Transportation Demand Management Program and Reduction of Parking Requirements

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### RECOMMENDATION

Review report and parking utilization study, provide feedback on a proposed Transportation Demand Management (TDM) program for new residential and mixed-use residential development of ten or more dwelling units, and consider recommendation to eliminate minimum parking requirements for certain multi-family projects.

### BACKGROUND

In response to the City Council's Green Affordable Housing Package and the City-wide Green Development Requirements referrals, the Planning Commission discussed potential parking reform at their July 17, 2019 meeting (see *Attachment 1*). Planning Commission requested development of a Transportation Demand Management (TDM) requirement for new residential and mixed-use residential development in Berkeley that would result in 10 or more dwelling units. They also discussed a proposal to conduct a Residential Parking Capacity Study (Parking Study) to provide data on real-world residential parking usage and to inform future discussions about TDM and parking requirement reform.

At their meeting of October 2, 2019, the Planning Commission discussed four specific TDM frameworks and directed staff to return with a TDM program that included specific recommended elements. They also requested that TDM be discussed with reductions in parking requirements, in the context of the results of the Parking Study, at their meeting of December 4, 2019.

Presented here is the Parking Study, a recommended TDM program, and a recommendation to eliminate minimum parking requirements for certain multi-family projects. It is requested that the Planning Commission receive this report and its accompanying presentation, provide comments and feedback, and direct staff to develop Zoning Ordinance language for the TDM program to be presented at a public hearing at the February 5, 2020 Planning Commission meeting.

## **Residential Parking Utilization Study**

In August, 2019, the City of Berkeley entered into a contract with the transportation planning consultant Nelson/Nygaard to conduct a residential parking utilization study (Parking Study). The purpose of the Parking Study is to analyze the actual usage of residential parking, both off-street and on-street, with the goal of reducing minimum parking requirements for residential development and improving the efficiency of on-street parking facilities. By analyzing actual demand for residential parking, the Parking Study would help “right size” parking requirements to meet the City of Berkeley’s goals of developing more housing at all affordability levels and encouraging more sustainable transportation modes.

The Parking Study included two survey approaches for each of twenty multi-unit buildings in Berkeley (see *Attachment 2*). The first survey was an on-line questionnaire, completed by a building owner or representative, that included basic information about each building, including the number of units, the number of vacant units, the number of residential parking spaces, whether parking was unbundled, and whether building occupants were offered transportation amenities such as bicycle parking or transit passes. The second survey was an in-person visit to each property, on a weeknight in early October between the hours of 12am and 4am, to physically count parking spaces and parked vehicles.

The Parking Study, included as *Attachment 3* of this report, includes the following key findings:

- **Off-street Residential Parking**

*Finding:* Across all 20 properties, the average occupancy rate for **off-street residential parking** spaces was **54%** (592 total spaces, with 279 spaces used), with a range of 100% occupancy at one property to 10% at another, with the median building occupancy at 50%. Projects located in the Southside neighborhood had the highest average occupancy at 66%, while projects in Downtown Berkeley had the lowest, at 45%.

*Analysis:* This finding shows that Berkeley’s average occupancy rate falls below that of other cities that have conducted similar studies. For example, King County Metro’s *Right Size Parking*<sup>1</sup> study found the utilization rate of required parking was 62% and Washington DC’s *Parking Utilization Study*<sup>2</sup> found a utilization rate of 60%. A survey of 40 multi-unit buildings in Chicago<sup>3</sup> found a utilization rate of 65% and a 2010 study of existing projects by the Santa Clara Transportation Authority found a utilization rate of 74%<sup>4</sup>

- **On-street Parking**

*Finding:* The average occupancy rate for **on-street parking** spaces near the 20 properties was **61%**, with a range of 100% occupancy at two properties to 0% at another, with the median on-street occupancy rate at 59%. 90% of the surveyed properties offered unbundled parking.

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<sup>1</sup> <https://metro.kingcounty.gov/programs-projects/right-size-parking/pdf/rsp-final-report-8-2015.pdf>

<sup>2</sup> <https://planning.dc.gov/page/parking-utilization-study>

<sup>3</sup> [https://www.cnt.org/sites/default/files/publications/CNT\\_Stalled%20Out\\_0.pdf](https://www.cnt.org/sites/default/files/publications/CNT_Stalled%20Out_0.pdf)

<sup>4</sup> <http://www.sjsu.edu/urbanplanning/docs/VTA-TODParkingSurveyReport-Voll.pdf>

*Analysis:* Unbundled parking could motivate residents to park on-street in lieu of paying for parking. While this may be the case, the on-street occupancy finding indicates available on-street spaces in the vicinity of most surveyed buildings with underutilized off-street parking.

- **Car-Ownership**

*Finding:* Across all 20 properties, there was an average of 0.5 **DMV registrations** per unit. The Parking Study suggested that rates of car ownership are likely higher for homeowners than for tenants. For example, 89% of homeowners who live in census districts that are primarily multi-family have at least one car.

*Analysis:* Tenants are less likely than homeowners to own a vehicle.

**DISCUSSION:**

The City Council’s original Green Affordable Housing Package (see *Attachment 4*) referral included direction to “reduce or eliminate minimum residential parking requirements if car-sharing spaces...or other TDM measures are provided. It also included consideration of “a cap on residential parking maximums.” At their meeting of October 2, 2019, the Planning Commission expressed support for the elimination of parking minimums within a TDM program and the consideration of parking maximums. Staff’s proposals addressing these requests follow:

**Minimum Parking Requirements**

Table 1 shows current off-street parking requirements for zoning districts that currently permit development at densities of ten units or more.

**Table 1. Current Off-Street Parking Requirements**

<b>Zone(s)</b>	<b>Required Off-Street Parking Spaces</b>
R-3, R-4 C-1, C-N, C-NS, C-SO, C-SA	One per unit, for projects of 10 or fewer units <sup>1</sup> OR One per 1,000 GSF of residential space, for projects of more than 10 units <sup>1</sup>
C-W	One per unit
C-DMU	One per three units <sup>2</sup>
C-T	None

<sup>1</sup> 25% reduction for senior projects

<sup>2</sup> Can be reduced with UP and TDM measures

The findings of the Parking Study, consistent with similar studies undertaken in other jurisdictions, as noted above, indicate that multi-unit developments in Berkeley currently contain more parking than is typically used by building occupants. While nearly all surveyed projects include unbundled parking, the availability of on-street parking in the areas around the surveyed projects indicates that even if residents are avoiding the cost of unbundled parking by using on-street parking, there still remains sufficient on-street parking to meet residents’ current needs.

*Eliminating Off-street Parking Requirements:* Reducing required parking to zero would remove a development standard that can result in the creation of unused parking spaces. Eliminating the construction of unused parking spaces would reduce the cost of overall development and provide the opportunity for square footage within a project to be put to other uses, including residential. In addition, the presence of off-street parking is the primary variable influencing whether an individual decides to own, and therefore use, a private vehicle. Eliminating parking requirements may therefore result in a decrease in private vehicle use.

With the elimination of parking requirements, project sponsors would be given the option of providing parking and would determine the number of spaces a project would include. The Parking Study indicates that there are roughly 0.5 registered vehicles per unit in multi-unit buildings in Berkeley, and required off-street parking is currently 54% occupied, so it is likely that new multi-unit projects would continue to offer off-street parking to meet existing usage trends even with the elimination of this requirement. Under the proposed TDM plan (explained in the next section), all provided parking would be required to be unbundled, which the Parking Study indicates is already standard practice in Berkeley.

*Instituting Off-street Parking Maximums:* In addition to eliminating required parking, the Planning Commission could also recommend instituting parking maximums. Instituting parking maximums results in all of the benefits of eliminating minimum parking requirements, as discussed above, while also preventing a project sponsor from voluntarily including parking at levels that could contradict those benefits. That is, if parking minimums are eliminated, there would be nothing necessarily preventing a project sponsor from proposing a project that has as much, or even more, parking than is currently required. Such a project could result in less residential square footage, an increase in overall construction costs, and a project that could encourage private vehicle use. By recommending the institution of parking maximums, the Planning Commission would make clear the general policy direction of maximizing residential square footage, discouraging private vehicle use and supporting mode shift to more sustainable travel options.

Staff has two recommendations for Planning Commission to consider:

1. A parking maximum could be 0.5 spaces per unit, which is consistent with the Parking Study's findings on off-street parking utilization and DMV registrations; or
2. A parking maximum at the Zoning Ordinance's current minimum parking requirements, as shown in Table 1 above. This would ensure that current parking usage levels are accommodated, while also providing an option for more off-street parking for projects with special circumstances.

### **Transportation Demand Management Program**

At their October 2, 2019 meeting, the Planning Commission discussed four specific TDM frameworks, and directed staff to return to the Commission with a program that provides benefits to residents, reduces private vehicle trips, and supports mode shift to more sustainable transportation choices. The TDM program should be separated from off-street parking regulations, and would include the following:



- A menu of TDM options for project sponsors to choose from;
- Exemption of 100% affordable projects, projects located in the Southside Car-free Overlay Zone, projects in the C-DMU (which are already subject to TDM requirements), and affordable projects for which a TDM program would result in an unreasonable delay of project approvals or funding;
- Required unbundled off-street parking;
- Required off-street bicycle parking;
- Credit for pedestrian improvements in the vicinity of the project;
- Limitations on RPP permits; and
- Allowance of GreenTRIP Certification as an alternative compliance path.

Given the direction above, the Planning Commission is asked to consider the following TDM Program:

### **Part 1. Required TDM Measures for All Residential Projects of Ten or More Units**

The TDM program would consist of two requirements for all residential projects of ten or more units.

1. Unbundled Parking: Any parking provided by an eligible project would be required to be unbundled. Parking would be offered so that residents or tenants have the option of renting or buying a parking space at an additional cost, and would, thus, experience a cost savings if they opt not to rent or purchase parking.
2. Required Bicycle Parking: Projects would be required to provide the minimum number of bicycle parking spaces indicated in Appendix F of the 2017 *Berkeley Bicycle Plan*.<sup>5</sup> For projects of ten or more units, that requirement is one (1) long-term parking space for every three (3) bedrooms, and two (2) short-term parking spaces, or one (1) short-term parking space per 40 bedrooms, whichever results in more spaces. Long-term bicycle parking is generally covered and secure and only available to building residents. Short-term bicycle parking spaces are typically bike racks available to the general public. Spaces would be designed per the specifications laid out in the 2017 *Berkeley Bicycle Plan*, or as subsequently updated by City staff.

### **Part 2. Selection of TDM Measures for Residential Projects of Ten or More Units**

At their meeting of October 2, 2019, the Planning Commission directed staff to return with a menu of TDM measures from which a project sponsor could select to meet the goals of the program. The Planning Commission directed staff to remove parking supply from the list of TDM measures, to reconsider the “weight” given to each TDM measure to ensure that point totals resulted in meaningful VMT reductions, and to include physical pedestrian improvements and the provision of real-time transportation information as possible TDM measures.

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<sup>5</sup> [https://www.cityofberkeley.info/uploadedFiles/Public\\_Works/Level\\_3\\_-\\_Transportation/Berkeley-Bicycle-Plan-2017\\_AppendixF\\_Facility%20Design%20Toolbox\(1\).pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley-Bicycle-Plan-2017_AppendixF_Facility%20Design%20Toolbox(1).pdf), p F-125.

Figure 2 below presents an updated menu of TDM options. A proposed project would be required to obtain six (6) points from the available options.

**Figure 2. TDM Measures**

<b>Improve Walking Conditions</b>	1
<b>Real-Time Transportation Information</b>	1
<b>Transit Passes</b>	
25% of cost	2
50% of cost	4
100% of cost	6
<b>Carshare</b>	
Carshare parking space	1
Carshare membership for each resident	2
<b>Bikeshare Membership</b>	
Free membership with pod 1000ft+	1
Free membership with pod within 1000ft	2

*Improved Walking Conditions:* The proposed project would include physical changes to the sidewalks and other public infrastructure adjacent to the project site with the intention of increasing physical space for pedestrians and including design elements that increase pedestrian safety and improve accessibility. To obtain credit under this measure, the proposed project must include improvements; in-kind replacement of existing infrastructure would not count. Examples of improvements that could be eligible are included in Appendix B (Pedestrian Design Guidelines) of the 2010 *Berkeley Pedestrian Master Plan*.<sup>6</sup>

*Real-Time Transportation Information:* A proposed project would include real-time transportation information on physical displays located in prominent locations (lobbies, entries/exits, elevator bays) that would include, but would not be limited to, transit arrivals and departures for nearby transit routes, walking times to these locations, and the availability of car-share vehicles, shared bicycles and shared scooters.

*Transit Passes:* Monthly, for a period of ten years, adult residents of a proposed project would receive a subsidy to cover the cost of an Adult Local 31-Day AC Transit pass as indicated in Figure 2. By mutual agreement between the building operator and resident, a resident could receive an equivalent cash amount added to a Clipper Card.

<sup>6</sup> [https://www.cityofberkeley.info/uploadedFiles/Public\\_Works/Level\\_3\\_-\\_Transportation/3%20Appendix%20A%20-%20Appendix%20C%20January%202010.pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/3%20Appendix%20A%20-%20Appendix%20C%20January%202010.pdf). Pp. B-1 – B-50.

*Carshare:* To obtain credit for providing a carshare space, a proposed project would include a parking space dedicated to a carshare vehicle and a project sponsor would arrange for a carshare vehicle to occupy that space. To obtain credit for providing carshare memberships, the project sponsor would provide a carshare membership at no cost to each resident who is a licensed driver. The cost of using a carshare vehicle would be assumed by the resident. The project sponsor would have the option of making the vehicle available to users who are not residents.

*Bikeshare Membership:* To obtain credit for providing a bikeshare membership, a bikeshare membership must be provided at no cost to all eligible residents (typically, adults 18 years old or older). An additional point would be awarded for projects in close proximity to bikeshare pods.

### **Part 3. GreenTRIP as Alternative Compliance Path**

Proposed projects could meet the requirements of Part 2 of the TDM program by obtaining certification under TransForm's GreenTRIP program.<sup>7</sup> Projects selecting this option would still be required to meet the requirements of Part 1, above (unbundled parking and bicycle parking).

### **Other TDM Measures Considered**

*Shuttles:* At their meeting of October 2, 2019, the Planning Commission directed staff to consider permitting residential projects to obtain TDM program credit under Part 2 for contributing to the operation of a private shuttle, such as the Emery Go-Round or the Berkeley Gateway Shuttle. The Berkeley Gateway Shuttle is currently the only private shuttle outside of the UC Berkeley campus area that operates in Berkeley. The Berkeley Gateway Shuttle runs a morning service from 5:37am to 9:44am from Ashby BART to West Berkeley and an afternoon service from West Berkeley to Ashby BART between 3:00pm and 7:00pm.

The Gateway Shuttle is operated by Bayer and Wareham development to service its employees and commercial properties. There are no residential developments currently serviced by the Gateway Shuttle and the shuttle operators are currently not pursuing partnerships with other employers or residential developments in operating the Gateway Shuttle.<sup>8</sup> As there is no existing private shuttle services for potential projects to opt into, it is not recommended that the Planning Commission establish credit under the TDM program for participating in a shuttle service. If such a service becomes more widely available, the Planning Commission can direct staff to reconsider the recommendation and add a shuttle option to Part 2 of the program.

### **DISCUSSION AND NEXT STEPS**

Planning Commission is asked to provide final policy direction on the following questions and request a public hearing on February 5, 2020 to consider specific Zoning Ordinance amendments.

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<sup>7</sup> <http://www.transformca.org/landing-page/greentrip>

<sup>8</sup> Jennifer Cogley, Deputy Director, Community Relations, Bayer LLC, conversation with City staff, November 14, 2019.

Proposed Transportation Demand Management Program and Reduction of Parking Requirements  
Page 8 of 8

**Question for Planning Commission:** *Should minimum parking requirements be eliminated for residential developments of ten units or more?*

**Question for Planning Commission:** *Should maximum parking requirements be instituted for residential developments of ten units or more? What should be the maximum number of allowable off-street parking spaces?*

**Question for Planning Commission:** *Does the proposed TDM program reflect Planning Commission's feedback? If no, what changes are needed?*

**ATTACHMENTS:**

1. Staff Report on Parking Reform: Transportation Demand Management & Modifications to Off-Street Parking Requirements (July 17, 2019)
2. Map of surveyed properties
3. Residential Parking Capacity Study
4. Green Affordable Housing Referral



**Planning and Development Department**  
Land Use Planning Division

## STAFF REPORT

DATE: July 17, 2019  
TO: Members of the Planning Commission  
FROM: Justin Horner, Associate Planner  
SUBJECT: Parking Reform: Transportation Demand Management & Modifications to Off-Street Parking Requirements

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### RECOMMENDATION

Review report and provide feedback on:

- 1) Developing a Transportation Demand Management (TDM) program for residential and mixed-use projects in the City of Berkeley, and
- 2) Scope of work for a parking study which will inform modifications to off-street parking requirements.

### BACKGROUND

At its May 1, 2019 meeting, the Planning Commission discussed parking reform in the context of the Green Affordable Housing Package (GAHP) and the City-wide Green Development Requirement Referral (see *Attachment 1: Staff Report on Parking Related City Council Referrals*) and requested staff to return to the Planning Commission with a proposal to implement unbundled parking for new residential projects in the City of Berkeley. Unbundled parking requires buildings to have their parking spaces leased or sold separately from the rental or purchase of dwelling units. Unbundling the cost of housing from the cost of a parking is economically efficient for occupants, as they are not required to pay for parking they do not need and they can opt in or out of parking as their circumstances change.

In the course of developing the proposed amendments, staff identified shortcomings of adopting unbundled parking as a stand-alone requirement: namely that the availability of free on-street parking and/or inexpensive on-street parking permits (offered through the Residential Preferential Parking (RPP) program) may discourage leasing or buying unbundled parking spaces. The result of such a policy could be vacant, zoning-required off-street parking spaces and an increase in on-street parking. Without reductions in both required off-street parking and incentives to use alternate modes of travel, the overall goals of parking related referrals —

reducing required off-street parking, producing more units, reducing the cost of housing, and reducing driving — may not be met.

Recognizing the connection between on-street and off-street parking and programming needed to support alternate modes of travel, Planning Commission is asked to consider implementation of a TDM program and modifications to off-street parking requirements at the same time. The following background is provided to help answer questions in the Discussion section.

### **Transportation Demand Management (TDM)**

Transportation Demand Management (TDM) programs include strategies aimed at maximizing transportation choices and reducing private vehicle use. Typically, TDM includes some combination of parking reductions, unbundled parking, transit subsidies, access to carshare vehicles, and on-site infrastructure to encourage bicycling. Nearby cities, including San Francisco, Oakland and Emeryville, and other California cities, including Los Angeles and Santa Monica, already include TDM requirements for residential projects as part of their land use regulations.

Among these existing programs are three general approaches to implementation. These are summarized below:

1. **Menu-Based.** The San Francisco Planning Department's Transportation Demand Management Program<sup>1</sup> is an example of this approach. Specific TDM practices have been assigned point values based on their demonstrated efficacy in reducing trips (see *Attachment 2: San Francisco's TDM Menu of Options*). Proposed projects are assigned a total point target, based on their uses and proposed number of parking spaces, and project sponsors must choose among TDM measures to add up to reach their assigned target. This approach gives project sponsors a degree of flexibility in the strategies they can choose while also sparing them potentially expensive and time-consuming project-specific transportation studies. While it is relatively easy to administer, the development of the program required significant time and staff resources. All residential projects of ten units or more are required to comply with the program, with exemptions for 100% affordable projects.
2. **Reduction-Based:** The cities of Oakland<sup>2</sup> and Emeryville<sup>3</sup> provide specific reduction targets for eligible projects. For example, the City of Emeryville requires projects to demonstrate that residents will drive fewer vehicle miles than the average Emeryville resident. The City of Oakland requires projects that produce between 50 and 99 net new PM or AM peak trips to reduce trips by 10%, and projects that generate 100 or more net new PM or AM peak trips to reduce trips by 20%. While the cities provide examples of TDM measures that would help meet these targets, it is ultimately up to the project

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<sup>1</sup> <https://sfplanning.org/transportation-demand-management-program>

<sup>2</sup> <https://www.oaklandca.gov/documents/transportation-impact-review-guidelines-for-land-use-development-projects>. See page 14.

<sup>3</sup> See Emeryville Municipal Code Section 9-5.2008

sponsor to select any available measures and demonstrate, through a transportation study, that the reduction targets would be met. A reduction-based option provides more quantitative certainty, but producing the required analysis may be expensive for some project sponsors. Reviewing the required transportation analysis would also likely require more administrative staff time than other approaches.

3. Program-Based: With this approach, compliance with programs is presumed to result in reduced vehicle trips although quantitative measurement is not required. For example, for residential projects of 16 or more units, the City of Santa Monica requires project sponsors to implement four programs: a transportation package for new residents; a local resident and employee preference marketing plan; participation in Santa Monica's transportation management organization; and 50% towards the cost of a transit pass for every resident. No transportation analysis is required and the trip reduction impact of these programs is not particularly well-demonstrated. While this approach is very easy to administer and does not require any transportation analysis, a potential downside is that there is little certainty as to whether the TDM program is shifting demand from private vehicle use to other modes.

GreenTRIP Certification. In addition to the above municipal programs, Transform, an East Bay-based transportation advocacy organization, has created GreenTRIP, a certification program, similar to LEED for green buildings, for developments that promote more sustainable transportation options. GreenTRIP certification requirements are based upon a proposed project's location, the amount of parking it would provide, and the selection of at least two of three possible TDM measures (unbundled parking, transit pass provision, and carshare availability). If the project is then able to meet a per unit VMT target (usually around 25 to 30 miles per day) the project qualifies for certification. There are currently six GreenTRIP certified projects in the City of Berkeley. Some municipalities, including Emeryville and Richmond, have provided an option to obtain GreenTRIP certification as an alternative means of meeting their TDM requirements. GreenTRIP certification has the advantage of being simple to implement and, as it is a certification program run by an independent non-profit, would result in little administrative cost to the City of Berkeley.

TDM Requirements in the C-DMU. Berkeley currently requires implementation of TDM measures for certain new and converted residential projects in the Commercial Downtown Mixed Use (C-DMU) district. Occupants of residential units are not eligible for RPP permits (this restriction addresses on-street "spillover") and residents are provided with transit passes and access to vehicle sharing services (providing alternatives to private vehicle ownership). Projects must provide unbundled parking and have the option of waiving off-street parking by paying an in lieu fee that would go towards transit enhancements.

### **Reduction of Off-Street Parking Requirements**

To meet the goals of City Council's parking reform referrals, adoption of a TDM program should go hand-in-hand with reductions in required off-street parking. It is counterproductive for the City of Berkeley to require projects to provide off-street parking with one hand (through minimum



parking requirements) while requiring them to reduce the use of off-street parking with the other (through a TDM program). It is instead optimal to have off-street parking requirements that are more in-line with actual demand, developed in tandem with a TDM program that can use that actual demand to shift to alternative modes of travel.

A number of studies have demonstrated that minimum parking requirements can result in projects that are “overparked;” that is, projects that are required to provide parking that ends up not being used. For example, King County Metro’s *Right Size Parking*<sup>4</sup> study found the utilization rate of required parking was 62% and Washington DC’s *Parking Utilization Study*<sup>5</sup> found a utilization rate of 60%. A survey of 40 multi-unit buildings in Chicago<sup>6</sup> found a utilization rate of 65% and a 2010 study of existing projects by the Santa Clara Transportation Authority found a utilization rate of 74%<sup>7</sup>.

A small survey of projects suggests the situation in Berkeley may be similar. Transform has designed a Parking Database<sup>8</sup> that includes data gathered at multi-family residential sites around the San Francisco Bay Area which shows both parking supplied and parking used at each site. The database includes three specific properties in Berkeley (Oxford Plaza at 2175 Kittredge Street, the New Californian at 1988 Martin Luther King Jr. Way and Fourth and U at 2020 Fourth Street). Among these three Berkeley projects, the average parking utilization rate is 60%.

## **DISCUSSION**

The aim of this report is to solicit feedback from the Planning Commission regarding staff’s overall approach to TDM and the adjustment of minimum off-street parking requirements, including basic program design as well as input on research and administrative needs.

### **TDM Program Considerations**

#### **1. Approach**

The Background section provides three approaches to TDM programs and also offers a summary of GreenTRIP and an example of existing regulations in the City of Berkeley. Planning Commission is asked to provide feedback on which model seems most appropriate to Berkeley’s needs and goals, with a particular eye to the ease and cost of implementation for project applicants and the City of Berkeley.

#### **2. Threshold**

In addition to program approach, the Planning Commission might also consider the size of projects that may be eligible for the requirement. For example, San Francisco’s requirement applies to projects of ten or more *units* and Santa Monica’s applies to projects of 16 or more *units*. Oakland’s program, on the other hand, applies to projects that

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<sup>4</sup> <https://metro.kingcounty.gov/programs-projects/right-size-parking/pdf/rsp-final-report-8-2015.pdf>

<sup>5</sup> <https://planning.dc.gov/page/parking-utilization-study>

<sup>6</sup> [https://www.cnt.org/sites/default/files/publications/CNT\\_Stalled%20Out\\_0.pdf](https://www.cnt.org/sites/default/files/publications/CNT_Stalled%20Out_0.pdf)

<sup>7</sup> <http://www.sjsu.edu/urbanplanning/docs/VTA-TODParkingSurveyReport-Voll.pdf>

<sup>8</sup> <http://www.transformca.org/greentrip/parking-database>



Transportation Demand Management Program & Minimum Parking Requirements  
Page 5 of 5

generate 50 or more net PM or AM peak vehicle *trips*. GreenTRIP certification, as a third approach, is for projects that are at a *density* of at least 20 dwelling units per acre.

**Questions for Planning Commission:** *What should be the City of Berkeley's general approach to a TDM program and a reasonable threshold? What additional information would be helpful in reaching a conclusion?*

### **Modifications to Off-Street Parking Requirements**

Land Use Planning is currently working with the Transportation Division on producing a scope of work for a **parking utilization study**, the first step towards determining new off-street parking requirements. This study will:

1. Survey and analyze parking required, provided and utilized at existing multi-unit buildings in order to determine how existing off-street parking regulations match actual demand.
2. Analyze DMV vehicle registration data and RPP permit information to determine whether people are parking at their residence or elsewhere (i.e. on-street).
3. Survey on-street parking capacity in certain areas to understand utilization and quantify demand.
4. Consider the use of curb space adjacent to residential developments (e.g. on-street parking, delivery, drop off) to understand how those spaces could most efficiently function as parking spaces for private vehicles, loading zones, transit boarding areas or areas for drop off and pick up for transportation network companies.

The goal of this parking utilization study is to “right size” our parking requirements and provide guidance as to the right levels of required off-street parking (if any) and the viability of parking *maximums*. Staff will also be looking into GreenTRIP's Connect tool<sup>9</sup>, a parking prediction model developed by TransForm. With GreenTRIP Connect, a user can identify a specific parcel, provide some basic characteristics of a proposed development and then see estimates of per resident VMT, GHG emissions and demand for residential parking spaces.

**Question for Planning Commission:** *Please provide input on the elements proposed for this study. Is there any aspect of on- or off-street parking that Planning staff have failed to consider?*

### **NEXT STEPS**

Planning Commission is asked to consider material presented in the staff report and provide staff direction to develop a TDM policy coupled with modifications to parking requirements. Staff intends to bring this item back to Planning Commission in October 2019 for review, and in December 2019 for action.

### **ATTACHMENTS:**

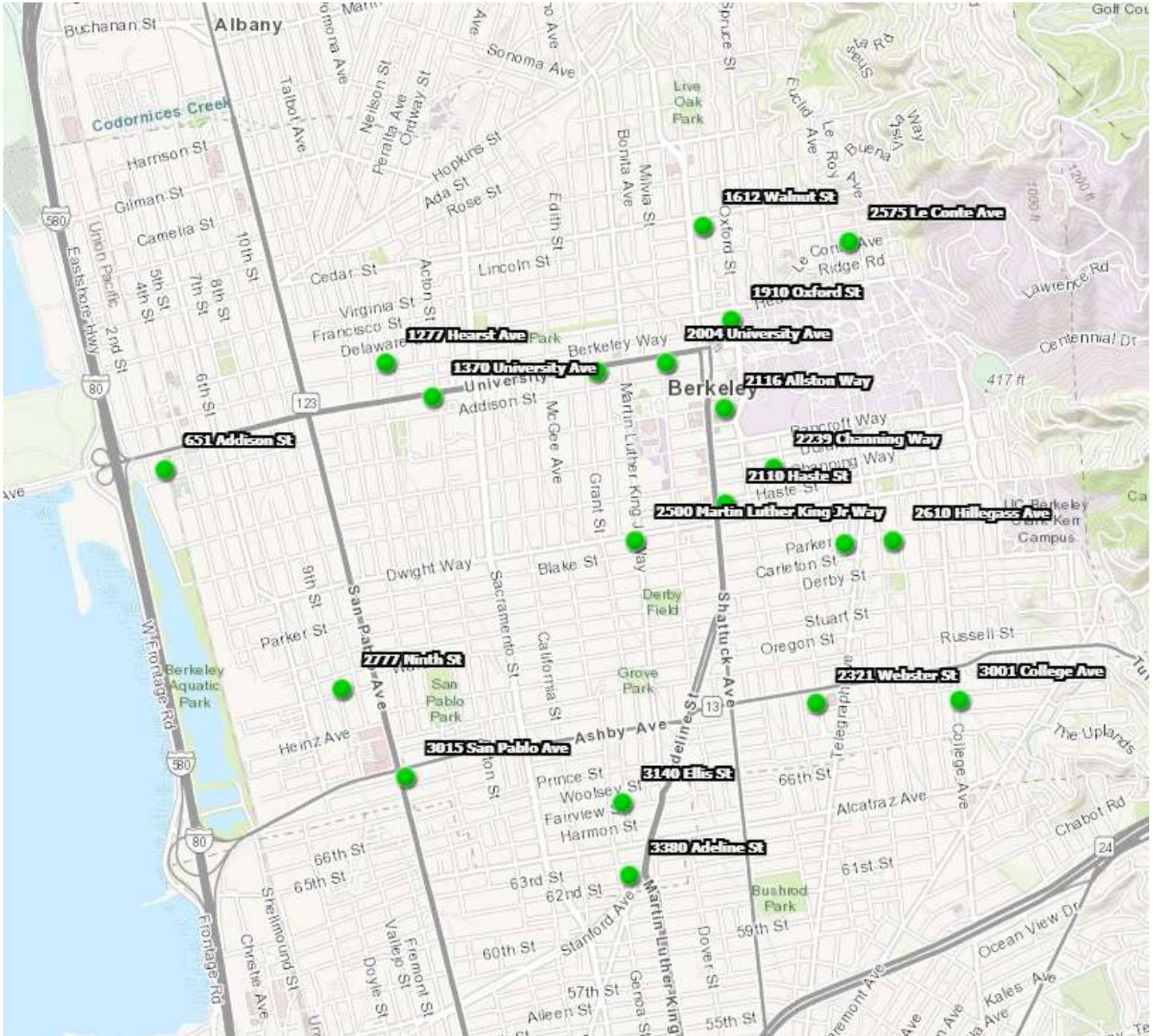
1. Staff Report on Parking Related City Council Referrals
2. San Francisco's TDM Menu of Options

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<sup>9</sup> <http://www.transformca.org/greentrip/connect>



## MULTI-UNIT BUILDINGS SURVEYED FOR RESIDENTIAL PARKING UTILIZATION STUDY





## MEMORANDUM

To: Justin Horner, City of Berkeley  
From: Nelson\Nygaard Team  
Date: November 25, 2019  
Subject: Berkeley Residential Parking Capacity Study

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### INTRODUCTION AND STUDY PURPOSE

By analyzing actual usage (i.e. occupancy) of residential parking, the purpose of this study is to “right size” off-street parking requirements to meet the City of Berkeley’s goals of developing more housing at all affordability levels and encouraging more sustainable transportation modes. In addition to studying off-street parking behavior, compared to what is provided, assessing the efficiency of on-street parking facilities is intended to help meet the City of Berkeley’s goals of encouraging more sustainable transportation modes.

The overall purpose of this assessment is to analyze the parking required, provided and utilized at these buildings in order to determine how existing off-street parking regulations match actual usage.

### METHODOLOGY

#### Property Selection Process

The City identified residential properties located within a variety of neighborhoods.

City Staff made initial contact with property’s/property managers to request they take a short survey about the property and secondly confirm whether they would allow access to the property for on-site parking survey. A total of 28 survey responses were received, and of that 20 properties were selected for further data collection multi-unit residential buildings (with 10 units or more) in consultation with the city. Selection criteria included:

- Geographical distribution within multifamily zoned areas
- Mix of affordable/inclusionary and 100% market rate facilities; and
- A range of property sizes (by number of units)

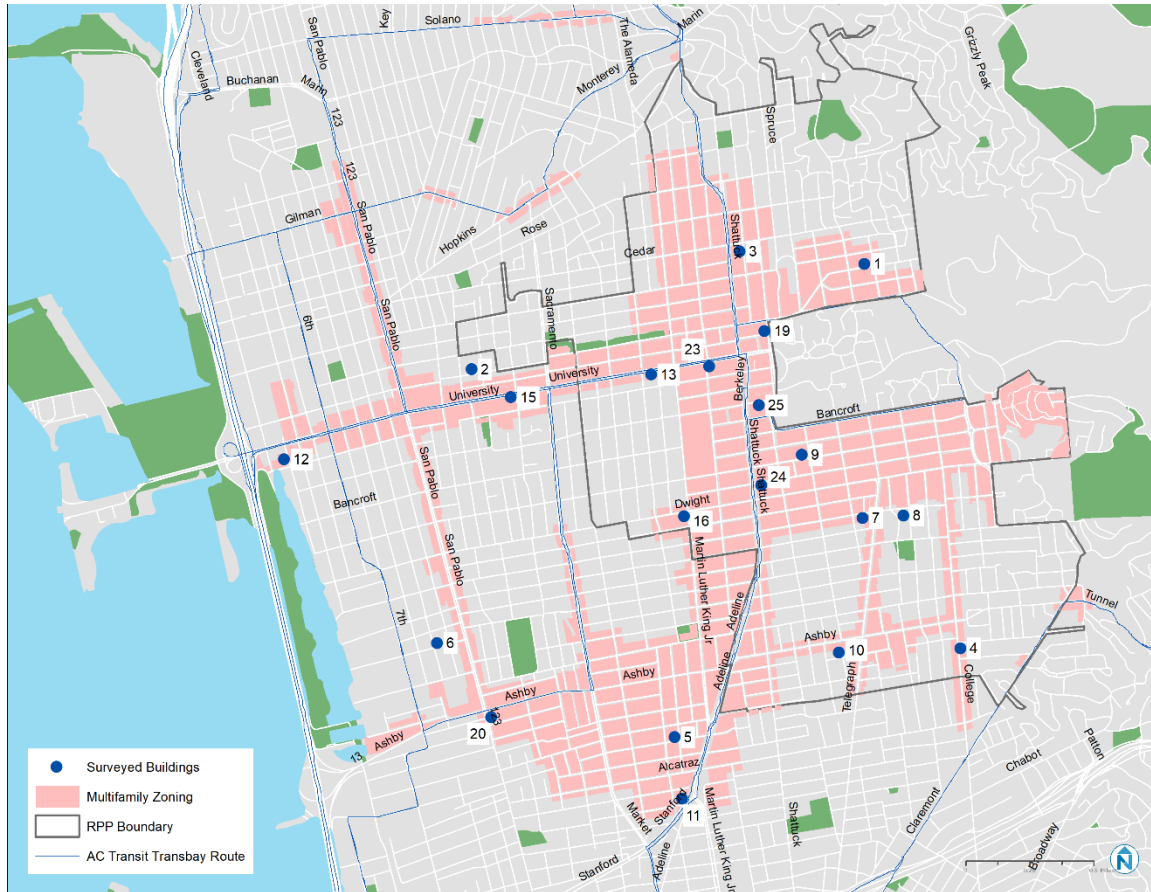
The surveyed properties are listed in Table 1 and displayed on the Figure 1 on the following page.

**Table 1 - Surveyed Properties**

ID	Address	Total Units	% Affordable Housing
1	2575 Le Conte Avenue	11	0%
2	1277 Hearst Avenue	8	0%
3	1612 Walnut Street	9	0%
4	3001 College Avenue	10	0%
5	3140 Ellis Street	10	0%
6	2777 Ninth Street	21	0%
7	2414 Parker Street	16	0%
8	2610 Hillegass Avenue	23	0%
9	2239 Channing Way	14	0%
10	2321 Webster Street	18	0%
11	3380 Adeline Street	14	0%
12	651 Addison Street	94	4%
13	1812 University Avenue	44	9%
15	1370 University Avenue	71	97%
16	2500 Martin Luther King Jr Way	10	20%
19	1910 Oxford Street	56	20%
20	3015 San Pablo Avenue	98	15%
23	2004 University Avenue	35	20%
24	2110 Haste Street	100	20%
25	2116 Allston Way	91	20%



Figure 1 - Study Area Map



Note: The number label in each surveyed property in the map corresponds to the ID number in Table 1

## Residential Property Manager Survey

A short on-line survey was developed and distributed for the residential property managers to get basic information about their buildings, including total units, total parking spaces, unit vacancies, the number of affordable units, unbundled parking and transportation demand management programs available to residents. A copy of the survey instrument is included in the appendix.

## Parking Data Collection

A parking survey was conducted at each property including off-street inventory of parking spaces and total vehicles observed. The survey was conducted when UC Berkeley was in session on a typical weekday evening, between midnight and 5:00am in order to more reliably reflect a time when most residents would be at home.

On-street parking capacity (inventory and occupancy) in the areas around selected buildings was surveyed on the two blockfaces nearest the immediate pedestrian entrance

to each property.<sup>1</sup> This data was collected to help understand neighborhood parking, potential spillover and local context.

### **Vehicle Registration**

The City provided anonymized DMV (Department of Motor Vehicle) and RPP (Residential Parking Permits) data associated with each of the residential properties. The purpose of the analysis was to determine how many vehicles are associated with each property and how many vehicles take advantage of the available Residential Preferential Permit Program rather than parking on the property.

### **Socioeconomic Assessment**

In addition to the property related data collected, a socioeconomic assessment of multifamily housing was performed. It focused on aspects related to vehicle ownership and commute choices in areas zoned for multifamily housing. The team used 2017 ACS 5-year data at census block group (CBG) level and compared ownership and rental tenure, and income.

## **KEY FINDINGS**

### **Property Survey**

- Surveyed properties averaged 41.5 units per building. The median apartment building surveyed had 23 housing units.
- The residential usage rate was relatively high, ranging from 94% to 100%.
- 9 of the 20 buildings studied contained some affordable housing units, with most around 15-20% affordable.
- All 20 properties were within a reasonable walking distance (half mile or less) and 17 within very walkable distance (quarter of mile or less) of high-frequency transit service (BART or Transbay Bus).
- The average built parking ratio was 0.82 per unit.
- Properties with the fewest vehicle registrations per unit appear to be closer to downtown Berkeley.

### **Parking Survey**

- The average parking occupancy across all properties, both on and off-street, is 55%

<sup>1</sup> In some cases where there were multiple entrances, the immediate blockfaces on each entrance were collected.



- There are slightly less than 0.5 vehicles registered per unit on average, yet there is an average 0.82 parking spaces per unit off-street.
- The average and median off-street occupancy for all properties is 0.45 and 0.53 per unit respectively.
- The average and median on-street occupancy for all properties was 60% and 61% respectively.

### **Socioeconomic Analysis**

- In multifamily areas less than 25% of people drive to work alone as opposed to more than 40% in single-family areas.
- In multifamily areas slightly more than 30% of people walk to work as opposed to approximately 7% in single-family areas.
- In general, the share of zero car households in multifamily areas is higher than in single family areas.
- Of the total households in multifamily areas, 40% of renter households do not own a car and about 10% of owner households do not own a car.
- There is more available on-street and off-street parking (particularly near Downtown Berkeley) in those areas that have more renters, have fewer cars and have more residents that commute either on-foot or on transit.

## PROPERTY ANALYSIS

Property managers responded to an online survey, providing relevant details for this analysis. The number of housing units in these properties ranges from 8 to 100, with an average of 41.5 units per building. The median apartment building surveyed had 23 housing units. Table 1, above, provides the number of units in each surveyed building. While there are a few vacant units in these properties, the occupancy rate is relatively high, ranging from 94% to 100%. Additionally, 9 of the 20 buildings studied contained some affordable housing units. The share of affordable housing ranged from 4% of the total units to 97%, with most around 15-20% of all units being affordable.

Ninety percent of surveyed properties had unbundled parking, meaning that the cost of parking charged separately from the apartment lease. Only two out of the twenty surveyed buildings did not charge separately for parking. Properties with unbundled parking all reported charging more than \$50 per month for a parking space.

All 20 properties were within a reasonable walking distance of high-frequency BART and AC Transit Transbay service.

Sixteen (16) of the properties included secure bike parking within their premises. The number of bicycles these facilities can store ranges from 4 (for a 10-unit apartment building) to 60 (for a 98-unit apartment building). In terms of per-unit bicycle storage, buildings that included secure parking ranged from 0.3 spaces unit to 3 spaces per unit.

All the surveyed properties include parking. The parking supply ranged from 10 parking spaces to 129 parking spaces. The following table summarizes parking supply in per-unit basis. The average built parking spaces was 0.82 per unit.

**Table 2 - Built Parking Spaces per Unit**

	Median	Mean	Min	Max	20 <sup>th</sup> percentile	80 <sup>th</sup> percentile
Parking Spaces	0.82	0.84	0.20	1.70	0.54	1.15

Similarly,

summarizes DMV vehicle registrations per unit for the surveyed properties. Registrations range from 0 to 69 vehicles per property, with an average of 0.49 vehicle registrations per unit. The data indicate a wide distribution. Figure 2 illustrates the distribution of vehicle registrations per unit across the 20 study properties. Red dots indicate a property with no vehicle registrations, while a large blue dot indicates a ratio of over one (1) vehicle per unit.

**Table 3 - DMV Registrations per Unit**

Median	Mean	Min	Max	20 <sup>th</sup> percentile	80 <sup>th</sup> percentile
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<b>Vehicle Registrations</b>	0.38	0.49	0	1.80	0.25	0.71
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A handful of properties have 15 or more registrations while many have very few. Those properties with the least vehicle registrations per unit as illustrated in Figure 2 appear to be closer to downtown Berkeley.

**Figure 2 – Vehicle Registrations per Unit**

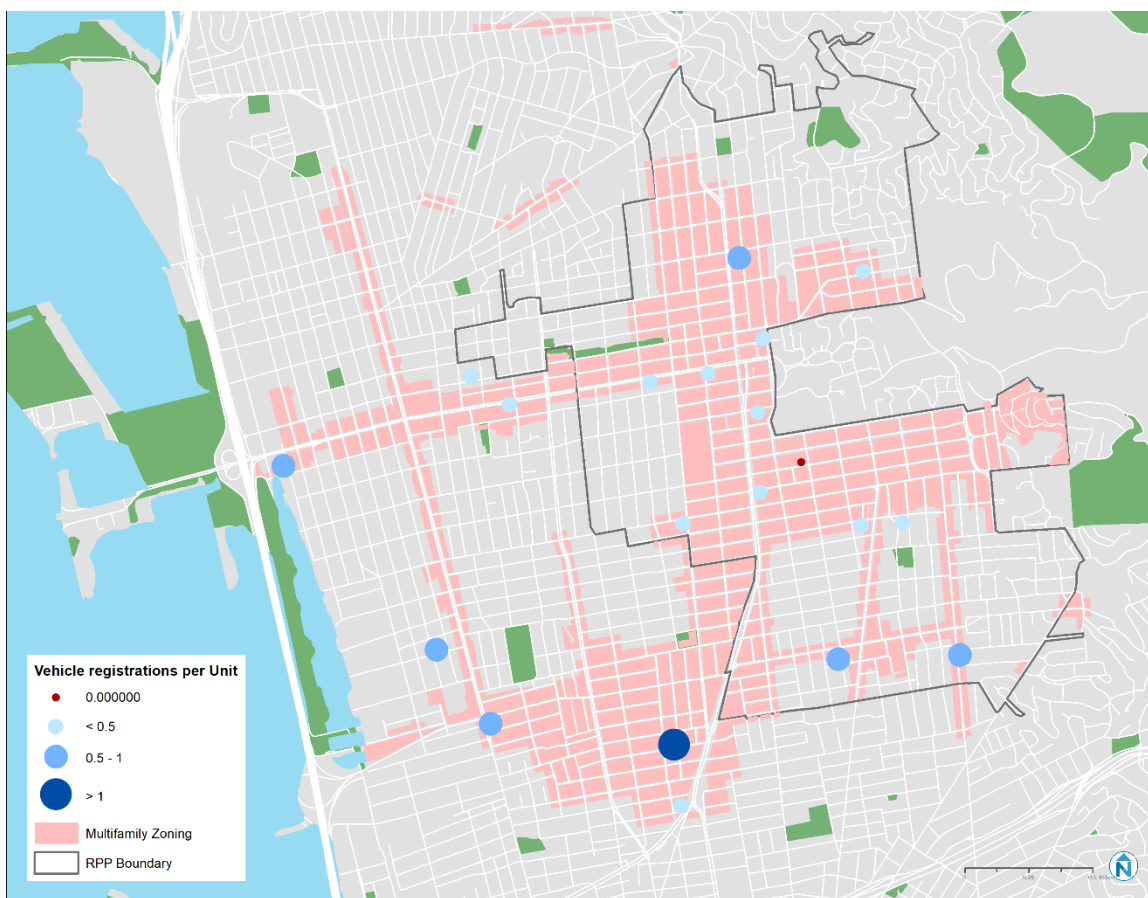
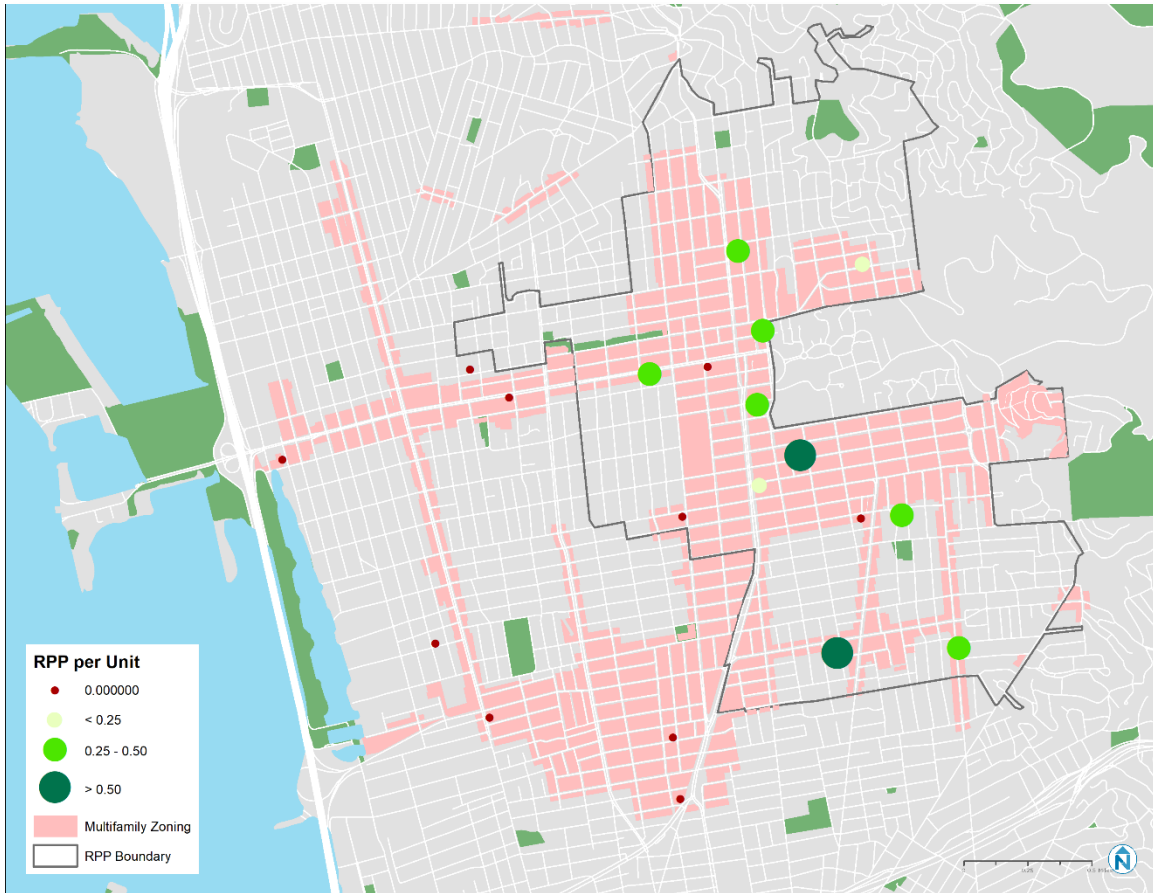


Figure 3 illustrates the distribution of residential preferential permit registrations per unit across the 20 study properties. Red dots indicate a property with no permits, while a large dark green dot indicates a ratio of more than 0.5 permit per unit. As to be expected, only properties within the RPP boundary are associated with residential permit registrations.

Figure 3 - RPP per Unit



## PARKING ANALYSIS

The following analysis combines the different data sources and studies trends and patterns on parking supply and parking usage within the surveyed properties and their adjacent streets.

### Occupancy

The average parking occupancy across all properties is summarized in Table 4 at 55%. Diving deeper into per unit occupancy and occupancy rates illustrates greater differences in properties with affordable and market rate units.

Table 4 – Parking Occupancy Across all Properties

	Total # Spaces	Occupancy	Occupancy (%)
On-Street	448	297	61%
Off-Street	592	279	54%
<b>Total</b>	<b>1040</b>	<b>576</b>	<b>55%</b>

### Off-Street

Table 5 shows parking occupancy and supply by unit. Properties with affordable units also lower occupancy across all categories as compared to purely market rate. This is corroborated with research indicating that lower income/ affordable housing residents are more transit dependent and less likely to own a vehicle.<sup>2</sup>

Table 5 – Off-Street Parking Occupancy and Supply per Unit

	Off-Street Supply	Off-Street Usage
Average	0.84	0.45
Market rate	0.89	0.55
Affordable/ Inclusionary	0.78	0.33

Table 6 summarizes the range of occupancies across the properties. The mean and median off-street occupancy for all properties is 0.45 and 0.54 per unit respectively.

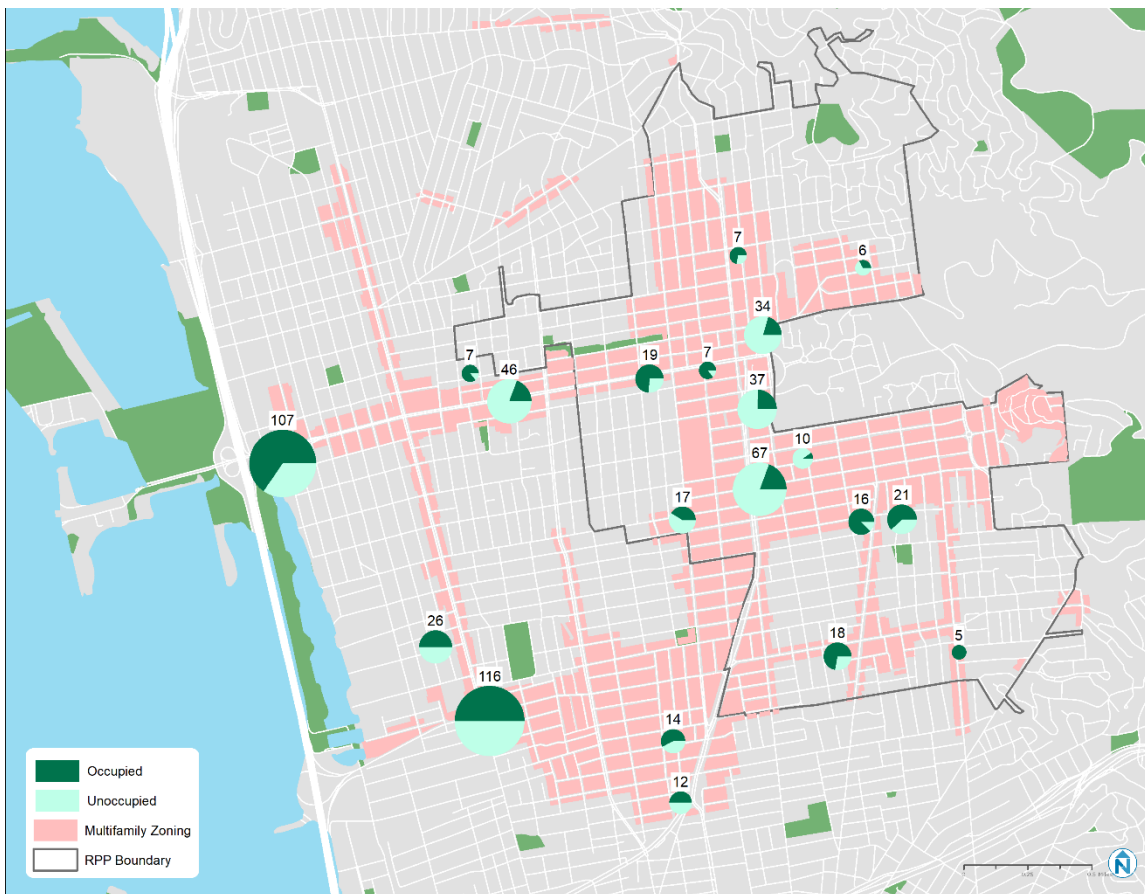
<sup>2</sup> <https://www.jtlu.org/index.php/jtlu/article/view/1129/986>

**Table 6 – Off-Street Parking Occupancy and Supply per Unit**

	Median	Mean	Min	Max	20 <sup>th</sup> percentile	80 <sup>th</sup> percentile
<b>Supply</b>	0.82	0.84	0.20	1.17	0.54	1.15
<b>Occupancy</b>	0.53	0.45	0.07	0.88	0.13	0.73

Figure 4 shows the distribution of off-street occupancy counts collected at the 20 study properties. The size of the pie chart indicates the total inventory of off-street parking available at the site and the dark green vs. light green is an indication of how much parking was occupied. There appears to be a larger proportion of unoccupied off-street parking when the buildings are located closer to UC Berkeley campus and the downtown area, which could be explained by student populations and proximity to BART.

**Figure 4 - Off-Street Parking**

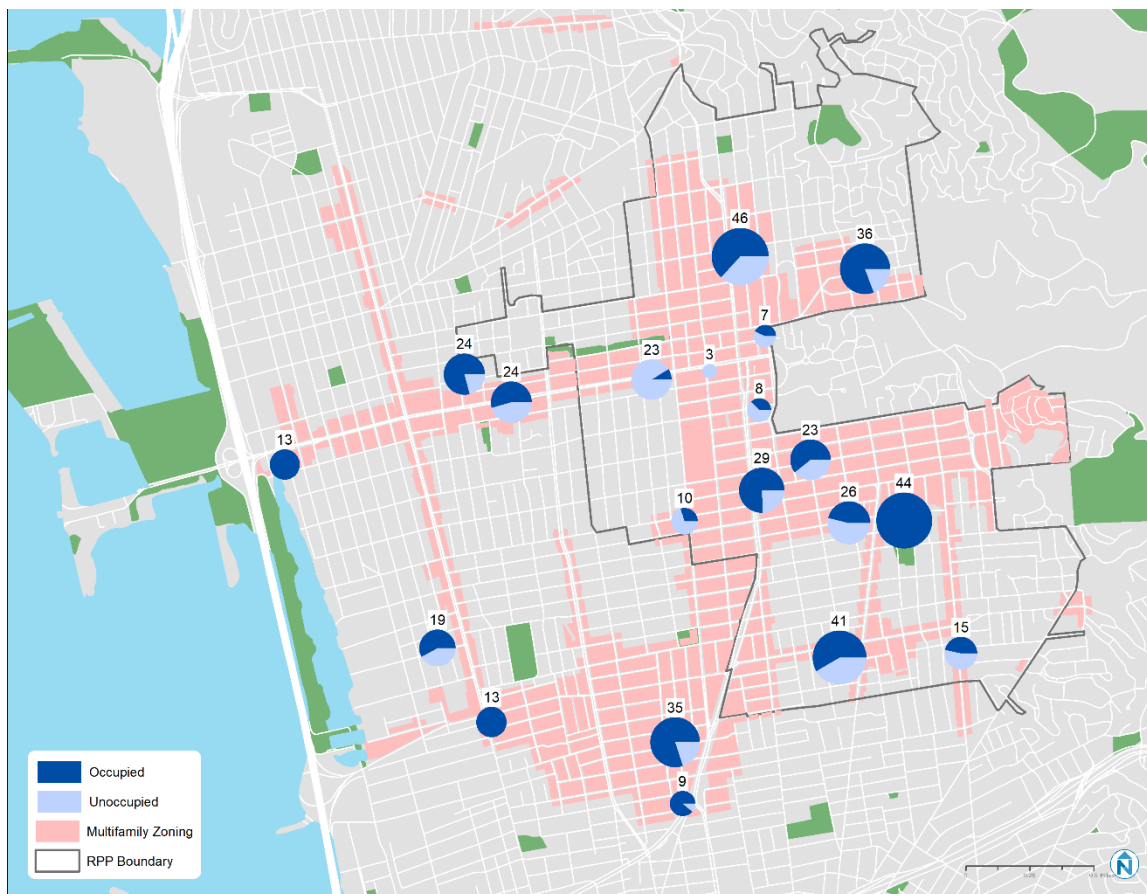


Note: Size of the pie chart and number on top indicate the total parking spaces

### On-Street

Figure 5 shows the distribution of on-street occupancy counts collected at the 20 study properties. On-street parking capacity in the areas around selected buildings was surveyed on the two blockfaces nearest the immediate pedestrian entrance to each property.<sup>3</sup> The size of the pie chart indicates the total inventory of on-street parking counted at the site and the dark blue vs. light blue is an indication of how much parking was occupied. Table 6 summarizes the range of occupancies across the properties. The average on-street occupancy for all properties was 61%. There did not appear to be any noticeable on-street occupancy pattern based on neighborhood.

Figure 5 - On-Street Parking



Note: Size of the pie chart and number on top indicate the total parking spaces

<sup>3</sup> In some cases where there were multiple entrances, inventory and occupancy at the immediate blockfaces on each entrance were collected.

**Table 7 – On-Street Parking Occupancy and Supply (# vehicles/ # spaces %)**

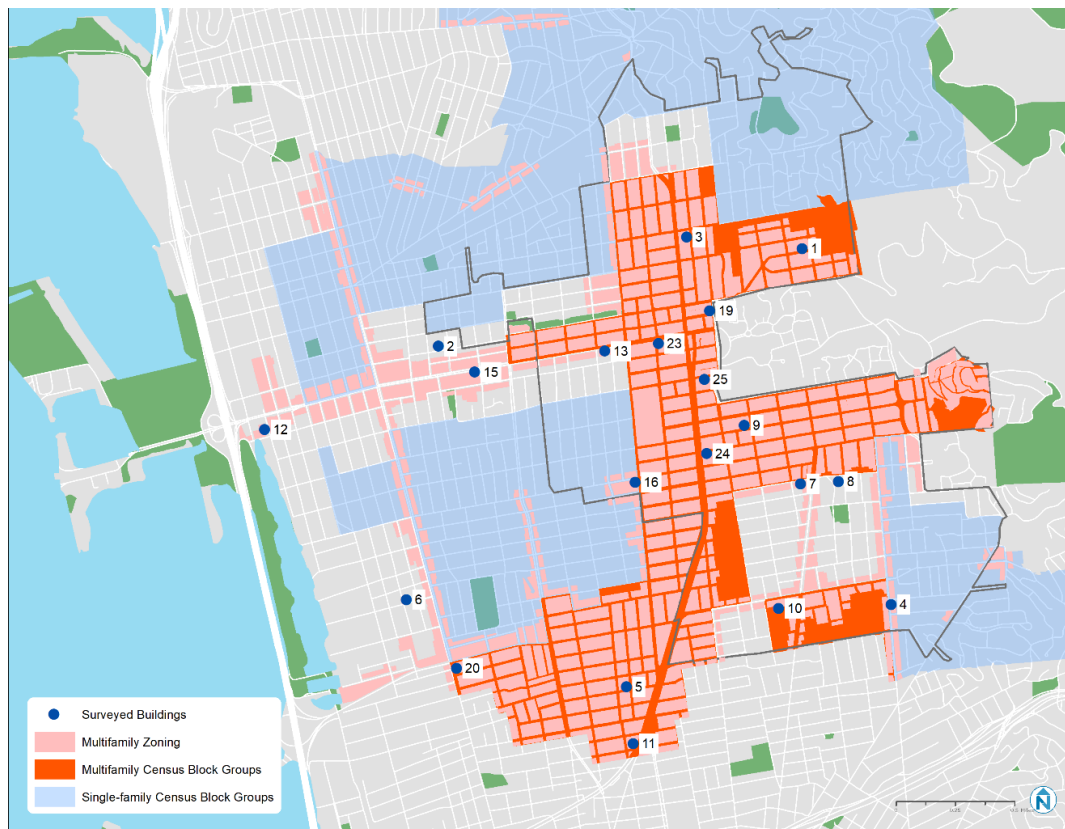
	<b>Median</b>	<b>Mean</b>	<b>Min</b>	<b>Max</b>	<b>20<sup>th</sup> percentile</b>	<b>80<sup>th</sup> percentile</b>
<b>Supply (#)</b>	23	22	3	46	9.8	35.2
<b>Occupancy (#)</b>	13	14.9	0	44	3	24.8
<b>Occupancy (%)</b>	60%	61%	0%	100%	42%	82%



## SOCIOECONOMIC ASSESSMENT

The project team evaluated characteristics of multifamily and single-family housing in Berkeley. This city-level assessment focused on aspects related to car-ownership that could provide context to the results of the parking capacity survey analysis. The team used 2017 American Community Survey (ACS) 5-year data at a census block group (CBG) level. A qualitative assessment was made to define CBGs as “multifamily housing” or “single-family housing,” based on the City of Berkeley zoning areas. CBGs were defined as either multifamily or single-family if one of the two types of land use covered most of the CBG. CBGs with an ambiguous mix of single-family and multifamily were excluded from the analysis. Figure 6 shows that most of the surveyed buildings (16) are located within multifamily zoning and in CBGs that the project team defined as multifamily. As a result, the socioeconomic assessment of the multifamily CBG (and its differences with single family areas) complement the conclusions from the survey and observation analysis.

Figure 6 – Multifamily Zoning and Census Block Groups



Note: Census block groups along the University corridor were neither defined as single nor multifamily since it was not clear the dominant zoning type in that CBG.

Figure 7 indicates that more than 40% of workers living in single-family CBGs drive alone to work as opposed to slightly more than 20% in multifamily CBGs. ACS data also shows that the share of workers walking to work in multifamily CBGs is higher (30%) than those living in single-family areas (7%).

**Figure 7 - Means of transportation to work, multifamily vs single-family CBG**

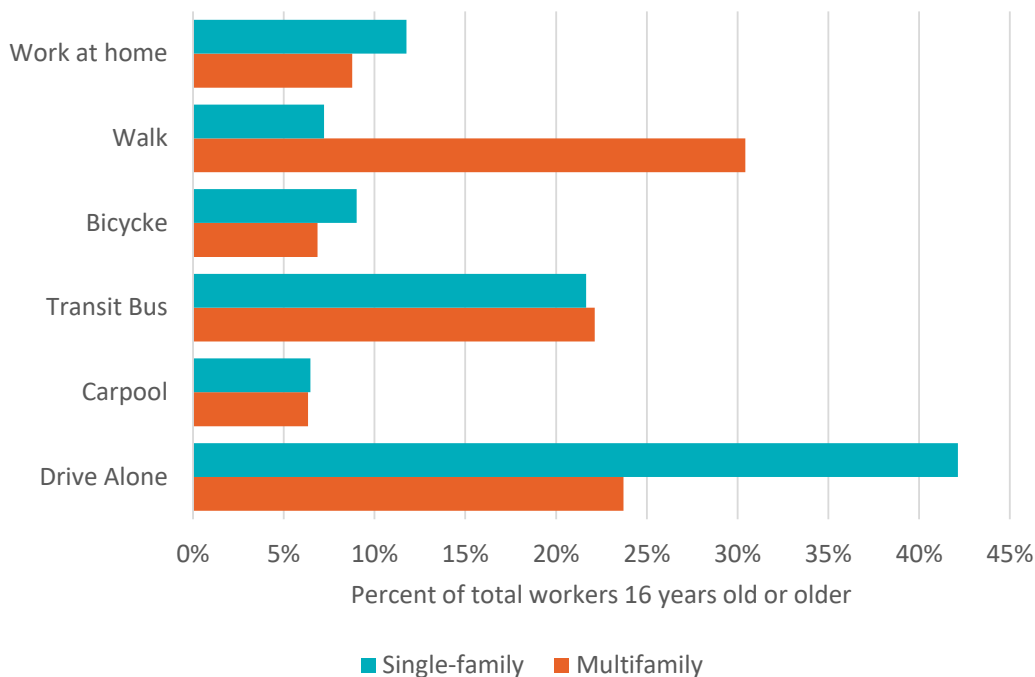
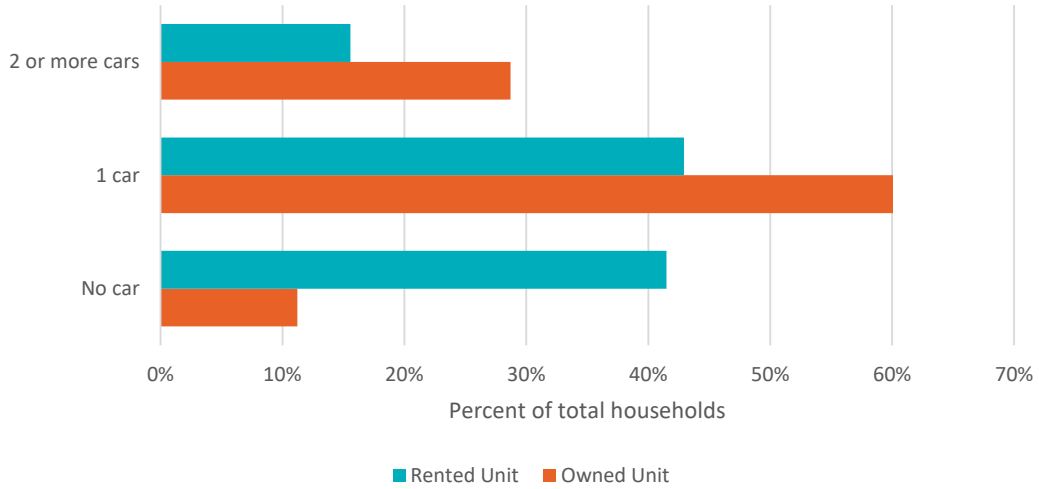
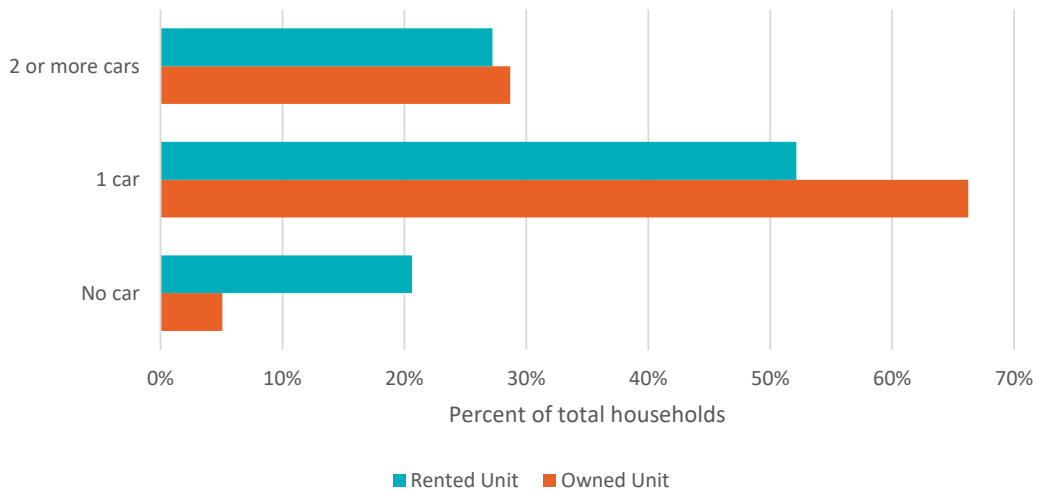


Figure 8 and Figure 9 show car-ownership by tenure in multifamily and single-family areas respectively. Approximately 40% of renters in multifamily areas do not have a car, double that of renters in single-family areas. Interestingly, homeowners show a similar car ownership pattern regardless of housing type. In multifamily housing areas, 89% of owners have at least one car, which is very close to the 95% of owners in single-family areas.

**Figure 8 – Vehicle ownership by tenure, multifamily CBG**



**Figure 9 – Vehicle ownership by tenure, single-family CBG**



## **APPENDICES**

- A. Property Survey Instrument
- B. Property Survey Parking Data



## Berkeley Parking Utilization Survey

Thank you very much for helping the Berkeley Planning Department by completing this survey. We expect this survey to only take about 5-10 minutes. After you submit the survey, we will contact you to arrange a visit to your building for a one-time parking count. If you have any questions about the survey or need any assistance, please contact Justin Horner, Associate Planner, at 510-981-7476 or [jhorner@cityofberkeley.info](mailto:jhorner@cityofberkeley.info)

\* 1. Residential Building Address

\* 2. Site Contact Name

\* 3. Site Contact Email

\* 4. Is there a Property Management Company?



## Berkeley Parking Utilization Survey

### 5. Name of the Management Company



## Berkeley Parking Utilization Survey

\* 6. Total Number of Residential Units

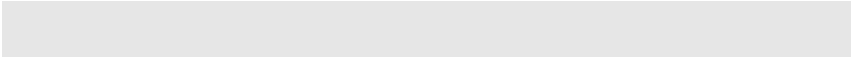
\* 7. Total Number of Occupied Residential Units

\* 8. Does this building have affordable residential units?



## Berkeley Parking Utilization Survey

\* 9. Total Number of Affordable Residential Units







## Berkeley Parking Utilization Survey

\* 10. Do you know how many residential units are occupied with residents that have vehicles?



## Berkeley Parking Utilization Survey

\* 11. Total number of residential units occupied by residents with vehicles





## Berkeley Parking Utilization Survey

\* 12. Total number of parking spaces designated for residential use

\* 13. Are there any parking spaces designated for residential use that are used by non-residents



## Berkeley Parking Utilization Survey

\* 14. Total number of spaces designated for residents that are used by non-residents



## Berkeley Parking Utilization Survey

\* 15. Do residents pay for on-site vehicle parking under separate agreement?

- Yes. Parking is rented/deeded separately
- No. Parking is free or included in rent or condo fee



## Berkeley Parking Utilization Survey

\* 16. Is the monthly cost of parking less or more than \$50/month?

- Less Than \$50
- More Than \$50
- N/A



## Berkeley Parking Utilization Survey

\* 17. Does your building offer any of the following benefits? (select all that apply)

- Secure Bike Parking
- Discounted Transit Passes for Residents
- On-site Car-share vehicles
- None of the Above
- Other (please specify)



## Berkeley Parking Utilization Survey

\* 18. What is the capacity of of your on-site bike parking (i.e. how may bikes can park)?





## Berkeley Parking Utilization Survey

\* 19. Do you think there are residents with cars who are parking off-site?

\* 20. Is there anything special or particular about residential parking in your building that you believe would be helpful for us to understand your building's situation better?

Appendix B - Berkeley Parking Survey Utilization Data

ID	Residential Building Address	Name of the Management Company	Total Number of Residential Units	Total Number of Occupied Residential Units	Does this building have affordable residential units?	Total Number of Affordable Residential Units	Do you know how many residential units are occupied with residents that have vehicles?	Total number of residential units occupied by residents with vehicles	Total number of parking spaces designated for residential use	Are there any parking spaces designated for residential use that are used by non-residents	Total number of spaces designated for residents that are used by non-residents	Do residents pay for on-site vehicle parking under separate agreement?	Is the monthly cost of parking less or more than \$50/month?	Does your building offer any of the following benefits? (select all that apply)
ID	Open-Ended Response	Open-Ended Response	Open-Ended Response	Open-Ended Response	Response	Open-Ended Response	Response	Open-Ended Response	Open-Ended Response	Response	Open-Ended Response	Response	Response	Secure Bike Parking
1	2575 Le Conte Ave.	Premium Properties	11	11	No		Yes	4	8	No		Yes. Parking is rented/d	More Than \$50	
2	1277 Hearst St.	Premium Properties	8	8	No		Yes	5	15	No		Yes. Parking is rented/d	More Than \$50	
3	1612 Walnut St.	Premium Properties	9	9	No		Yes	5	9	No		Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
4	3001 College Ave.	Premium Properties	10	10	No		Yes	6	10	No		Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
5	3140 Ellis St.	Premium Properties	10	10	No		Yes	5	7	No		Yes. Parking is rented/d	More Than \$50	
6	2777 9th St.	Premium Properties	21	21	No		Yes	20	21	No		No. Parking is free or included in rent or cond		Secure Bike Parking
7	2414 Parker St.	Premium Properties	16	16	No		Yes	9	16	No		Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
8	2610 Hillegass Ave.	Premium Properties	23	23	No		Yes	10	22	No		Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
9	2239 Channing Way	Premium Properties	14	14	No		Yes	0	6	Yes	4	Yes. Parking is rented/d	More Than \$50	
10	2321 Webster St.	Premium Properties	18	18	No		Yes	13	18	Yes	1	Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
11	3380 Adeline St.	Premium Properties	14	14	No		Yes	6	12	No		Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
12	651 Addison St, Berkeley, CA 94710	Avalonbay Communities	94	89	Yes	4	Yes	85	101	No		Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
13	1812 University Avenue Berkeley, CA 94703	SG Real Estate	44	44	Yes	4	No		17	No		Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
15	1370 university Ave	Equity Residential	71	67	Yes	69	No		61	Yes	4	Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
16	2500 Martin Luther King Jr., Way		10	10	Yes	2	Yes	9	10	No		No. Parking is free or included in rent or cond		Secure Bike Parking
19	1910 Oxford Street Berkeley CA 94704	The Dinerstein Companies	56	56	Yes	11	No		36	No		Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
20	3015 San Pablo Ave	Gerding Edlen	98	92	Yes	15	No		100	No		Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
23	2004 University Ave. Berkeley CA, 94704	The Dinerstein Companies	35	35	Yes	7	No		6	No	unknown	Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
24	2110 Haste St. Berkeley CA, 94704	The Dinerstein Companies	100	100	Yes	20	No		64	Yes	unknown	Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
25	2116 Allston Way	The Dinerstein Companies	91	91	Yes	18	No		40	No		Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
x	2002 Addison St, Berkeley CA, 94704	The Dinerstein Companies	27	27	Yes	4	No		18	No		Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
x	2020 Bancroft Way - 2025 Durant Avenue	Everest Properties	105	104	No		Yes	51	106	Yes	40	Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
x	1627 University Ave Berkeley CA 94703	The Dinerstein Companies	34	32	Yes	6	No		21	No		Yes. Parking is rented/d	More Than \$50	Secure Bike Parking
x	1901 Dwight Way Berkeley, CA 94704	SG Real Estate	21	21	Yes	3	Yes	12	14	No		Yes. Parking is rented/d	More Than \$50	
x	2121 Dwight Way	Greystar	99	96	Yes	9	No		41	No		Yes. Parking is rented/d	More Than \$50	Secure Bike Parking

Appendix B - Berkeley Parking Survey Utilization Data

ID	Residential Building Address	Discounted Transit Passes for Residents	On-site Car-spaces	None of the Above	Other (please specify)	Capacity of your on-site bike parking?	Are there residents with cars who are parking off-site?	Is there anything special or particular about residential parking in your building that you believe would be helpful for us to understand your building's situation better?	OFF Street	OFF Street	ON Street	ON Street
ID	Open-Ended Response					Open-Ended Response	Open-Ended Response	Open-Ended Response	TOTAL Supply	TOTAL Occupancy	TOTAL Supply	TOTAL Occupancy
1	2575 Le Conte Ave.			None of the Above			Yes	No	6	2	36	29
2	1277 Hearst St.			None of the Above			Yes	No	7	6	24	19
3	1612 Walnut St.					4-5	Yes	No	7	5	46	29
4	3001 College Ave.					2-3	Yes	No	5	5	15	7
5	3140 Ellis St.			None of the Above			Yes	No	14	8	35	28
6	2777 9th St.					Not sure	Yes	No	26	13	19	11
7	2414 Parker St.					Not sure	Yes	No	16	14	26	12
8	2610 Hillegass Ave.					Not sure	Yes	No	21	13	44	44
9	2239 Channing Way			None of the Above			Yes	No	10	1	23	14
10	2321 Webster St.					Not sure	Yes	No	18	13	41	24
11	3380 Adeline St.					Not sure	Yes	No	12	6	9	8
12	651 Addison St, Berkeley, CA 94710					27	Yes	All parking spaces are in the garage & 42 are standard parking spaces with 8 spaces with EV charging stations & 59 stack parking spaces	107	70	13	13
13	1812 University Avenue Berkeley, CA 94703					50	Yes	Thank you	19	14	23	2
15	1370 university Ave					40	Yes	Parking is \$150 per month in our building. Residents are all in affordable units so most residents park on the street surround building	46	9	24	13
16	2500 Martin Luther King Jr., Way					30 We have	No	Besides the 10 parking spots for the residential units all numbered there are 5 other parking spots for the 2 commercial units, a Chiropractor and Art Studio that	17	7	10	3
19	1910 Oxford Street Berkeley CA 94704					20	Yes	Parking is located in the garage which is gate controlled access. We have a Klaus system that allows multiple cars to park in the same space	34	7	7	3
20	3015 San Pablo Ave					60	Yes	matrix system - Matthews Mechanical	116	58	13	13
23	2004 University Ave. Berkeley CA, 94704					unknown	Yes	We utilize a Klaus machine to optimize garage space	7	6	3	0
24	2110 Haste St. Berkeley CA, 94704					unknown	Yes	utilize Klaus machine to optimize space in garage	67	13	29	22
25	2116 Allston Way					unknown	Yes	our building have a Klaus machine to optimize garage space	37	9	8	3
x	2002 Addison St, Berkeley CA, 94704					unknown	Yes	We utilize a Klaus machine to optimize garage space	NA	NA	NA	NA
x	2020 Bancroft Way - 2025 Durant Avenue					40	No	Mix of outdoor and indoor spaces.	NA	NA	NA	NA
x	1627 University Ave Berkeley CA 94703					20	Yes	Gated garage	NA	NA	NA	NA
x	1901 Dwight Way Berkeley, CA 94704			None of the			Yes	Thank you	NA	NA	NA	NA
x	2121 Dwight Way	Discounted Transit Passes for Residents				50 +	Yes	spots	NA	NA	NA	NA



OCT 27 2015

OFFICE OF THE CITY CLERK  
CITY OF BERKELEY

ACTION CALENDAR  
October 27, 2015  
(continued from October 6, 2015)

To: Honorable Mayor and Members of the City Council  
From: Councilmember Lori Droste  
Subject: Councilmember Lori Droste's Green Affordable Housing Package - Amendments

**RECOMMENDATION**

Request that the Planning Commission and City Manager investigate the feasibility of reducing barriers for the creation of new affordable housing. City Council requests that commissions and staff address and propose solutions and/or an implementation plan using the following recommendations by October 1, 2016.

**Policy 1: Designate units and funding for affordable housing by prioritizing housing over parking spaces in new developments**

1. Reduce or eliminate minimum residential parking requirements if car-sharing spaces, shared mobility devices, or transit passes or other TDM measures are provided.
2. Consider a cap on residential parking maximums.
3. Reduce or eliminate minimum parking requirements for new housing that serves populations that do not have high rates of car ownerships.
4. Reduce or eliminate minimum parking requirements for transit-intensive housing.
  - Transit-intensive housing is defined as within 1,200 feet of a transit center or within 1,200 feet of an overlap between major transit corridor and a commercial or mixed-use district.
  - Broadly defined, a *transit corridor* generally refers to a geographic area that accommodates travel or potential travel. A transit corridor is best defined as the areas around all of the stations along a transit line that have destinations or residences within reasonable distance for walking, biking, or other transit connections. ■
  - Broadly defined, a *transit hub* refers to a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or a major bus route with frequencies of service intervals of 15 minutes or less during the morning and afternoon peak commute periods. ■
5. Re-evaluate and/or reduce parking space requirements per new residential unit in areas within ½ mile of a transit hub.

*Determine a process whereby the costs saved by parking reductions will be designated for affordable units or the Affordable Housing Trust Fund.*

*Evaluate and account for impacts of parking policies on access and routes for emergency vehicles and evacuations.*

**Policy 2: Remove the structural barriers to creating more housing**

1. Improve and streamline the development review process, particularly for permanently affordable housing projects. ~~and smaller residential housing proposals~~ Review and compare Berkeley's process to that of neighboring cities.





Planning and Development Department  
Land Use Planning Division

## STAFF REPORT

DATE: December 4, 2019

TO: Members of the Planning Commission

FROM: Fatema Crane, Senior Planner

SUBJECT: 2740 and 2744 Telegraph Avenue Proposal for General Plan Re-designation and Zoning Map Amendment

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### RECOMMENDATION

Consider proposal to re-designate portions of parcels at 2740 and 2744 Telegraph Avenue from Medium Density Residential to Avenue Commercial and to rezone these same areas from Restricted Two-Family Residential District (R-2) to General Commercial District (C-1).

### BACKGROUND

The proposal in this report concerns a project site consisting of three lots: two lots that front on Telegraph Avenue (APN 054-171600300 and 054-171600300), and one that fronts on Ward Street (054-1716-031-00) (see Attachment 1: Project Site Zoning Map). Currently, these three lots, including the areas toward the rear, are part of the Rose Garden Inn and contain hotel rooms and parking lots to support that land use.

As shown on Attachment 2 (Existing Site Plan), the project site includes five structures. Buildings A and B are located within the C-1 zoning district and Buildings C, D, and E are located in the R-2 zoning district, except for a portion of Building D. All buildings are associated with the Rose Garden Inn hotel use.

Two of the lots (APN 054-1716-003-00 and 054-1716-031-00) are split-zoned with C-1 zoning along Telegraph Avenue and a portion of Stuart Street and R-2 zoning along the rear portions of the lots that front on Telegraph Avenue and for the majority of the lot that fronts on Ward Street. The current hotel use within the R-2 zoning district is considered to be legally non-conforming. A zone change and General Plan re-designation to commercial would bring the stated portions of these lots with hotel uses into conformance with the General Plan and the zoning ordinance.

The project site was originally approved as a bed and breakfast use in the 1970s; however, around 1991, the property transitioned to a hotel use. The bed and breakfast use was allowable in the R-2 zone at that time. Hotels are not allowed in the R-2, but in this case was approved with use permits and variances.

Variance 1630 was approved on December 10, 1990 to allow eight hotel rooms in the R-2 District at the rear of the property. In 1990, the restaurant within the hotel was for hotel guests only; however, per modifications approved in Use Permit No. 8633, the restaurant was allowed to expand operations to seven days per week with extended hours and was allowed to be open to the general public. Hotel uses are currently not allowed in the R-2 zoning district but are allowed in the C-1 zoning district. The Rose Garden Inn currently operates (legally non-conforming) as a hotel and restaurant with 40 guestrooms and a restaurant.

## **DISCUSSION**

The proposed General Plan re-designation and rezone of portions of the two lots from R-2 to C-1 would change the allowable uses and development regulations that would apply to the rear portion of the project site. The current hotel uses could continue as a nonconforming use in the R-2 zone; however, expansion of these uses or consolidation of the buildings would be subject to prior approval of a variance and/or Use Permit. The purpose of the requested re-designation and rezone is to bring the existing uses into conformity with the General Plan and Zoning Ordinance and to allow for future improvements to the hotel. The property owner is separately applying for Use Permits to upgrade and expand the non-historic portion of the hotel complex, but no changes to the hotel use are proposed, and the historic buildings (Berkeley Landmarks 125 and 126) would not be adversely impacted.

The Planning Commission will need to conduct a Public Hearing, and recommend action to the City Council regarding the requested map amendments according to BMC Chapters 22.04.02 and 23A.20, and California Government Code Sections 65353 *et seq* and 65853 *et seq*. This public hearing will be scheduled for a future date. This report is intended to introduce the proposed General Plan re-designation to Avenue Commercial and rezone to the C1 zone and address any preliminary questions, requests for additional information, and to provide ample notice to the public.

When this item comes forward as a public hearing, the Planning Commission will be asked to consider two sets of findings. Staff has drafted preliminary statements in response to the findings to support the re-designation and rezoning of the parcels. These preliminary findings are provided in Attachment 3.

## **NEXT STEPS**

Staff recommends that the Commission consider report for the proposed General Plan re-designation and rezone of portions of the three subject parcels, ask questions, and request a public hearing at the January 15, 2020 meeting to make a formal recommendation to the City Council on this request.



**Attachments:**

1. Project Site - Zoning Map
2. Existing Site Plan
3. General Plan Re-designation and Rezoning Findings



# ATTACHMENT 1 PROJECT SITE AND ZONING



Imagery provided by Microsoft Bing and its licensors © 2019.  
Additional data provided by City of Berkeley, 2019; Alameda County, 2018.



**ATTACHMENT 2  
EXISTING SITE PLAN**





**ATTACHMENT 3  
GENERAL PLAN REDESIGNATION AND  
REZONING FINDINGS**

*General Plan Re-designation Findings:*

1. The proposed amendment is in the public interest.
  - The proposed General Plan Amendment will eliminate an existing nonconforming use (hotel use in a medium density residential land use designation), as well as facilitate the proposed future renovation project that would meet general plan policies. The amendment serves the public interest by allowing the entire existing hotel use to continue by right within a unified commercial general plan designation. The commercial land use designation would also be consistent with commercial uses and land use designations along the Telegraph Avenue commercial corridor.
2. The proposed amendment is compatible with adjacent zoning districts and with adjacent district's uses.
  - The proposed amendment to Avenue Commercial is consistent with existing commercial land use designations and uses along the Telegraph Avenue corridor and existing commercial uses to the north, east and south of the project site. Medium density residential uses with a medium density residential General Plan designation exist to the north along Ward Street. These uses are also compatible with the general commercial land use designation and existing hotel use at 2740 and 2744 Telegraph Avenue.
3. The potential effects of the proposed amendment have been evaluated and have been determined not to be detrimental to the public health, safety, or welfare.
  - The amendment would not result in changes to the physical characteristics of the property or existing structure, but, as described in Finding 1 above, will facilitate compliance with current codes and regulations. New development would be reviewed for compliance with Berkeley Municipal Code and CEQA and be constructed to comply with the State Building and Safety Code as adopted by the City of Berkeley.
4. The proposed amendment has been processed in accordance with the applicable provisions of the California Government Code and the California Environmental Quality Act (CEQA).
  - Staff evaluated the amendment request and determined it is exempt from CEQA pursuant to Classes 1, 3, 5, and 31, which apply to the proposed amendment as well as a proposed future hotel renovation project (Attachment 2). Section 15301 of the *State CEQA Guidelines* states that a Class 1 CE is for minor alterations of existing private structures that involve negligible or no expansion of an existing use. Section 15303 states that a Class 3 CE is for construction of limited numbers of new structures and the conversion of existing structures from one use to another where only minor modifications are made in the exterior of the structure. Section 15305 states that a Class 5 CE is for minor alterations in land use limitations which do not result in changes to land use or density. Section 15331 of the *State CEQA Guidelines* states that a Class 31

### **ATTACHMENT 3 GENERAL PLAN REDESIGNATION AND REZONING FINDINGS**

CE is for rehabilitation or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for Rehabilitating Historic Buildings (1995).

*Rezoning Findings:*

1. The proposed rezoning is in the public interest.
  - The proposed rezoning from R-2 to C-1, serves the public interest by eliminating a non-conformity (hotel use in an R-2 restricted residential zone), as well as facilitate the proposed future renovation of the project site that would meet provisions of the C-1 zone in the Berkeley Municipal Code. The amendment serves the public interest by allowing the entire existing hotel use to continue by right within the commercial general plan designation. The C-1 zone would also be consistent with commercial uses and C-1 zoned properties along the Telegraph Avenue commercial corridor.
2. The proposed rezone is compatible with adjacent zoning districts.
  - The proposed rezone from R-2 to C-1 is compatible with existing commercial land use zoning and uses along the Telegraph Avenue corridor and existing commercial uses to the north, east and south of the project site. Medium density residential uses with a medium density residential designations exist to the north along Ward Street, which is also compatible with the general commercial land use designation and existing hotel use.
3. The proposed rezone allows uses which would be compatible with adjacent districts uses.
  - The proposed rezone from R-2 to C-1 would allow commercial uses that are compatible with existing commercial uses along the Telegraph Avenue corridor. In addition, the proposed commercial zoning allows compatible mixed residential/commercial and higher density uses with prior approval of a use permit. These uses would be compatible with multi-family housing to the north and south of the project site along Ward Street.
4. The potential effects of the proposed rezone will not be detrimental to the public health, safety and welfare.
  - The proposed rezone would not result in changes to the physical characteristics of the property or existing structure, but, as described in Finding 1 above, will facilitate compliance with current codes and regulations. Any new development would be reviewed for compliance with CEQA and be constructed to comply with the State Building and Safety Code as adopted by the City of Berkeley.





Office of the City Manager

ACTION CALENDAR

October 15, 2019

*(Continued from September 24, 2019)*

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Jordan Klein, Economic Development Manager  
Subject: Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses

RECOMMENDATION

Refer to the Planning Commission modifications to the Zoning Ordinance that are designed to streamline the zoning review process for new or expanding small businesses in Berkeley.

SUMMARY

In April 2017, City Council referred to the City Manager analysis of a number of policy and programmatic initiatives to support the City's small businesses, including "streamlining of zoning, permitting and licensing requirements and processes." In February of 2019, six changes to the Zoning Ordinance were enacted. Subsequently, staff from the Office of Economic Development (OED) have identified eight additional potential modifications to the Zoning Ordinance for the Council and Planning Commission to consider. These eight changes are proposed in Berkeley's commercial zoning districts to make the permitting review process for small businesses less complex and time consuming:

1. Consider permitting Group Instruction (Dance Studios, Yoga Studios, Martial Arts, Exercise) with a Zoning Certificate.
2. Clarify the threshold for design review and the applicability of design guidelines for sign applications in commercial districts.
3. Consider permitting the sale of Distilled Spirits that are incidental to a Food Service Establishment with an Administrative Use Permit (AUP) subject to performance standards.
4. Consider permitting standalone Beer and Wine Sales (such as Tap Rooms and Wine Bars) with a Zoning Certificate subject to performance standards.
5. Consider modifying the limitation on hours of operations in some commercial districts.
6. Consider the necessity of 'change of use' requirements in commercial districts.
7. Consider the appropriate levels of discretion for Arcades and Automatic Teller Machines (ATMs) commercial districts.

8. Update the Special Use Standards in Section 23E.16.040 for Alcoholic Beverage Sales and 23E.16.050 Amusement Arcades to reflect the proposed changes to the Zoning Ordinance.

These proposed revisions reflect input from the small business community and are seen by staff as relatively straightforward opportunities to modernize and improve the Zoning Ordinance to reflect present day conditions and community values. Each of these proposed modifications is designed to make the zoning review process for small businesses easier, clearer, and more streamlined.

#### FISCAL IMPACTS OF RECOMMENDATION

Modifications to the Zoning Ordinance, and the accompanying public hearings, will require staff time from the Planning Department, Office of Economic Development, and City Attorney's Office to produce staff reports and attend the required Planning Commission and City Council hearings. Proposed modifications are designed to simplify the planning review process for desirable business activities (including new business starts and expansions) and therefore may result in a modest increase in business license tax and sales tax revenues.

#### CURRENT SITUATION AND ITS EFFECTS

The Zoning Ordinance has evolved over decades to reflect Berkeley's changing values and the changing landscape of property development and land use. Its requirements are intended to guide the City's growth while preserving its existing character. However, businesses and people operate differently than they did 20 to 50 years ago, and some of the current permit thresholds and ordinance requirements do not recognize these changes. This results in a permitting process that can be unnecessarily lengthy and cumbersome, especially for independently-owned small businesses without the sophistication to navigate our complicated code and permitting process. Since its last major overhaul in 1999, the Zoning Ordinance has been updated in large and small ways at least 16 times to reflect new approaches to land use and changes in the ways businesses function and residents view their community. Staff has observed that it is particularly difficult for smaller, independently-owned businesses to navigate the permit review process and the associated timelines and expense. The modifications proposed here are designed with the unique needs and challenges of small businesses in mind. Further, these recommendations follow up on the recently adopted (January 2019) zoning modifications to support small business that have improved the experiences in several cases over a period of five months.

In order to update our ordinance to better accommodate today's locally-owned, small, independent enterprises that are highly desirable to our community, and to adhere to best practices in planning and sustainable economic development, staff recommends the eight modifications to the Zoning Ordinance listed above to provide regulatory relief for small businesses in their establishment or expansion phases. These changes are an important component and continuation of a broader effort to improve our organization's embrace of our customer service and Strategic Plan goals to "foster a dynamic, sustainable, and locally-based economy" and "provide excellent, timely, easily-

accessible service and information to the community,”<sup>1</sup> while honoring the City’s commitment to public participation and ensuring that new uses are compatible with neighboring land uses.

#### BACKGROUND

On April 25, 2017, the City Council referred to the City Manager a bundle of recommendations entitled the “Small Business Support Package” with the objective to “to support the establishment of new, and sustainability of existing small and/or locally owned businesses.” Among the strategies that Council asked staff to analyze and implement included “streamlining of zoning, permitting and licensing requirements and processes for small/local businesses and not-for-profits, to reduce associated costs and delays, and, where appropriate, provide less onerous levels of review.”<sup>2</sup> In the Council’s annual referral prioritization exercise conducted in May 2017, the item was ranked as the Council’s top priority among the referrals not pertaining to housing.

Subsequently, during summer and fall of 2017, Office of Economic Development (OED) staff conducted significant outreach and research on Berkeley’s small businesses and compiled its findings in a work session report and presentation to council on January 16, 2018.<sup>3</sup> Small business owners and advocates identified the lengthy permitting review process as one of the primary barriers to small business startup and expansion in Berkeley. As a result, staff recommended six modifications to the Zoning Ordinance that were adopted by the City Council on January 22, 2019.<sup>4</sup> Over six months since the zoning modifications went into effect, several business have benefited from the amendments by reducing months of permit review time and additional expenses. For example, Thai Corner at 1277 Gilman Street, the Sundhari Spa at 1605 Solano Avenue, and AxeVentures at 2566 Telegraph Avenue each were able to open their business or expand their hours via a Zoning Certificate, rather than wait several months for an AUP. In addition, the zoning modifications were acknowledged by the Northern California Chapter of the American Planning Association (NorCal APA) with an Award of Merit in Economic Planning and Development.

The goal of this second round of zoning changes is again to improve and simplify the permitting experience for small businesses, which can in turn enhance the quality of commercial district offerings, help fill vacant storefronts, and generate more local and sustainable economic opportunities. The recommendations distill specific complaints, concerns, challenges, and staff observations into concise changes to the zoning ordinance designed specifically to alleviate long permit queues, clear up applicant confusion, and streamline the experience of doing business in Berkeley. The

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<sup>1</sup> See *City of Berkeley 2018-2019 Strategic Plan*, adopted by Berkeley City Council, January 16, 2018.

<sup>2</sup> See *Small Business Support Package*, adopted by Berkeley City Council, Item 41, April 25, 2017.

<sup>3</sup> See *Economic Development Worksession, Small Business Support*.

[https://www.cityofberkeley.info/Clerk/City\\_Council/2018/01\\_Jan/Documents/2017-01-16\\_WS\\_Item\\_01\\_Economic\\_Development\\_Worksession.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/01_Jan/Documents/2017-01-16_WS_Item_01_Economic_Development_Worksession.aspx)

<sup>4</sup> See *Referral Response: Modifications to the Zoning Ordinance to Support Small Businesses*, adopted by City Council, Item 1, January 22, 2019

[https://www.cityofberkeley.info/Clerk/City\\_Council/2019/01\\_Jan/Documents/2019-01-22\\_Item\\_01\\_Ordinance\\_7635.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/01_Jan/Documents/2019-01-22_Item_01_Ordinance_7635.aspx)

recommendations are also informed by outreach, conducted February through August 2019, to neighborhood stakeholders, business owners, elected officials and commissioners. Staff aimed to identify and streamline the particular controls that lengthen the review process for desired and noncontroversial uses. In addition, the recommendations are consistent with purpose statements for commercial districts in section 23E of the Zoning Ordinance.

The following recommendations and rationale continue to iterate on the progress and inputs gathered from the first round of zoning amendments to support small businesses:

1. Consider permitting Group Instruction (Dance Studios, Yoga Studios, Martial Arts, Exercise) with a Zoning Certificate. Currently the Zoning Ordinance requires an AUP for Group Class Instruction in the majority of commercial zoning districts. A new yoga studio or exercise studio, or businesses interested in adding classes to an existing business, such as an art gallery or culinary business, are subject to discretionary review through an AUP application. The AUP requirement typically lengthens the zoning review process by three to six months, and typically increases the cost by roughly \$1,000 to \$4,000.

OED staff has observed an increase in business models that employ a combination of retail and/or food consumption with instruction, training and class offerings. As the prevalence of online purchases for soft goods (e.g., clothing, books, music) increases, these creative commercial uses are increasingly critical to the vitality and sustainability of neighborhood commercial districts. Therefore staff recommends amending the Zoning Ordinance to permit these uses in commercial districts with a Zoning Certificate.

2. Clarify the threshold for design review and the applicability of design guidelines for sign applications in commercial districts. Section 20.12.070 of the Zoning Ordinance and Section 23E.08.020 of the Sign Code have conflicting and contradictory language related to the threshold for the design review of a new sign and the requirements for a Sign Permit. In addition, the current application for Signs and Awnings throughout the City refer to the Downtown Sign Guidelines; those guidelines have been used for the review and processing of signs beyond Downtown. This has led to confusion for applicants, business owners and sign companies wishing to do business in Berkeley. The impact is especially detrimental to small, independent business owners interested in opening a new business with a new sign.

To remedy this, staff recommends a minor modification to the language in Section 23E.08.020 Applicability of Design Review in non-residential districts to clarify the types of signs that are subject to design review and signs that are exempt. In addition, the Planning Commission should determine whether the Downtown Sign Guidelines are suitable for the evaluation of signs throughout the City or only Downtown.

3. Consider permitting the sale of Distilled Spirits that are incidental to a Food Establishment with an Administrative Use Permit (AUP) subject to performance standards. Presently an operator of a food service establishment must obtain a Use Permit with a Public Hearing UP(PH) to serve distilled spirits. This review process is separate from and in addition to the review process an owner or operator is subject to by Alcohol Beverage Control (ABC), the state agency regulating the sale, service, and production of alcohol. The UP(PH) requirement typically lasts between five to eleven months, and includes \$5,215 in fees. The requirement also generates additional demands on Planning staff and the Zoning Adjustments Board, and uncertainty for food service purveyors.

Staff recommends the incidental service of distilled spirits at a food establishment be permitted via an AUP, subject to specific conditions of approval and the adopted performance standards which are approved by Berkeley's law enforcement officials and in line with the best practices employed by the state ABC. Nearby residents and property owners will still be notified of the proposed use and will have the ability to provide comments and appeal the Planning Department's decision.

4. Consider permitting standalone Beer and Wine Sales (such as Tap Rooms and Wine Bars) with a Zoning Certificate subject to performance standards. Currently, tap rooms, wine bars and tasting rooms are subject to the UP(PH) process in most commercial districts. As noted above, the UP(PH) requirement typically lasts between five to eleven months, and includes \$5,215 in fees. The requirement also generates additional demands on Planning staff and the Zoning Adjustments Board, and uncertainty for entrepreneurs interested in this type of business. This review process is separate from and in addition to the review process an owner or operator is subject to by Alcohol Beverage Control (ABC), the state agency regulating the sale, service, and production of alcohol.

Staff recommends that standalone beer and wine sales be permitted via a Zoning Certificate, subject to the performance standards which are approved by Berkeley's law enforcement officials and in line with the best practices employed by the state ABC. The City of Berkeley has an emerging wine and beer scene, resulting in additional tourism, tax revenue, manufacturing and job creation; this policy change could help to encourage its continued expansion.

5. Consider modifying the limitation on hours of operations in some commercial districts. Currently, several commercial zoning districts limit the hours of operation for businesses; e.g., businesses in the Elmwood District may not operate outside of 7am-11pm. In order for a business to exceed the existing limits, they must apply for a UP(PH) (adding approximately five to eleven months and \$5,215 in fees to the zoning approval process). This is a significant obstacle for many business owners and has served as a deterrent for entrepreneurs that may be interested in providing food and drinks to customers after 11:00 pm. Many of the City's entertainment activities end at or after 11:00 pm; in some

districts, the limits on hours of operations restricts businesses from offering complementary services. This could result in lost tax revenue, job opportunities and lost business to adjacent cities. Staff recommends that the Planning Commission consider removing the blanket restriction in some or all commercial districts, allowing business owners to maintain hours of operation that comply with any applicable State laws and are aligned with their business model and customer demand.

6. Consider the necessity for 'change of use' requirements in commercial districts triggered by square footage. Currently in some C-prefixed districts, a change of use above a certain square footage threshold necessitates an AUP or a UP(PH). A commercial change of use requirement based on square footage is atypical; surrounding jurisdictions do not impose this level of scrutiny on neighborhood serving business, which puts Berkeley at a competitive disadvantage in its attraction of new businesses to larger commercial spaces. Each district's Use Table makes allowances for different levels of discretionary review for particular uses based on square footage thresholds. This additional requirement therefore adds to the overall complexity of the zoning ordinance; as it is a supplemental requirement implemented via an asterisk, often it is initially overlooked by applicants.

Staff recommends that the Planning Commission review the appropriateness and benefits of an AUP for a Change of Use and consider eliminating the requirement in some or all commercial districts. Proposed uses would be evaluated and reviewed based on the levels of discretion defined in the Use Table for each district.

7. Consider the appropriate levels of discretion for Arcades and Automatic Teller Machines (ATMs) commercial districts. Commercial recreation uses that are classified as Arcades (e.g., Emporium and 90's Experience, Oakland, CA and the High Scores Arcade Museum, Alameda, CA) have become increasingly popular and prevalent. With the rise of internet sales posing challenges to retailers, these types of experiential commercial establishments have become increasingly important to the overall health of commercial districts. However, Berkeley's existing zoning controls make it difficult or impossible to open that type of establishment in most districts. Currently, Arcades are either prohibited or require a UP(PH), which adds approximately five to eleven months and \$5,215 in fees to the zoning approval process. The requirement also generates additional demands on Planning staff and the Zoning Adjustments Board, and uncertainty for entrepreneurs interested in this type of business.

ATMs also typically require an AUP or UP(PH), and in some districts are prohibited unless part of a Financial Institution. ATMs are often a beneficial and complimentary element for active commercial districts, especially if there's a lack of financial institutions in the area like some parts of Berkeley. Furthermore, the City of Berkeley is considering a policy that would require businesses to accept

cash. Staff recommends that the Planning Commission review the levels of discretion for Arcades and ATM's in commercial districts.

8. Update the Special Use Standards in Section 23E.16.040 for Alcoholic Beverage Sales and 23E.16.050 Amusement Arcades to reflect the proposed changes to the Zoning Ordinance. The Special Use Standards in Section 23E.16.040 for Alcoholic Beverage Sales and 23E.16.050 Amusement Arcades provide additional requirements and limitations for certain uses in the Zoning Ordinance. Several of the regulations are limiting and don't reflect the current standards in other jurisdictions. In addition, these sections would need to be modified to be consistent with the recommended Zoning Ordinance amendments above. Furthermore, the Public Convenience or Necessity findings for alcohol use and the distance buffers for Arcades are overly restrictive, don't reflect best practices and conflict with typical business practices. For example, Section 23E.16.040(A)(1)(b)(5) states "*no beer or wine may be distributed in its original bottle or can.*" Staff recommends that the Planning Commission consider updating the Special Use section of the ordinance to be reasonable, enforceable and be consistent with surrounding jurisdictions.

#### *Next Steps*

Staff recommends that City Council review and adopt this referral to Planning Commission. Subsequently, Planning Department staff would present the Planning Commission with information, case studies and analysis relevant to each proposed change, seek guidance from the Commission, and draft Zoning Ordinance amendments for the Commission's review. It is possible that some of the recommendations may be implemented as part of the Zoning Ordinance Revision Project (ZORP), a current initiative to modernize and streamline the Zoning Ordinance. Planning Commission hearings will provide opportunities for additional feedback from small business owners, citizens, neighborhood associations, and commercial district groups.

#### *Strategic Plan Connection*

This referral is a component of a Strategic Plan Priority Project (Small Business Support), advancing our goals to provide an efficient and financially-healthy City government; to foster a dynamic, sustainable, and locally-based economy; and to be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.

#### ENVIRONMENTAL SUSTAINABILITY

Many of the City's environmental sustainability goals are inextricably tied to the overall health of the City's economy. Small businesses make up the bulk of Berkeley's economy. Small businesses often contribute to sustainable transportation and consumer behavior by providing opportunities to shop in neighborhood commercial districts that are accessible by foot, bicycle and transit.

#### RATIONALE FOR RECOMMENDATION

Berkeley's commercial districts, and the small businesses that comprise them, are vital to the City's economic, social and civic wellbeing. These zoning changes represent the

most immediate and straightforward approach the City can take to assist small businesses and potentially reduce commercial vacancies. They are designed specifically to support small independent operators seeking to invest and activate these districts, and will provide the community with needed goods and services. These changes also have the added addition of improving our city's internal permitting processes, by shortening timelines and improving customer service.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered various other changes to levels of discretionary review and other zoning compliance review for commercial uses, but recommends moving forward with the modifications proposed above while continuing to gather input on additional changes.

CONTACT PERSON

Jordan Klein, Economic Development Manager, (510) 981-7534

Kieron Slaughter, Community Development Project Coordinator, (510) 981-2490





Office of the City Manager

CONSENT CALENDAR  
November 12, 2019

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Timothy Burroughs, Director, Planning and Development Department  
Subject: Authorize the City Manager to Submit Senate Bill 2 Planning Grants Program Application

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to submit the application for Senate Bill 2 Planning Grants Program (PGP) in the amount of \$310,000 and sign documents or amendments when the grant is awarded.

FISCAL IMPACTS OF RECOMMENDATION

The City will receive \$310,000 from the State of California that will go towards planning efforts to develop transit-oriented development (TOD) zoning regulations on Bay Area Rapid Transit (BART) properties in Berkeley.

CURRENT SITUATION AND ITS EFFECTS

Senate Bill (SB) 2, the Building Homes and Jobs Act of 2017, established a \$75 recording fee on certain real estate documents to be used for planning grants in 2019 and for affordable housing in following years. The City of Berkeley is eligible to receive a 2019 Planning Grants Program award in the amount of \$310,000.

BACKGROUND

SB 2 provides funding and technical assistance to all local governments in California to help them prepare, adopt, and implement plans and process improvements that streamline housing approvals and accelerate housing production. Funding is non-competitive and based on population estimates published by the State's Department of Finance.<sup>1</sup> The City of Berkeley is classified as a "medium city" and is therefore eligible to apply for \$310,000.

Grants issued through the 2019 PGP can be used for updating local planning documents, updating zoning ordinances, conducting environmental analyses or for local improvements to expedite local planning and permitting. More specifically, planning activities funded through this program are to focus on preparation, adoption and

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<sup>1</sup> <http://www.dof.ca.gov/Forecasting/Demographics/Estimates/E-5/>

**Page 2 of 4**

Authorize the City Manager to submit Senate Bill 2 Planning Grants Program Application    CONSENT CALENDAR  
November 12, 2019

implementation of plans and zoning regulations that streamline housing approvals and accelerate housing production.

The City will use these funds for developing TOD zoning regulations on BART properties in Berkeley. Both the draft Adeline Corridor Specific Plan and passage of Assembly Bill (AB) 2923 require Berkeley to plan for future uses and development at Berkeley's BART stations.

AB 2923, signed into law by Governor Brown on September 30, 2018, requires BART to adopt TOD zoning standards on parcels of land it owns by July 2020. It also requires affected cities and counties to update their zoning regulations to be consistent with BART's zoning TOD standards by July 2022. Zoning at Ashby BART station and North Berkeley BART station must be modified for the City of Berkeley to be in compliance with AB 2923.

ENVIRONMENTAL SUSTAINABILITY

Funds used to advance TOD at BART stations supports regional and local greenhouse gas reduction goals.

RATIONALE FOR RECOMMENDATION

In order to apply for the 2019 PGP funds, City Council must adopt and submit the attached Resolution by November 30, 2019.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Alene Pearson, Principal Planner, Planning and Development Department, 510-981-7489

Attachments:  
1: Resolution

**Page 3 of 4**

RESOLUTION NO. ##,###-N.S.

SUBMISSION OF SB 2 PLANNING GRANTS PROGRAM APPLICATION

WHEREAS, the State of California, Department of Housing and Community Development (Department) has issued a Notice of Funding Availability (NOFA) dated March 28, 2019, for its Planning Grants Program (PGP); and

WHEREAS, the Council of the City of Berkeley desires to submit a project application for the PGP program to accelerate the production of housing and will submit a 2019 PGP grant application as described in the Planning Grants Program NOFA and SB 2 Planning Grants Program Guidelines released by the Department for the PGP Program; and

WHEREAS, the Department is authorized to provide up to \$123 million under the SB 2 Planning Grants Program from the Building Homes and Jobs Trust Fund for assistance to Counties (as described in Health and Safety Code section 50470 et seq. (Chapter 364, Statutes of 2017 (SB 2)) related to the PGP Program.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is hereby authorized and directed to apply for and submit to the Department the 2019 Planning Grants Program application in the amount of \$310,000.

BE IT FURTHER RESOLVED that in connection with the PGP grant, if the application is approved by the Department, the City Manager or her designee is authorized to enter into, execute, and deliver a State of California Agreement (Standard Agreement) for the amount of \$310,000, and any and all other documents required or deemed necessary or appropriate to evidence and secure the PGP grant, the City's obligations related thereto, and all amendments thereto (collectively, the "PGP Grant Documents").

BE IT FURTHER RESOLVED that the City shall be subject to the terms and conditions as specified in the Standard Agreement, the SB 2 Planning Grants Program Guidelines, and any applicable PGP guidelines published by the Department. Funds are to be used for allowable expenditures as specifically identified in the Standard Agreement. The application in full is incorporated as part of the Standard Agreement. Any and all activities funded, information provided, and timelines represented in the application will be enforceable through the executed Standard Agreement. The City Council hereby agrees to use the funds for eligible uses in the manner presented in the application as approved by the Department and in accordance with the Planning Grants NOFA, the Planning Grants Program Guidelines, and 2019 Planning Grants Program Application.

BE IT FURTHER RESOLVED that the City Manager or her designee is authorized to execute the City of Berkeley Planning Grants Program application, the PGP Grant

**Page 4 of 4**

Documents, and any amendments thereto, on behalf of the City as required by the Department for receipt of the PGP Grant.



Office of the City Manager

CONSENT CALENDAR  
November 19, 2019

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Timothy Burroughs, Director, Planning and Development Department  
Subject: Priority Development Area Nomination – North Berkeley BART Station

RECOMMENDATION

Adopt a Resolution in support of nominating the North Berkeley BART station as a Priority Development Area.

FISCAL IMPACTS OF RECOMMENDATION

Upon Metropolitan Transportation Commission's (MTC's) designation of the North Berkeley BART station as a Priority Development Area, the City of Berkeley would become eligible to apply for, and receive, grant funding from MTC for planning activities and infrastructure improvements related to the development of the North Berkeley BART station.

BACKGROUND

*Plan Bay Area 2050* is the long-range regional planning effort undertaken by MTC and the Association of Bay Area Governments (ABAG) to outline strategies for growth and investment in the nine-county Bay Area through the year 2050. The Plan will serve as the Bay Area's Regional Transportation Plan (RTP), to be developed in accordance with the California Transportation Commission's RTP guidelines, and will also serve as the Bay Area's Sustainable Communities Strategy, fostering compliance with greenhouse gas emissions reductions targets set by the California Air Resources Board, pursuant to the Sustainable Communities and Climate Protection Act (SB375). The Plan is to be adopted in 2021.

*Plan Bay Area 2050* envisions new development concentrated in Priority Development Areas (PDAs). PDAs are places with convenient public transit service prioritized by local governments for housing, jobs, and services. Jurisdictions with PDAs have access to dedicated funding for plans and infrastructure improvements focused in those areas. Since 2012, MTC has invested more than \$630 million in PDA projects that advance community goals, including new sidewalks and bike lanes, improved transit access, and development of housing, including affordable units. In addition, many competitive state transportation and housing funding programs now prioritize projects in places that implement regional plans such as PDAs.

The City of Berkeley currently has six PDAs (see *Attachment 3*): the Adeline Corridor; Downtown Berkeley; San Pablo Avenue; South Shattuck Avenue; Telegraph Avenue and the Southside; and University Avenue. The North Berkeley BART PDA would be the City's seventh PDA. The City received a grant of \$750,000 from MTC for planning in the Adeline / South Shattuck PDAs and anticipates receiving substantial additional funding for Specific Plan implementation. If the next round of PDA funding has a minimum size requirement, the North Berkeley PDA may be combined with another Berkeley PDA or planning area to qualify for funding.

In addition, State law (AB 2923, Chiu) passed in 2018 requires BART to develop transit-oriented development (TOD) zoning standards for each BART station, establishing minimum local zoning requirements for height, density, parking, and floor area ratio by July 1, 2020. The City is currently working with BART to establish such zoning regulations for the North Berkeley BART station, including a community visioning process for development at the station. Establishment of a North Berkeley BART PDA would allow the City to leverage funding that could support this planning process.

#### ENVIRONMENTAL SUSTAINABILITY

The designation of the North Berkeley BART station as a PDA will qualify the area for grant funds to support planning and infrastructure for the development of a TOD on the North Berkeley BART station site. Dense residential development in close proximity to transit and multimodal access improvements further the goals of the City of Berkeley's Climate Action Plan to reduce GHG emissions from the transportation sector and to improve the efficiency of energy use in buildings.

#### EQUITY ANALYSIS

The designation of North Berkeley BART as a PDA would encourage residential development near high-quality public transit. TOD at BART would offer sustainable, low-cost access to jobs and educational institutions and provide affordable housing per local (e.g. Inclusionary Housing Ordinance, Housing Trust Fund, Measure O) and State initiatives. Stable, affordable housing paired with transit can help prevent displacement and job-loss and can help improve the quality-of-life for individuals, families and communities.

#### RATIONALE FOR RECOMMENDATION

Designation of the North Berkeley BART station as a PDA will qualify the area for grant funds to support planning and infrastructure for the development of sustainable TOD, including affordable housing, on the North Berkeley BART station site. Designation of the area as a PDA would not compel the City of Berkeley to undertake any action which would be inconsistent with current plans, policies or programs. Choosing not to designate the area as a PDA could exclude the North Berkeley BART station project from certain sources of grant funding.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

Priority Development Area Nomination – North Berkeley BART Station

CONSENT CALENDAR  
November 19, 2019

CONTACT PERSON

Alene Pearson, Principal Planner, Land Use Planning, 510-981-7489  
Justin Horner, Associate Planner, Land Use Planning, 510-981-7476

Attachments:

- 1: Resolution
- 2: Map of Proposed North Berkeley BART PDA
- 3: Map of City of Berkeley PDAs

**Page 4 of 6**

RESOLUTION NO. ##,###-N.S.

DESIGNATION OF NORTH BERKELEY BART STATION AS A PRIORITY  
DEVELOPMENT AREA

WHEREAS, the Metropolitan Transportation Commission and the Association of Bay Area Governments are preparing *Plan Bay Area 2050* (the Plan), a long-range plan charting the course for the future of the nine-county San Francisco Bay Area; and

WHEREAS, the Plan will serve as the Bay Area's Regional Transportation Plan and Sustainable Communities Strategy, outlining strategies for growth and investment through the year 2050; and

WHEREAS, the Plan is expected to support new development concentrated in Priority Development Areas (PDAs). PDAs are places with convenient public transit service prioritized by local governments for housing, jobs, and services; and

WHEREAS, jurisdictions with PDAs have access to dedicated funding from MTC for plans and infrastructure improvements focused on PDAs; and

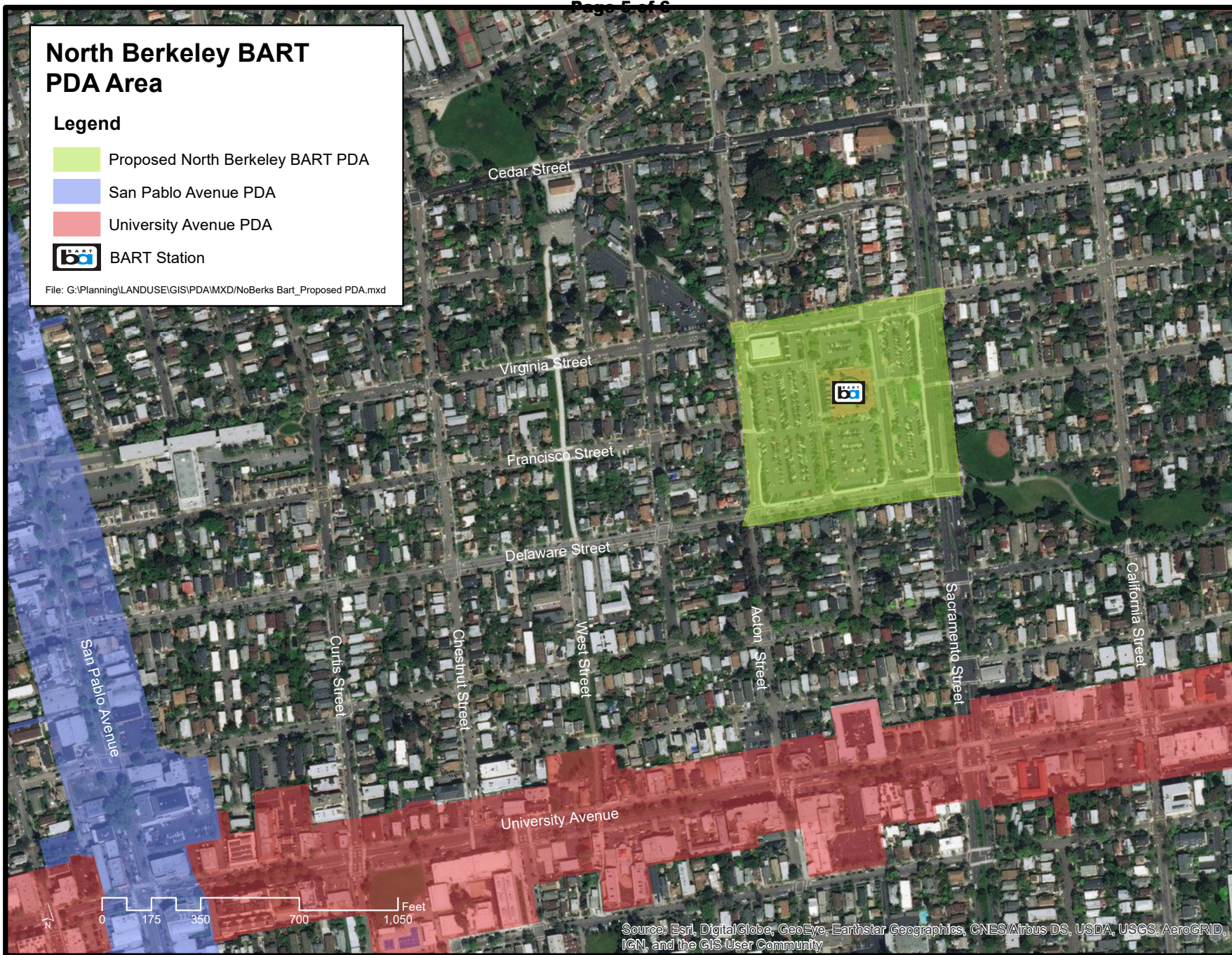
WHEREAS, the City of Berkeley (the City) is currently working with the Bay Area Rapid Transit District (BART) to establish zoning regulations for the development of a transit-oriented development (TOD) at the North Berkeley BART station; and

WHEREAS, designation of the North Berkeley BART station as a PDA would qualify the area for grant funds to support planning and infrastructure for the development of TOD on the North Berkeley BART station site; and

WHEREAS, designation of the North Berkeley BART station does not require the City to approve any specific housing or other project at the North Berkeley BART station site at the time, nor does this designation compel the City of Berkeley to undertake any action inconsistent with current City plans, policies or programs.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley nominate the North Berkeley BART station for PDA designation.

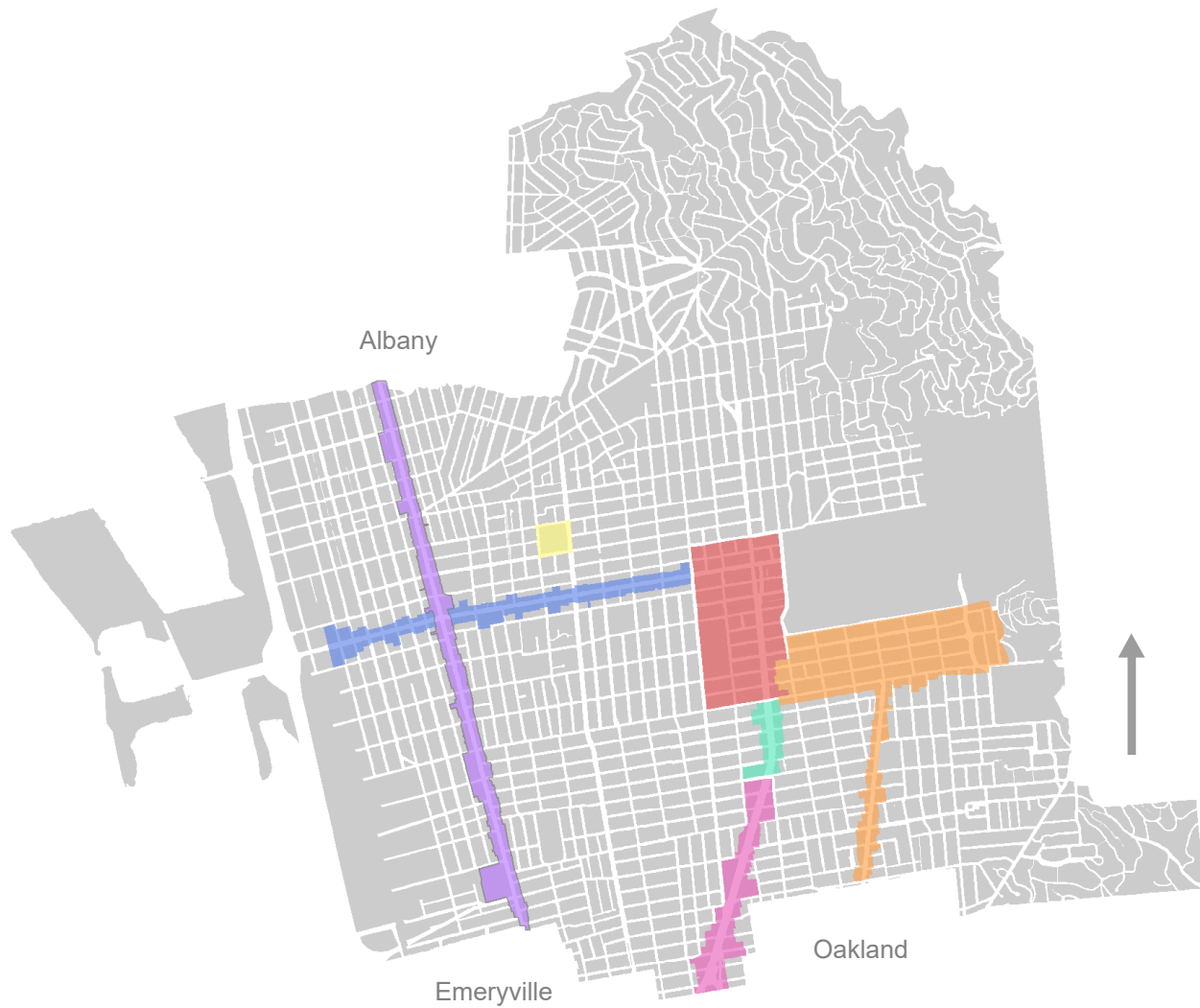













## City of Berkeley | Priority Development Areas (PDA)

Last Updated: October 10, 2019



### Legend

- |  |  |
|--|--|
|  Proposed North Berkeley BART PDA |  Shattuck PDA   |
|  Adeline PDA                      |  Telegraph PDA  |
|  Downtown PDA                     |  University PDA |
|  San Pablo PDA                    |  |

**Lapira, Katrina**

---

**From:** Lapira, Katrina  
**Sent:** Wednesday, November 13, 2019 8:45 AM  
**To:** Lapira, Katrina  
**Cc:** Pearson, Alene  
**Subject:** Berkeley Strategic Transportation (BeST) Plan

Good morning Commissioners,

I'm linking the [Berkeley Strategic Transportation \(BeST\) Plan](#) – which was referenced by Transportation Division Principal Planner, Beth Thomas, during her discussion of the transportation impact fee (Item 10).

Please let me know if you have any issues accessing the accompanying sections of the plan.

Best,

**Katrina Lapira**

Assistant Planner  
City of Berkeley | Land Use Planning Division  
1947 Center Street, 2<sup>nd</sup> Floor  
Berkeley, CA 94704  
510-981-7488  
[klapira@cityofberkeley.info](mailto:klapira@cityofberkeley.info)  
*Pronouns: she, her, hers*






City Clerk Department

November 18, 2019

To: Members of Berkeley Boards and Commissions

From:  Mark Numainville, City Clerk

Subject: Berkeley Lobbyist Registration Ordinance

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

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

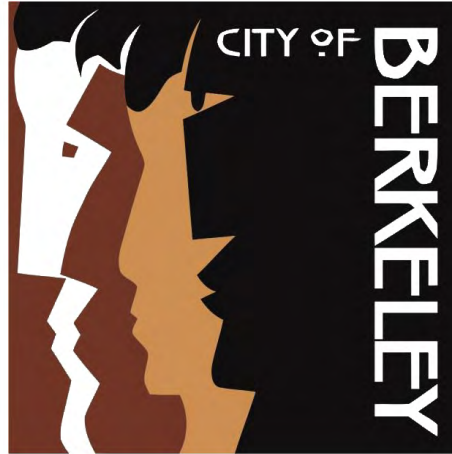
The requirement to register applies broadly. The definition of a “Local Government Lobbyist” includes any individual who is paid specifically to communicate with any elected or appointed City official or employee for the purpose of influencing any proposed or pending governmental action of the City;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

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

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

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





# LOBBYIST MANUAL 2020 EDITION

BACKGROUND INFORMATION  
RULES AND PROCEDURES

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





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## CHAPTER I. INTRODUCTION

### CHAPTER I. INDEX

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- E. What kind of Communication falls within these Lobbying Activities?
- F. Who Are The Officers of the City of Berkeley?
- G. What Kind of Communications are Exempt?

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

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

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

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

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

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

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

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

### C. Who must Register?

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

1. Receives or is entitled to receive one thousand dollars (\$1,000) or more in economic consideration in a calendar month (other than reimbursement for reasonable travel expenses) to communicate directly or through agents with any elected or appointed City official or City employee, for the purpose of influencing any proposed or pending governmental action of the City; or

2. Is a salaried employee, officer, or director of a corporation, organization or association, and whose duties include communication directly or through agents with any elected or appointed City official or City employee, for the purpose of influencing any proposed or pending governmental action of the City.

*Examples:*

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

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

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

### D. What are Lobbying Activities?

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

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

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

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

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

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

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

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

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

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

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

*Examples:*

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

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

*Examples:*

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

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

## CHAPTER II. GETTING STARTED: REGISTRATION

### CHAPTER II. INDEX

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

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

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

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

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

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

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

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

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

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

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

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

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

**D. Training (BMC 2.09.080)**

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

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

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

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

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

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

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

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

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

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

**CHAPTER III. INDEX**

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

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

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

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

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

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

**C. General Disclosure Requirements**

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

| <u>Deadline</u>      | <u>Reporting Period</u> |                                                                                                                                                                                                                 |
|----------------------|-------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| April 30             | January 1 - March 30    | <div style="border: 1px solid black; border-radius: 10px; padding: 5px; width: fit-content;">                     ** Only applies to sole proprietor or firms with 4 or fewer employees.                 </div> |
| July 31              | April 1 - June 30       |                                                                                                                                                                                                                 |
| October 31           | July 1 - September 30   |                                                                                                                                                                                                                 |
| January 31           | October 1 - December 31 |                                                                                                                                                                                                                 |
| Annual: January 31** | January 1 - December 31 |                                                                                                                                                                                                                 |



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## CHAPTER IV. PROHIBITED ACTIVITIES

### CHAPTER IV. INDEX

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

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

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

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

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

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

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

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

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

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

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

The following are exempt from the restrictions in 2.09.220:

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

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

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

The following types of payments are prohibited under 2.09.220:

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

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

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

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

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

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

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

## CHAPTER V. ENFORCEMENT

### CHAPTER V. INDEX

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## APPENDIX A: RESOURCE DIRECTORY

1. OPEN GOVERNMENT COMMISSION  
2180 Milvia Street, Fourth Floor  
Berkeley, CA 94704  
(510) 981-6998  
[fcpc@cityofberkeley.info](mailto:fcpc@cityofberkeley.info) <http://www.cityofberkeley.info/opengovernmentcommission/>
  
2. CITY CLERK  
2180 Milvia Street, First Floor  
Berkeley, CA 94704  
(510) 981-6900  
[elections@cityofberkeley.info](mailto:elections@cityofberkeley.info)  
<http://www.cityofberkeley.info/clerk>
  
3. BERKELEY MUNICIPAL CODE  
Lobbyist Registration and Regulations  
Chapter 2.09  
<https://www.codepublishing.com/CA/Berkeley/>



**APPENDIX B: FULL TEXT OF ORDINANCE**

ORDINANCE NO. 7,629-N.S.

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

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

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

Chapter 2.09

LOBBYIST REGISTRATION AND REGULATIONS

Sections:

Article 1. General Provisions

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

Article 2. Definitions and Interpretation of This Act

- 2.09.040 Words and phrases.
- 2.09.050 Definitions.

Article 3. Registration of Lobbyists

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

Article 4. Disclosure of Lobbying Activities and Audits

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

Article 5. Prohibitions

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

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

**Article 6. Enforcement**

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

**Article 1. General Provisions**

**2.09.010 Title.**

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

**2.09.020 Findings.**

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

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

**2.09.030 Purpose.**

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

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

**2.09.040 Words and phrases.**

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

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

**2.09.050 Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**2.09.070 Cessation of employment.**

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

**2.09.080 Lobbyist training.**

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

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

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

**2.09.090 Exceptions.**

The provisions of this Act shall not apply:

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

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

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

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

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

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

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

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

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

**2.09.100 Failure to Register.**

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

**2.09.110 Availability of information.**

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

**2.09.120 Filing under penalty of perjury.**

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

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

**2.09.130 Records.**

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

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

**2.09.140 Quarterly disclosure.**

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

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

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

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

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

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



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

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

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

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

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

**2.09.160 Audits**

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

**Article 5. Prohibitions**

**2.09.170 No unregistered employment or activity.**

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

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

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

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

**2.09.190 Deception prohibited.**

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

**2.09.200 False appearances prohibited.**

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

**2.09.210 Prohibited representations.**

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

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

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

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

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

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

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

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

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

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

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

B. This prohibition shall not apply to:

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

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

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

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

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

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

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

## **Article 6. Enforcement**

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

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

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

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

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

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

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

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

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

**2.09.270 Violations – commission action.**

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

**2.09.280 Civil actions.**

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

**2.09.290 Civil penalties.**

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

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

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

**2.09.300 Criminal violation.**

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

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

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

**2.09.310 Joint and several liability.**

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

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

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

**2.09.320 Effective date.**

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

**2.09.330 Severability.**

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

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

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

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

1) The Open Government Commission shall:

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

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

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

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

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

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

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

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

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

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

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

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

Sections:

Article 1. General Provisions

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

Article 2. Definitions and Interpretation of This Act

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

Article 3. Registration of Lobbyists

- [2.09.060](#) Registration with the Open Government Commission.
- [2.09.070](#) Cessation of employment.
- [2.09.080](#) Lobbyist training.
- [2.09.090](#) Exceptions.
- [2.09.100](#) Failure to Register.
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Article 4. Disclosure of Lobbying Activities and Audits

- [2.09.140](#) Quarterly disclosure.
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Article 5. Prohibitions

- [2.09.170](#) No unregistered employment or activity.
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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 liability.
- [2.09.320](#) Effective date.
- [2.09.330](#) Severability.

**2.09.010 Title.**

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

**2.09.020 Findings.**

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

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

**2.09.030 Purpose.**

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

**2.09.040 Words and phrases.**

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

**2.09.050 Definitions.**

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

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

action which is ministerial in nature.

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

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

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

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

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

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

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

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

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

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

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

**2.09.070 Cessation of employment.**

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

**2.09.080 Lobbyist training.**

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

required by the Open Government Commission, at its discretion.

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

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

**2.09.090 Exceptions.**

The provisions of this Act shall not apply:

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

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

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

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

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

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

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

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

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

**2.09.100 Failure to Register.**

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

**2.09.110 Availability of information.**

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

**2.09.120 Filing under penalty of perjury.**

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

**2.09.130 Records.**

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

**2.09.140 Quarterly disclosure.**

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

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

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

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

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

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

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

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

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

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

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

**2.09.160 Audits.**

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

**2.09.170 No unregistered employment or activity.**

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

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

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

**2.09.190 Deception prohibited.**

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

**2.09.200 False appearances prohibited.**

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

**2.09.210 Prohibited representations.**

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



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

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

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

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

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

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

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

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

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

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

B. This prohibition shall not apply to:

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

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

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

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

**2.09.240 Rules and regulations.**

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

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

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

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

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

**2.09.260 Notice and hearing on violations.**

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

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

**2.09.270 Violations – commission action.**

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

**2.09.280 Civil actions.**

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

**2.09.290 Civil penalties.**

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

**2.09.300 Criminal violation.**

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

**2.09.310 Joint and several liability.**

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

**2.09.320 Effective date.**

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

**2.09.330 Severability.**

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

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