



Health, Housing & Community Services
Mental Health Commission

To: Mental Health Commissioners
From: Jamie Works-Wright, Commission Secretary
Date: December 6, 2019

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Berkeley/ Albany Mental Health Commission

Regular Meeting
Thursday, December 12, 2019

Time: 7:00 p.m. - 9:00 p.m.

1947 Center Street
Basement, Multi-

Purpose Room

AGENDA

All agenda items are for discussion and possible action

Public Comment Policy: Members of the public may speak on any items on the Agenda and items not on the Agenda during the initial Public Comment period. Members of the public may also comment on any item listed on the agenda as the item is taken up. Members of the public may not speak more than once on any given item. The Chair may limit public comment to 3 minutes or less.

7:00pm

- 1. Roll Call**
- 2. Preliminary Matters**
 - a. Action Item: Agenda Approval
 - b. Public Comment
 - c. Action Item: Approval of the October 24, 2019 Minutes
- 3. Presentation about Census – Shahihah Lacy, Keith Carson’s office**
- 4. Discussion and vote to establish the Mental Health Commission 2020 calendar for regular meetings**
- 5. Create Planning Subcommittee for LGBTQI2-S Staff Training that will collaborate with the Training and Diversity & Multicultural Coordinator within the Division of Mental Health.**
- 6. Report of November 7, 2019 meeting**
- 7. Discussion and Possible Action on Subcommittee Reports**
 - a. Site Visit Subcommittee
 - b. Accountability Subcommittee
 - c. Mobile Crisis Response



d. Membership Subcommittee

8. One - hour training on Commission Mandate by Margaret Fine
9. Mental Health Manager Updates- Steve Grolnic-McClurg
10. Berkeley Mental Health Staff Announcements
11. Prioritize Agenda Items of January Meeting
12. Announcements
13. Adjournment

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Contact person: Jamie Works-Wright, Mental Health Commission Secretary (510) 981-7721 or Jworks-wright@cityofberkeley.info



*Communication Access Information: This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date. **Please refrain from wearing scented products to this meeting. Attendees at trainings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs. Thank you.***

SB 343 Disclaimer

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection in the SB 343 Communications Binder located at the Family,



Department of Health,
Housing & Community Services
Mental Health Commission

Berkeley/Albany Mental Health Commission Minutes

Regular Meeting
October 24, 2019

1947 Center Street
7:00pm
Basement, Multi-Purpose Room

Members of the Public Present: Alina Fox, Farzaneh Izadi, Richie Smith, Lisi Ludwig, Ed Opton, Ann Hawkins, Tony Wilkinson, Devahe (?), Margy Wilkinson Jonah

Staff Present: Fawn Downs, Steve Grolnic-McClurg, Jamie Works-Wright & Tenli Yavneh.

1. Call to Order at 7:03pm

Commissioners Present: Erlinda Castro, boona cheema, Paul Kealoha-Blake, Andrea Prichett, Margaret Fine, Cheryl Davila (Arrived 7:12) **Absent:** Shelby Heda

2. Preliminary Matters

A. Approval of the October 24, 2019 Agenda

M/S/C (Castro, Prichett) Motion to approve the October 24, 2019 Mental Health Commission Meeting Agenda – PASSED

Ayes: Castro, cheema, Fine, Kealoha-Blake, Prichett; **Noes:** None;

Abstentions: None; **Absent:** Davila, Heda

B. Public Comment – There were 5 public comments.

C. Approval of the September 26, 2019 Meeting minutes

M/S/C (Prichett, Davila) Motion to approve the September 26, 2019 Meeting minutes – PASSED

Ayes: Castro, cheema, Davila, Fine, Kealoha-Blake, Prichett; **Noes:** None;

Abstentions: None **Absent:** Heda.

3. Interview and vote on nomination of Farzaneh Izadi to the Mental Health Commission

M/S/C (Davila; Kealoha-Blake) Motion to nominate Farzaneh Izadi and send to city council for appointment to the Mental Health Commission.

PASSED

Ayes: Castro, cheema, Davila, Fine, Kealoha-Blake, Prichett; **Noes:** None;

Abstentions: None; **Absent:** Heda

4. **Discuss the MHC for the cities of Berkeley and Albany Work Plan 2019-2020**
M/S/C (Fine, Davila) Motion to withdraw the work plan for 2019/2020
PASSED
Ayes: Castro, cheema, Davila, Fine, Kealoha-Blake, Prichett; **Noes:** None;
Abstentions: None; **Absent:** Heda.

5. **Discuss input for Crisis Response Consultant RFP**
M/S/C (Fine, Davila) Motion to provide 10 days from October 24, 2019 to provide the chair with feedback on the evaluation of the Mobile Crisis Response team and the chair will incorporate the feedback and submit to the division.
PASSED
Ayes: Castro, cheema, Davila, Fine, Kealoha-Blake, Prichett; **Noes:** None;
Abstentions: None; **Absent:** Heda

6. **Discussion and Possible Action on Subcommittees Reports**
 - Site Visit Subcommittee - No Motion Taken
 - Accountability Subcommittee- No Motion Taken
 - Mobile Crisis Response - No Motion Taken
 - Membership Subcommittee- No Motion Taken

7. **Mental Health Manager Updates - Steve Grolnic-McClurg**
 - ❖ **At this point, the following motion was made:**
M/S/C (Fine; Davila) *Motion to extend for 10 minutes from 8:55 to 9:05
Ayes: Castro, cheema, Davila, Fine, Kealoha-Blake, Prichett; **Noes:** None;
Abstentions: None; **Absent:** Heda

8. **Berkeley Mental Health Staff Announcements –** One announcement- Commission Secretary, Jamie Works-Wright shared the flyer about the Berkeley Mental Health Thanksgiving party that will take place on Tuesday, November 26 @ San Pablo Park from 12-2pm, open to BMH adult consumers.

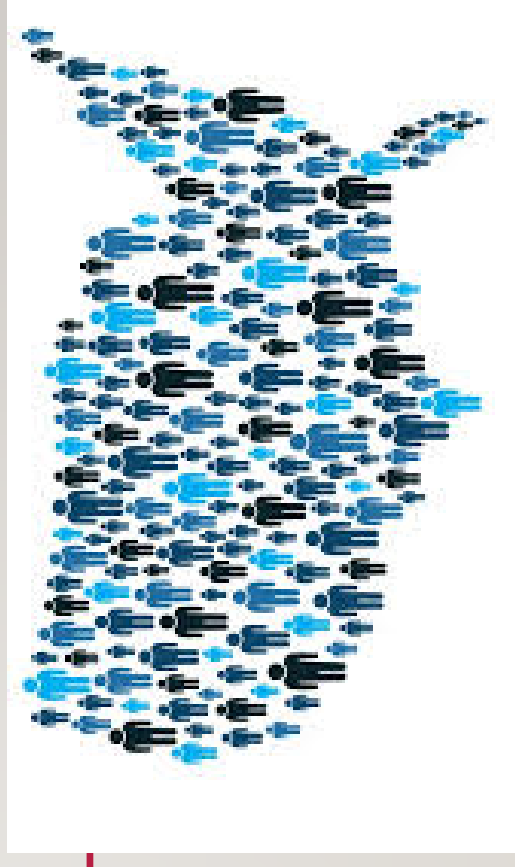
9. **Prioritize Agenda Items for October Meeting –** Keith Carson’s office wants to do a presentation about the census.

10. **Announcements –** Commission Chair, boona cheema shared what was happening in the city hall parking lot. A lady and a child were in the parking lot and a person was trying to contact 211 to help with emergency shelter for the night.

11. **Adjournment – 9:07pm**
M/S/C (Fine, Castro) Motion to adjourn the meeting – PASSED
Ayes: Castro, cheema, Davila, Fine, Kealoha-Blake, Prichett; **Noes:** None;
Abstentions: None; **Absent:** Heda

Minutes submitted by: _____
 Jamie Works-Wright, Commission Secretary

**ALAMEDA COUNTY
BOARD OF SUPERVISORS
KEITH CARSON
PRESENTS: CENSUS 2020**



WHAT IS THE CENSUS ?

How many people know what the census is ?

What is the Census?

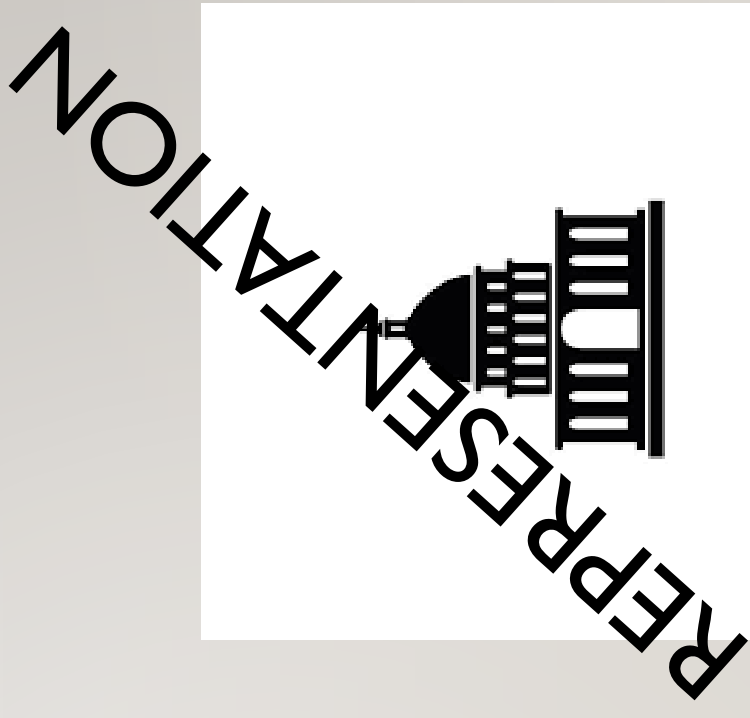
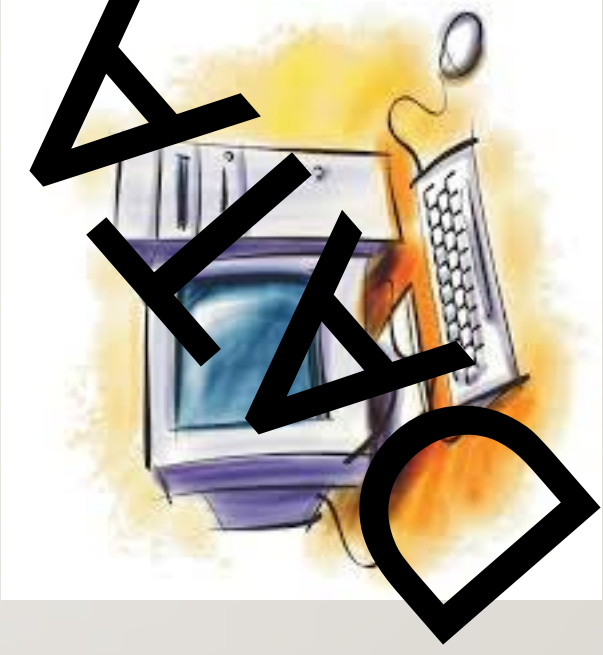
When is Census Day?

Who must fill out the census?

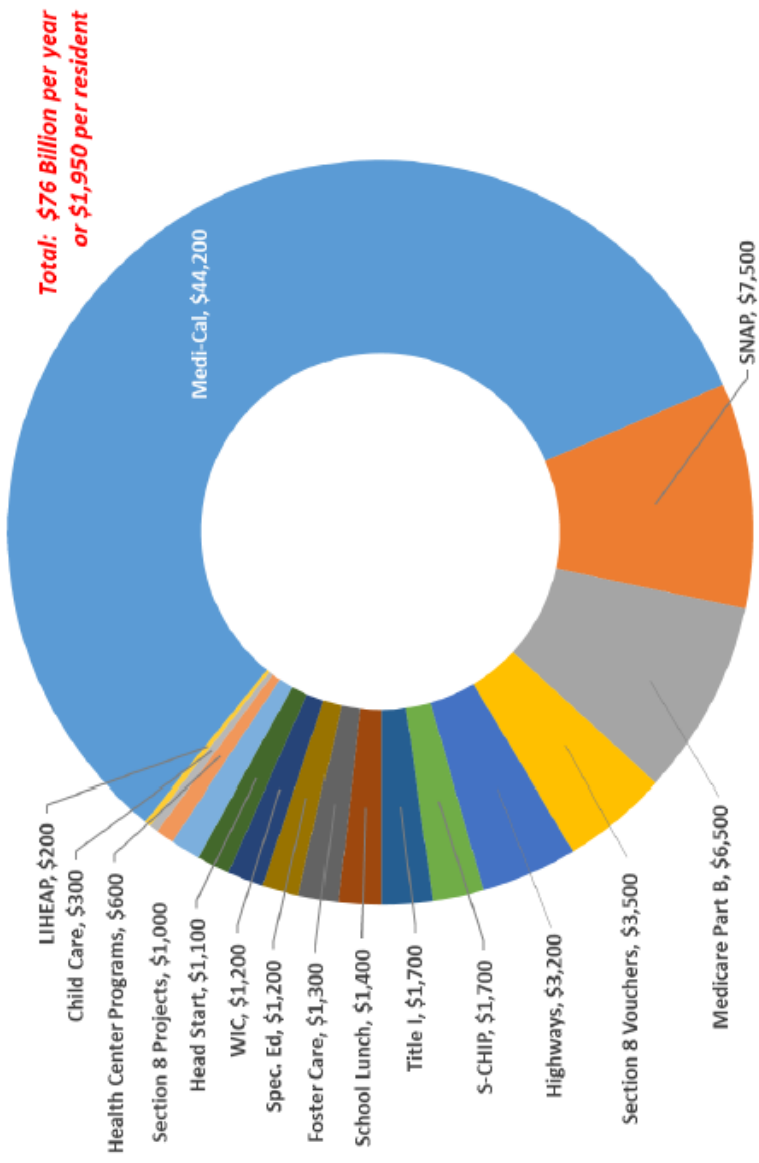


WHY IS THE CENSUS IMPORTANT ?

- MONEY
- REPRESENTATION
- DATA



Federal Programs That Allocate Funds to California Using Census Data
 (in million dollars - FFY2015)



Program	Federal department	Federal funding (billions)
Medical Assistance Program (Medicaid/Medi-Cal)	Health and Human Services (HHS)	\$44.2
Supplemental Nutrition Assistance Program (SNAP/CalFresh)	US Department of Agriculture (USDA)	\$7.5
Medicare Part B (Supplemental Medical Insurance)—Physicians Fee Schedule Services	HHS	\$6.5
Section 8 Housing Choice Vouchers	Housing and Urban Development (HUD)	\$3.5
Highway Planning and Construction	Department of Transportation (DOT)	\$3.2
State Children's Health Insurance Program (S-CHIP)	HHS	\$1.7
Title I Grants to Local Education Agencies	Department of Education (ED)	\$1.7
National School Lunch Program	USDA	\$1.4
Foster Care (Title IV-E)	HHS	\$1.3
Special Education Grants (IDEA)	ED	\$1.2



CENSUS BY THE NUMBERS

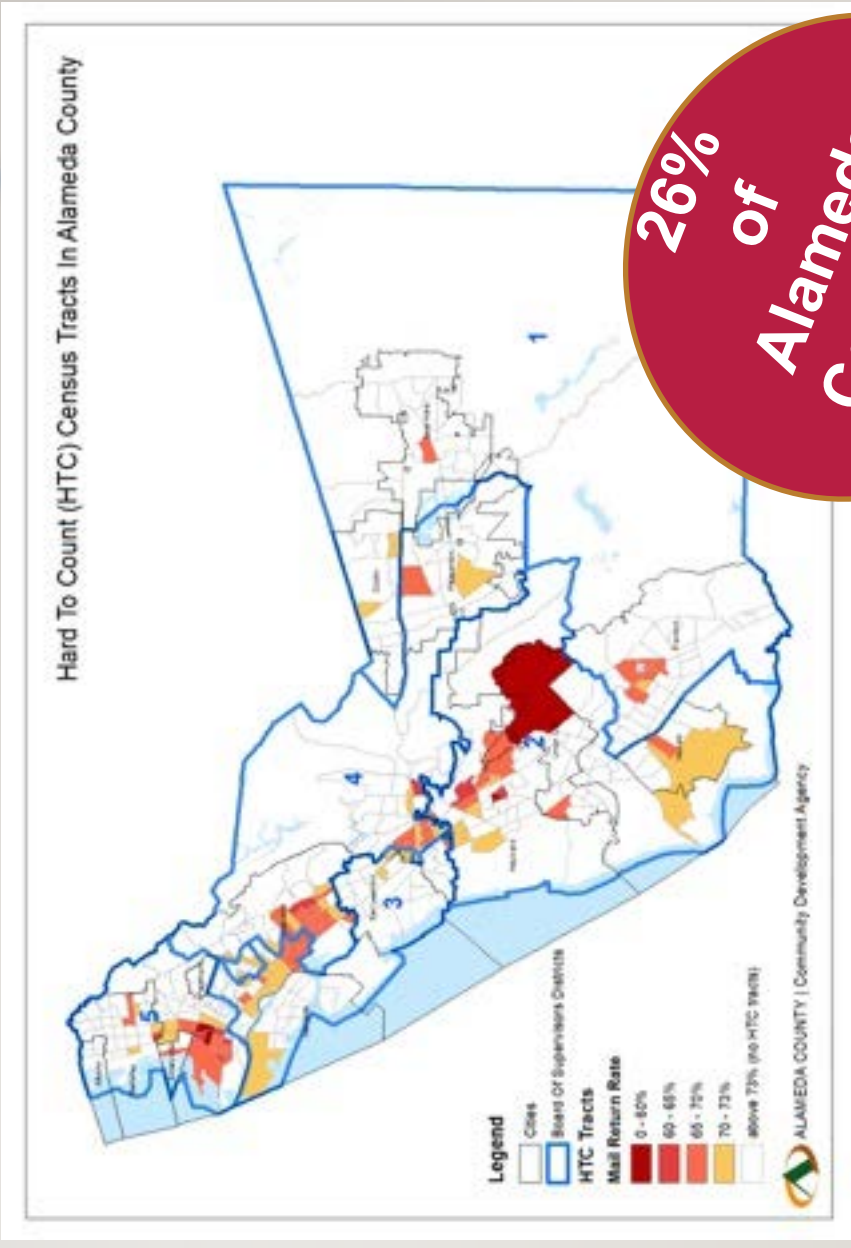


- Alameda County receives ~60% of its revenue from Federal & State resources.
- Each person not counted equates to a loss of ~\$1,000 in funding PER YEAR.
- Alameda County has 413,000 “Hard-to-Count” residents which is 26 percent of our population.
- If Alameda County undercounts by only 6%, we would lose \$1 Billion over 10 years.
- The estimated cost of counting “Hard-To-Count” populations is \$7-\$12 per person



Hard-To-Count Populations

- Foreign born residents / Immigrants
- People of color
- Young children
- Renters / Frequent movers
- ‘Linguistically isolated’ households
- Low-income households
- Unhoused individuals
- Large or overcrowded households
- Senior citizens
- People without high school degrees
- People with disabilities
- Households without a computer or internet access
- People who distrust government authority and / or have been or could be targets of law enforcement





CENSUS 2020 IS RADICALLY DIFFERENT



Fear may deter participation: Residents are increasingly distrustful of government, are concerned about data privacy, The U.S. GAO has predicted a 17% reduction in self-response on the 2020 Census.



First Digital Census: Instead of the traditional paper form, 60% of the population will be asked to take the Census online using a 16 digit pin or QR code. The site will be available on mobile devices.



Logistics: The Census Bureau has not thoroughly tested its new technological systems, it has reduced Bureau staff including enumerators, and has only completed 1 “Census dress rehearsal.” (3 are usually conducted)



Census Takers: They are required to do training online and field work on smart phones. Staff will only make half as many attempts to visit each home than in previous Census.



Language Barriers: While 220 languages are spoken throughout the state, the Census questionnaire will only be available in 12 languages. Video guides & glossaries will be available for 59 languages.

TIMELINES

When is the Census

- March 12 -20th (invitation to respond to the census)
 - March 16 -24 (reminder letter is sent)
- If not self response**
- March 26 – April 3 (reminder postcard is sent)
 - April 8- 16 (a reminder letter and a paper form is sent out)
 - April 20-27(a final reminder letter is sent out)
 - Census will follow up in person

WAYS TO TAKE THE CENSUS



Online



Computer
Or mobile device

Available in 12
Languages + English



Paper Form



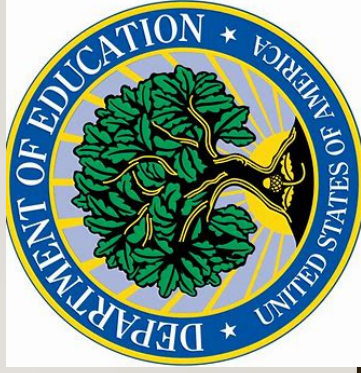
Paper form sent if you
haven't taken the Census
by April 8

Printed in Spanish & English

Title 13, United States Code

- Personal information is never published. It is against the law to disclose or publish any private information that identifies an individual.
- Personal information cannot be used against respondents by any government agency or court. This includes law enforcement, ICE, IRS.
- Census Bureau employees are sworn in for life to uphold Title 13 protections.
- Anyone who violates Title 13 faces a federal prison sentence of up to five years, a fine up to \$250,000, or both.

SOME OF THE PROGRAMS THAT ARE FUNDED BY THE CENSUS





- March 12 -20th (invitation to respond to the census some area receive paper forms)
- March 16 -24 (reminder letter is sent)

If not self response

- March 26 – April 3 (reminder postcard is sent)
- April 8- 16 (a reminder letter and a paper form is sent out)
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- Census will follow up in person

TIMELINES

The goal is self response

HOW WILL PEOPLE BE COUNTED

- There are 4 ways that people can get counted
 - Self Response
 - Group Quarters
 - Service based enumeration
 - In field group quarters enumeration

CENSUS JOBS AVAILABLE NOW!

- Application window is anticipated to be September 2019 – January 2020
- Enumerator work done remotely between April – July 2020 at \$25 per hour
- Training is required for enumerator positions
- County and Census staff will hold info sessions/application workshops or job seekers in Fall of 2019
- Note: a small number of jobs are available now – see website (Office positions & Address Canvassers)

Over 500 enumerators will be hired throughout Alameda County



<https://2020census.gov/jobs>

ALAMEDA COUNTY COMMUNITY AMBASSADOR PROGRAM

Are you a trusted messenger and wish to lead Census outreach in your community?

We are inviting organizations & individuals to sign up to support outreach – by committing to do one of the following:

Host an event where people can complete the Census!

Adopt-A-Block

Host a Questionnaire Assistance Center (QAC)

Volunteer to support people at QAC's or to table at events

All Census Ambassadors are provided training and materials for their outreach!



Sign-up to volunteer at <http://www.bit.ly/CensusAmbassador>

CONTACT US

- If you have any questions or would like find out more ways to be involved please contact
- Shahidah Lacy
 - Shahidah.Lacy@acgov.org
 - Mina.Sanchez@acgov.org
- Call Us
 - 510-272-6695

Proposed 2020 Commission Meeting Schedule

Name of Commission: Mental Health Commission

Commission Secretary: Jamie Works- Wright

2020 Meeting Dates

Month	Meeting Day and Date	Time
January 2020	Thursday, 1/23/20 (4 th Thursday)	7:00PM
February 2020	Thursday, 2/27/20 (4 th Thursday)	7:00PM
March 2020	Thursday, 3/26/20 (4 th Thursday)	7:00PM
April 2020	Thursday, 4/23/20 (4 th Thursday)	7:00PM
May 2020	Thursday, 5/28/20 (4 th Thursday)	7:00PM
June 2020	Thursday, 6/25/20 (4 th Thursday)	7:00PM

Month	Meeting Day and Date	Time
July 2020	Thursday, 7/23/20 (4 th Thursday)	7:00PM
August 2020	No Meeting	
September 2020	Thursday, 9/24/20 (4 th Thursday)	7:00PM
October 2020	Thursday, 10/22/20 (4 th Thursday)	7:00PM
November 2020	No Meeting	
December 2020	Thursday, 12/17/20 (3 rd Thursday)	7:00PM

commission@cityofberkeley.info
City Clerk Department

MEMORANDUM

To: Mental Health Commission
From: Steven Grolnic-McClurg, Mental Health Manager
Date: December 2, 2019
Subject: Mental Health Manager Report

Mental Health Services

Attached is the report on caseload statistics for October (the last month in which we have data). Costs per participant, per approved budget, is included.

Contract Negotiations between City of Berkeley (COB) and Alameda County Behavioral Healthcare Services (ACBHCS)

Negotiations between COB and ACBHCS regarding a new contract are continuing. One item that has been agreed to by both sides concerns the geographic area that the City of Berkeley Mental Health Division will cover.

In the course of doing research in inform this contracting process, COB made inquiries to the California Department of Health Care Services (DHCS) regarding the basis for the Realignment and MHSAs funding that the City of Berkeley receives. DHCS responded that they could provide information regarding the MHSAs, but that the California Department of Finance (DOF) administers the realignment funding, and passing along that portion of the inquiry.

DHCS informed COB that the MHSAs funding for the COB is calculated by dividing the population of California by the population of the City of Berkeley – COB receives this percentage of the available MHSAs funding. They do **not** and have not ever included the population of the City of Albany in that calculation. Based on this information, it is unclear what reason there is for using the COB MHSAs funding to provide prevention, early intervention or other services to residents of the City of Albany.

The Department of Finance followed up on the referral from DHCS and stated that the Realignment funding the City of Berkeley receives were initially allocated per Welfare and Institutions Code 17601, when the COB was allotted 0.190% of available funding. This was determined as the base. Since then, City and Counties also receive funding from the Sales Tax Growth Account per Welfare and Institutions Code 17606.10. DOF was not able to locate any records on what the basis for the original 0.190% was based

on, and suggested that COB reach out to the California Behavioral Health Directors Association (CBHDA), which may have that information.

COB contacted CBHDA, and they stated that the Realignment base funds were distributed to individual Counties and Cities based on prior State General Fund County allocations. CBHDA was not aware of what the State General Fund County allocations were based on, and reached out to the California State Association of Counties (CSAC) to see if they had this information. CSAC stated that COB's 1991 base was developed for the population of Berkeley **only**. The 1991 base for each jurisdiction was based on their level of funding in these program areas just prior to realignment, and efforts were made to talk into account historical formulas and funding. From this information, it is unclear what reason there is for using COB 1991 funding to provide mental health services for individuals in the City of Albany.

COB presented this information to ACBHCS. ACBHCS agreed that the funding for COB mental health services was designated only for Berkeley residents, and further agreed to assume responsibility for individuals presenting for mental health services from Albany in the future. COB has agreed to continue to provide Mobile Crisis Services for an additional year to Albany, to assure no disruption of services. During this year, COB will determine the costs for these services, and request that ACBHCS either assume responsibility for these services going forward or reimburse COB for these costs.

Berkeley Wellness Center

The Berkeley Wellness Center (BWC), located at 1909 University Avenue, is now open! The BWC will have a grand opening (although it has been operating for all of November) on Monday, December 9th, from 2-4 pm. The BWC is open from 9-5, Monday through Friday. If you are not able to attend the grand opening, you can go down to the center anytime it is open to check it out.

Homeless Outreach

At the request of the City Manager's Office, the HOTT did daily outreach to the encampments at I-80 and University through November, and will continue to do three times a week outreach in December. This intensive outreach is difficult to do, given the ongoing clients served by HOTT, and the work required to do the important follow up work for individuals who accept the outreach. HOTT has been able provide a variety of services at the encampment, including motel stays, vouchers for free identification cards, clothes, toiletries, food, etc. The HOTT staff report that individuals are generally open to the outreach and appreciative of receiving these services and goods.

Mobile Crisis Team

Jeff Buell has been hired as the new Mental Health Program Supervisor over the Mobile Crisis Team, the Transitional Outreach Team, the Homeless Outreach and Treatment Team, and the Community Assessment Team. This position was most recently held by

Tenli Yavneh. Jeff has worked in both mental health and aging for the COB, and was promoted from a temporary position directly supervising the Mobile Crisis Team.

**Berkeley Mental Health Caseload Statistics for
October 2019**

Adult Services	Intended Ratio of staff to clients	Clinical Staff Positions Filled	# of clients open this month	Monthly Cost Per Participant Per Budget*	Fiscal Year 2020 Demographics as of November 2019
Adult, Older Adult and TAY Full Service Partnership (FSP) (Highest level outpatient clinical case management and treatment)	1-10 for clinical staff.	6 Clinicians 1 Team Lead	73	\$2289	77 Clients American Indian: 0 API: 1 African-American: 25 Hispanic: 3 Other: 31 White: 17 Male: 50 Female: 27
Adult FSP Psychiatry	1-100	.5 FTE	59	\$464	
Comprehensive Community Treatment (CCT) (High level outpatient clinical case management and treatment)	1-20	9.5 Clinicians .5 Lead Clinician 1 Non-Degreed Clinical 1 Manager	181	\$1075	193 Clients API: 6 African-American: 53 Hispanic: 9 Other: 78 White: 47 Male: 103 Female: 90
CCT Psychiatry	1-200	.75	138	\$224	
Focus on Independence Team (FIT) (Lower level of care, only for individuals previously on FSP or CCT)	1-20 Team Lead, 1-50 Post Masters Clinical 1-30 Non-Degreed Clinical	1 Clinical Supervisor, 1 Licensed Clinician, 1 CHW Sp./ Non-Degreed Clinical	98	\$419	94 Clients API: 3 African American: 31 Hispanic: 2 Other: 25 White: 33 Male: 58 Female: 36
FIT Psychiatry	1-200	.25	86	\$392	

Family, Youth and Children's Services	Intended Ratio of staff to clients	Clinical Staff Positions Filled	# of clients open this month	Monthly Cost Per Participant Per Budget*	Fiscal Year 2019 Demographics as of October, 2019
Children's Full Service Partnership	1-8	2.0 Clinical	11	\$4555	17 Clients API: 0 African-American: 7 Hispanic: 3 Other: 1 White: 6 Male: 12 Female: 5
Early and Periodic Screening, Diagnostic and Treatment Prevention (EPSDT) /Educationally Related Mental Health Services (ERMHS)	1-20	2.5 Clinical	67	\$1205	69 Clients API: 1 African-American: 24 Hispanic: 13 Other: 16 White: 15 Male: 44 Female: 25
High School Health Center and Berkeley Technological Academy (Note: school not in session)	1-6 Clinician (majority of time spent on crisis counseling)	102	Treatment:54 Groups: 5 offered, 5 conducted Drop In (Crisis): 94	N/A	N/A

Crisis, ACCESS, and Homeless Services	Staff Ration	Clinical Staff Positions Filled	Total # of Clients/Incidents
Homeless Outreach and Treatment Team (HOTT)	1-10 Case Manager 1-3 Team Lead	1 Team Lead, 1 Licensed Clinician, 3 Case Managers	37 enrolled clients for the month. 39 non-enrolled individuals received outreach.
Mobile Crisis	N/A	3 Clinicians, 1 Team Lead	<ul style="list-style-type: none"> • 79 Incidents • 31 5150 Evals • 8 5150 Evals leading to involuntary transport
Transitional Outreach Team (TOT)	N/A	1 Licensed Clinician, 1 Non-Licensed Staff	55 Incidents

Not reflected in above chart is Early Childhood Consultation, ACCESS, Wellness and Recovery Programming, or Family Support.

∞* Monthly costs determined by dividing yearly budgeted amounts for programs by number of participants, then dividing this rate by 12.

Works-Wright, Jamie

From: Berkeley/Albany Mental Health Commission
Sent: Thursday, November 21, 2019 10:19 AM
To: Works-Wright, Jamie
Subject: FW: BERKELEY RISING-Questions
Attachments: BERKELEY RISING-Questions.docx

Thank you for your time.

Jamie Works-Wright

Consumer Liaison & Mental Health Commission Secretary
City of Berkeley
1521 University
Berkeley, CA 94703
jworks-wright@cityofberkeley.info
Office: 510-981-7721 ext. 7721
Cell #: 510-423-8365

From: Sharon Siskin [mailto:sharonsiskin@att.net]
Sent: Thursday, November 7, 2019 1:17 PM
To: Berkeley/Albany Mental Health Commission <BAMHC@cityofberkeley.info>
Subject: BERKELEY RISING-Questions

Dear Mental Health Commission,

I was recently awarded a Berkeley Civic Arts Grant for a project that I am inviting you to participate in with me. Since this project focuses directly on the City of Berkeley I would be most grateful if you were willing to answer a few questions, because your answers will help to drive the content of this project. There is a short description of the project, below, an image that contains 9 questions that I am inviting you to consider, and a Word Document that makes it very easy to take the 5 minutes to answer these questions. Thank you in advance for your time in reading this message, and your consideration to support BERKELEY RISING by participating.

Warmly,

Sharon Siskin, Berkeley

Artist

Adj

unct Professor, Department of Art & Cultural Studies, Berkeley City College & Laney
College

Faculty Advisor, MFA-IA Program, Goddard College, Port Townsend, WA

BERKELEY RISING is a community-engaged, social practice, public art project that addresses issues related to climate change as they affect people who live, study or work in the City of Berkeley. This project involves research in the form of small, intimate, community-engaged conversations about the effects of climate change on the lives of people here in Berkeley. These interactions will be made visible in the form of regional/city maps that bear traces of those conversations, seen as transcribed texts that are burnt into the papers that contain these maps.

RISING is a project I have been working on in my studio for some time. It has been focused on the global effects of climate change. Inspired by the 1987 Names Project Quilt—a personal response to the AIDS pandemic—RISING is my own personal imperative to speak the names and remember what may be lost globally, due to rising temperatures and the resulting rising waters. RISING has taken the form of a 98-page repurposed world atlas bearing the names of low-lying island nations that I have burned into the maps, where these nations now exist. It has taken the form of large-scale maps and map fragments where I have used a similar process of burning texts. RISING has also taken the form of reportage of the stories of the rising up of 5% of the world's population within AOSIS (Alliance of Small Island States), which is a coalition of islands and low-lying coastal countries sharing their concerns about the environment (with anyone in the world who cares to know) and their vulnerability to the effects of global climate change. Their press releases have become texts that I have burnt into found world maps.

I am interested in making work that makes me remember; that memorializes; and most importantly, that makes visible the stories of people who have been raising their voices, building global alliances and taking direct action in the face global of unprecedented crisis. For me, BERKELEY RISING is the obvious next step in this ongoing project—to get regional, local, hyper-local, and deeply personal—to learn about the effects on my city government, my West Berkeley community, my 9th Street neighbors, my Berkeley-based friends, my students and colleagues at Berkeley City College, my own family and me. I plan to display and exhibit the results of BERKELEY RISING in venues throughout Berkeley by the end of 2020.

BERKELEY RISING

An Arts Research Project Investigating Ecological Grief in Berkeley, California

Through intimate dialog about the effects of manmade climate change
and other Anthropocenic events on our daily life and work

QUESTIONS:

1. Have you seen or experienced changes in the climate here in Berkeley?
2. If so, please describe what you have seen or experienced.
3. Have you thought about changes in the climate globally?
4. If so, please describe some of those thoughts.
5. How do you feel about what you know now about global climate change?
6. What are your thoughts about the affects of climate change in Berkeley?
7. How do you feel about those thoughts as they relate to your life or work
in Berkeley?
8. What actions have you taken in response to what you know about climate change?

9. Are there other thoughts that you would like to add to a public dialog about climate change?

Works-Wright, Jamie

From: Berkeley/Albany Mental Health Commission
Sent: Friday, November 22, 2019 1:01 PM
To: Works-Wright, Jamie
Subject: FW: Lobbyist Registration Ordinance
Attachments: Lobbyist Full Manual for Upload.pdf; Memo to Commissioners.pdf; BMC Chapter 2-09.pdf

Please see the following email about Lobbyist registration Ordinance

Thank you for your time.

Jamie Works-Wright

Consumer Liaison & Mental Health Commission Secretary

City of Berkeley

1521 University

Berkeley, CA 94703

jworks-wright@cityofberkeley.info

Office: 510-981-7721 ext. 7721

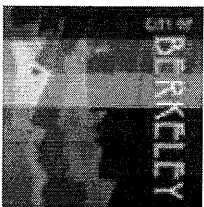
Cell #: 510-423-8365

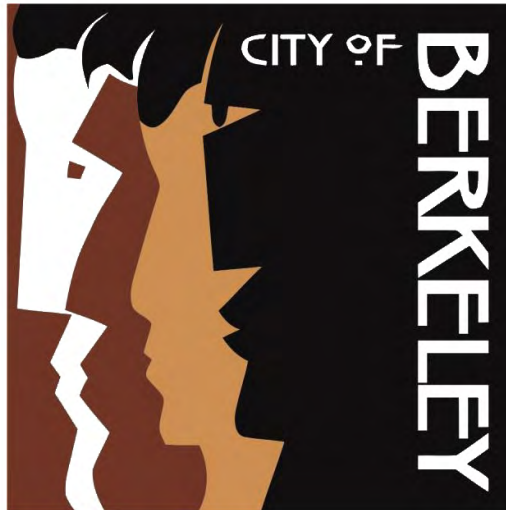
Commission Secretaries,

The Lobbyist Registration Ordinance is effective 1/1/20. People that lobby your commissioners may be subject to the requirements of the act. The attached information is intended to provide your commissioners with some background and context regarding the ordinance.

Please send the attached documents to your commissioners and add the items to your next agenda packet as a communication.

Let me know if you have any questions.





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

- A. The History and Purpose of Berkeley's Lobbyist Registration Act
- B. The Open Government Commission
- C. Who must Register?
- D. What are Lobbying Activities?
- E. What kind of Communication falls within these Lobbying Activities?
- F. Who Are The Officers of the City of Berkeley?
- G. What Kind of Communications are Exempt?

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

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

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

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

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

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

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

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

### C. Who must Register?

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

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

#### *Examples:*

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

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

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

### D. What are Lobbying Activities?

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

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

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

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

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

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

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

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

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

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

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

*Examples:*

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

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

*Examples:*

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

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



## CHAPTER II. GETTING STARTED: REGISTRATION

### CHAPTER II. INDEX

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### CHAPTER III. INDEX

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

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

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

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

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

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

#### C. General Disclosure Requirements

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

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Berkeley, CA 94704

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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.

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).

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

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### **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)